Noida Toll Bridge Co. Ltd.

March 23, 2018

The General Manager
Corporate Relations Department
Bombay Stock Exchange Limited
1st Floor, New Trading Ring
Rotunda Building, P J Towers
Dalal Street, Fort
Mumbai – 400 001

Scrip Code No. 532481

Mr. K Hari
Listing Department
National Stock Exchange of India Ltd.
Exchange Plaza, 5th Floor
Plot No. C/1, G Block
Bandra-Kurla Complex, Bandra (E)
Mumbai – 400 051

Scrip Code No. NOIDA TOLL EQ

Subject : Update on Income Tax Demand :

Dear Sirs,

In continuation to our letter dated May 24, 2017 on the captioned subject and disclosures provided in the Annual Report of the Company for FY 2016-17, the applications for extension of stay of demand has been rejected by Assistant Commissioner of Income Tax ("ACIT") vide its letter dated 06/03/2018 for Assessment Year (AY) 2009-10, 2010-11, 2011-12 and 2014-15, and by Principal Commissioner of Income Tax -6 ("PCIT-6") vide its letter dated 16/03/2018 for AY 2007-08, 2008-09, 2012-13 and 2013-14 and the Company has been asked to pay 20% of the total outstanding demand. Copy of the said letters are enclosed herewith as Annexure-1 and 2.

The Company has filed review petitions to PCIT-6 against the order of ACIT and to Chief Commissioner of Income Tax (CCIT) against the order of PCIT-6.

Also, the Company has received a show cause notice under section 221(1) of the Income Tax Act, 1961 for non-payment of outstanding tax demand, a copy of which is enclosed herewith as Annexure-3.

The Company herein has filed two separate writ petitions before the Hon'ble Delhi High Court on March 22, 2018, seeking extension of stay of demand vide Diary No. E-92839/2018 for AY 2007-08, 2008-09, 2012-13 and 2013-14and E-92864/2018 for AY 2009-10, 2010-11, 2011-12 and 2014-15.

Based on the legal advise, the Department's stand is unlikely to withstand argument, however the information is being disclosed as a good corporate governance practice.

Sincerely

Dhiraj Gera
Company Secretary & Compliance Officer

Encl: a/a

Annexure - 1

INCOME TAX DEPARTMENT

Name of the Assessee	:	**M/s Noida Toll Bridge Co. Ltd Toll Road, DND Flyover, Opp. Sector-15A, Noida, U.P.**
Assessment Year	:	**2009-10, 2010-11, 2011-12 & 2014-15**
PAN	:	AAACN3498A
Status	:	Company
Date	:	06.03.2018

ORDER U/S 220(2) OF INCOME TAX ACT, 1961 in the case of M/s Noida Toll Bridge Co. Ltd for A.Y. 2009-10,2010-11,2011-12 & 2014-15 (PAN- AAACN3498A) - Reg.

1. M/s Noida Toll Bridge Co. Ltd. has filed application for the extension of stay of demand in its case for A.Y. 2009-10, 2010-11, 2011-12 & 2014-15. The position of the outstanding demand against the assessee is as under :-

S. No	A.Y	Nature of Demand u/s 143(3)/147	Outstanding Demand (Rs. in Crore)	Stayed by	Remarks
1	2009-10	143(3)/147	141.09	DCIT, Circle-2, Noida	Stay of demand till 30.09.2017 or disposal of appeal by CIT(A), whichever is earlier.
2	2010-11	143(3)/147	151.09	DCIT, Circle-2, Noida	Stay of demand till 30.09.2017 or disposal of appeal by CIT(A), whichever is earlier.
3	2011-12	143(3)	158.65	DCIT, Circle-2, Noida	Stay of demand till 30.09.2017 or disposal of appeal by CIT(A), whichever is earlier.
4	2014-15	143(3)	291.56	DCIT, Circle-2, Noida	Stay of demand till 30.09.2017 or disposal of appeal by CIT(A), whichever is earlier.
		TOTAL	**742.39**		

ED599337333IN

2. Pursuant to the stay application personal hearings were given to the AR of the assessee to Sh. Jeetan Nagpal. CA and Sh. Rajiv Jain, CFO of the assessee company. The issue pertaining to the outstanding demand an application for the stay of the demand in the case were discussed and the AR's requested that the stay of demnnd in these case may be extended.

3. Earlier the stay of demand in the above mentioned assessment years in para 1 , was given by the DCIT, Circle-2 , Noida- till the disposal of the appeal by the CIT(A) , Noida or 30.09.2017, whichever is earlier. Subsequently, the case was transferred to the Pr. CIT-06, Delhi and the assessee has filed applicaiion for the extension of stay of demnnd in its case for A.Y. 2009-10, 2010-11, 2011-12 & 2014-15 before this office.

4. Assessee was provided sufficient opportunity of hearing in the presence of Pr. CIT -06, on 27.11.2017, in which the AR's of the assessee were asked to submit the relevant documents and come with a detail plan of installments to deposit the due demands but assessee did not submit any installment plan to deposit the outstanding demand. Again , on 23.02.2018, a meeting of AR's of the assessee was held with the ACIT, Circle-18(2) , in which AR's had sought time till 26.02.2018 to make submission on the legal and factual submission to extend the stay .However; none attended on 26.02.2018 nor any submission filed on this date.

5. Further, the AR's of the assessee Sh. Rajeev Jain, CFO and Sh. Jeetan Nagpal , CA were provided final opportunity vide note sheet entry dated 01.03.2018 to present its case on 06.03.2018 but the AR's of the assessee failed to produce any plan of deposit of outstmding demand or any payment in installments of the same.

6. Hon'ble Gujarat and Allahabad High Courts in cases of *VikrambhaiPunjabhaiPalkhiwala v. S.M. Ajbalu, Recovery Officer (1990) 182 ITR 413* and JalanJeePolytex Ltd. vs. ACIT 2015-TIOL-1485-HC-ALL-IT respectively have held that **mere filing of an appeal or an application for stay in such an appeal will not ipso grant stay of further proceeding in a tax recovery matter. There is nothing in section 220(6) debarring officer concerned from refusing to grant of stay.**

   It is pertinent to mention here that Hon'ble Supreme Court in case of Asstt. Collector of Central Excise Vs. Dunlop India Ltd. (1985) 154 ITR 0172 examining the issue of grant of stay for recovery of tax had observed that "**where matters of public revenue are concerned, it is of the utmost importance to realize that interim orders ought not to be granted merely because a prima facie case has been shown. More is required.**"

7. The assessee company has been given enough time and opportunity vide hearing dated 27.11.2017, 23.02.2018, 28.02.2017, 01.03.2018 and 06.03.2018 to pay the 20% of the total outstanding demand as per the CBDT instruction No.1914 as modified by OM on F. No. 404/72/93-ITCC dated 29.02.2016 and again modified vide dated 31.07.2017, but the company has failed to do so. Meanwhile, after expiry of the stay on 30.09.2017, the assessee company has not been granted any stay of demand by any of the appellate authority. The assessee company has not come up with any plan or strategy to pay the demands even in installments. The assessee's plea stating that its main source of income has been severed by the Hon'ble Allahabad High Court order is acceptable and noted. However, the company still has capital assets like advertisement receipts and commercial space on either side of the DND flyover. The company is having revenue income from these advertisement hoardings. It is clear from the present state that there is huge outstanding demand against the assessee which has not been paid.

8. It is the comention of the assessee that :

a) Its source of revenue is severed.

b) Its matter for relevant AY 2009-10, 2010-11, 2011-12 and 2014-15 is pending before the Ld.CIT(A). Hence, stay of demand should be extended.

All the contentions of the assessee have been diligently considered by the undersigned and it is stated that the assessee still has source of revenue.

Further, even though the case is disputed before the Ld.CIT(A), part payment of outstanding demand should be made as per instruction no.1914 of CBDT as modified by OM on F.No. 404/72/93-ITCC dated 29.02.2016 and again modified vide dated 31.07.2017.

9. In view of the above facts and discussion and for the interest of the revenue the application for the extension of the stay of the demand is being rejected and the assessee company is directed to pay 20% of the total outstanding demand relevant to A.Y. 2009-10, 2010-11, 2011-12 and 2014-15 as per the CBDT instruction No.1914 as modified by OM on F. No. 404/72/93-ITCC dated 29.02.2016 and modified vide dated 31.07.2017. This 20% of the total outstanding demand of the above mentioned Assessment years should be paid within 7 days of the receipt of this order.

Yours faithfully,

(Om Prakash Meena)
Asstt. Commissioner of Income Tax
Circle – 18(2), New Delhi

OM PRAKASH MEENA
Asstt. Commissioner of Income Tax
Circle-18(2), New Delhi

Annexure -2

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Office of the
Pr. Commissioner of Income-Tax-06, Delhi
Room No. 418, C.R. Building I.P. Estate , New Delhi-110002

F.No. Pr. CIT-06/Stay of Demand/2017-18/ 3153 . **Dated:-15.03.2018**

(PAN-**AAACN3498A)**

To,

The Principal Officer
M/s Noida Toll Bridge Co. Ltd.
Toll Road, DND Flyover,
Opp. Sector-15A,
NOIDA, U.P.

Sub:- Application for stay of demand for A.Y. 2007-08,2008-09,2012-13 & 2013-14 –Reg. -

Please refer to your application for extension of stay of demand for A.Y. 2007-08, 2008-09, 2012-13 & 2013-14. Shri Jeetan Nagpal, CA and Sh. Rajiv Jain, CFO appeared on your behalf to pursue this application. The position of the outstanding demand against the assessee is stated as under :-

S. No	A.Y	Nature of Demand u/s 143(3)/147	Outstanding Demand (Rs. in Crore)	Stayed by	Remarks
1	2007-08	143(3)	101.81	Pr. CIT, Noida	Stay of demand till 30.09.2017 or disposal of appeal by CIT(A), whichever is earlier.
2	2008-09	143(3)	129.73	Pr. CIT, Noida	Stay of demand till 30.09.2017 or disposal of appeal by CIT(A), whichever is earlier.
3	2012-13	143(3)	175.88	Pr. CIT, Noida	Stay of demand till 30.09.2017 or disposal of appeal by CIT(A), whichever is earlier.
4	2013-14	143(3)	189.36	Pr. CIT, Noida	Stay of demand till 30.09.2017 or disposal of appeal by CIT(A), whichever is earlier.
		TOTAL	**596.78**		

प्रधान आयकर आयुक्त-06, नई दिल्ली
Pr. Commissioner of Income Tax-06, New Delhi

2. In these cases, conditional stay of demand was given by the Pr. CIT Noida, till 30.09.2017 or disposal of the appeal by the CIT(A), whichever was earlier. The stay order expired on 30.09.2017. Subsequently, the case was transferred to the Pr. CIT-06, Delhi and the assessee filed fresh application for extension of stay of demand for A.Y. 2007-08, 2008-09, 2012-13 & 2013-14 vide its letter dated 13.10.2017.

3. During the course of hearing, assessee was asked to submit the relevant documents and detailed plan of depositing outstanding demands, but assessee failed to do so. Subsequently, the assesee has filed a written submission on 28/02/2018. Relevant portion of various submissions is reproduced below:

   (i) The assessee stated that the factual matrix under which the stay was granted, remains unchanged as the judicial determination of the concessionaire agreement is still pending before the Hon'ble Apex Court.
   (ii) The assessee has contended that its main source of revenue has been severed by order of Hon'ble High Court.
   (iii) The matter is still *sub judice* before the Hon'ble Apex Court and recovery proceedings may be kept in abeyance till its disposal and further that the addition was made of notional income and not real receipts and hence is likely to be deleted in appeal.
   (iv) The company has filed a petition before the "high pitched committee" stating that the addition was "high pitched" and beyond permissible laws. The assessee has also submitted its financials for FY 2015-16 and 2016-17.

4. On the issue of unchanged factual position since granting of the stay, it is noticeable that the order of the PCIT, Noida was a conditional stay till March, 2017 or till the disposal of appeal by the CIT(A). Repeated opportunities have been provided to assessee to pay part of the demand. However, the assessee has chosen to neither liquidate the demand nor has it submitted any payment plan. Thus the stay cannot be granted any further. Even though the case is disputed before the Ld.CIT(A), part payment of outstanding demand should be made as per instruction No.1914 of CBDT, which governs recovery of demand.

5. On the issue of lack of funds, assessee has pleaded that its revenue source of toll collection has been severed by order of Hon'ble Allahabad High Court and so its application of stay of demand may be accepted. Assessee's representative Sh. Rajiv Jain & Sh. Jitan Nagpal have verbally submitted that company is still in receipt of small revenue from advertisement activities on behalf of its clients. Based on such facts also, there is no offer to make part payment of demands by assessee.

6. Further, as per concessionaire agreement, it is understood that the assessee had been guaranteed 20% returns annually. Any short fall in revenue was added to the total cost of the project by NTBL and on the same basis, the A.O. made the additions i.e. on the issue under the head "designated returns to be recovered. Infact, the facts of this case warrant collection of maximum possible demand because the assessee itself informed that their main source of income i.e. Toll collection has been stopped. Therefore, it is likely that demand raised in A.Y. 2007-08, 2008-09, 2012-13 & 2013-14 may not be recoverable in



future and the revenue will loose an opportunity to recover demand permanently, if not done now.

7. The assessee's submission that *"a Public Interest Litigation* ['PIL' *No. 60214 of 2012 was filed by the Federation of NOIDA Residents' Welfare Association* ['FONRWA] *against the Assessee before the Hon'ble Allahabad High Court. In the subject case, the Hon'ble Allahabad High Court has held that in the instant case, the total cost of the project computed as per Article 14 of the Concession Agreement will never be recovered, meaning thereby that the same continues to be notional income and not real income."* This contention of the assessee is also not acceptable as this was the case that was filed by the "FONRWA" against the assessee company. The Income Tax Department was not a party in this case. Hence, this plea is also not acceptable.

8. The assessee's submission that *"the Assessee filed an appeal against the order of the Hon'ble Allahabad High Court before the Hon'ble Supreme Court of India. The matter is sub-judice before the Hon'ble Supreme Court and the Company will place all the applicable correct facts and its detailed position on the CAG Report before the Hon'ble Court."* As the assessee has not submitted any relevant documents pertaining to CAG report nor it is available for reference, it cannot be considered for deciding this petition for stay of demand.

9. The assessee's submission that, *"the tax demand on account of bringing to tax designated returns and revenue subsidy as per Table in Para 5 supra account for 95% of the total tax demand outstanding (Rs. 13,43,33,59,728) on which Ld. AO erred in law and on facts in taxing the same. Balance 5% of the total tax demand outstanding is equivalent to Rs.67,16,67,986. As per CBDT's Office Memorandum F.No.404/72-93-ITCC dated 29.02.2016, it has been laid down that in a case where the outstanding demand is disputed before CIT(Appeals), the Assessing Officer shall grant stay of demand till disposal of first appeal on payment of 20% of the disputed demand. 20% of Rs. 67,16,67,986 is equivalent to Rs. 13,43,33,597. Complying with the aforesaid CBDT's Office Memorandum, the assessee has already paid Rs. 23,55,00,000".*
This contention of the assessee is not acceptable as assessee itself cannot decide whether the assessment order passed by the A.O. is legally correct or not. It is to be decided by the appellate authorities and appeals are still pending. Further no appellate authority has granted any stay of demand to the assessee company.

10. Hon'ble Gujarat and Allahabad High Courts in cases of *VikrambhaiPunjabhaiPalkhiwala v. S.M. Ajbaju, Recovery Officer (1990) 182 ITR 413* and JalanJee Polytex Ltd. vs. ACIT 2015-TIOL-1485-HC-ALL-IT respectively have held that **mere filing of an appeal or an application for stay in such an appeal will not ipso grant stay of further proceeding in a tax recovery matter. There is nothing in section 220(6) debarring officer concerned from refusing to grant of stay.** It is pertinent to mention here that Hon'ble Supreme Court in case of Asstt. Collector of Central Excise Vs. Dunlop India Ltd. (1985) 154 ITR 0172 examining the issue of grant of stay for recovery of tax had observed that **"where matters of public revenue are concerned, it is of the utmost importance to realize that interim orders ought not to be granted stay merely because a prima facie case has been shown. More is required."**



11. After expiry of the stay on 30.09.2017, the assessee company has not been granted any stay of demand by any appellate authority. The assessee company has not come up with any plan to pay the demands even in installments. The assessee's plea that its main source of income has been severed by the Hon'ble Allahabad High Court order is only partially correct as the company still has capital assets which can be monetized, advertisement receipts and right to use commercial sidings on either side of the DND flyover. The company is already having revenue income from advertisement hoardings running into crores. It is clear from the above, that the act of the assessee is nothing but an effort to defer payment of outstanding tax demand.

12. In view of the above facts and in the interest of the revenue, the application for the extension of the stay of the demand is being rejected and the assessee company is directed to pay 20% of the total outstanding demand relating to A.Y. 2007-08, 2008-09, 2012-13 and 2013-14 as per the CBDT instruction. Further, the assessee company is directed to request the CIT (A) to dispose off the appeals expeditiously.

Yours faithfully,

(P.K. Shrivastava)
Pr. Commissioner of Income Tax-06,
Delhi

पी० के० श्रीवास्तव
प्रधान आयकर आयुक्त-06,
नई दिल्ली

प्रधान आयकर आयुक्त-06, नई दिल्ली
Pr. Commissioner of Income Tax-06, New Delhi

Annexure - 3

Office of the
Assistant Commissioner of Income-Tax,
Circle-18(2), Room No. 212, C.R.Building I.P.Estate , New Delhi-110002 Ph:-23708232
delhi.dcit18.2@a.incometax.gov.in

F.No. ACIT/Circle-18(2)/2017-18//202 **Dated:- 16.03.2018**

आयकर अधिनियम 1961 ,की धारा 221 (1) के अधीन नोटिस
Notice u/s 221(1) of the Income-Tax Act, 1961

To,

The Principal Officer,
M/S Noida Toll Bridge Company Limited
Toll Plaza, DND Flyway
Noida -201301 **PAN:-AAACN3498A**

Madam/Sir,

I find from my office records that the following demand raised against you have not been paid till date:-

S.No	Asstt. Year(s)	Amount (In Rs.)	Nature of demand	Date of service of notice of demand	Due date for payment
1	2014-15	291.56 + interest	U/s 143(3) of Income Tax Act 1961	In time	Overdue
2	2013-14	189.36 Cr + interest	U/s 143(3) of Income Tax Act 1961	In time	Overdue
3	2012-13	175.88 Cr + interest	U/s 143(3) of Income Tax Act 1961	In time	Overdue
4	2011-12	158.65 Cr + interest	U/s 143(3) of Income Tax Act 1961	In time	Overdue
5	2010-11	151.09 Cr + interest	U/s 147/143(3) of Income Tax Act 1961	In time	Overdue
6	2009-10	141.09 Cr + interest	U/s 147/143(3) of Income Tax Act 1961	In time	Overdue
7	2008-09	129.73 Cr + interest	U/s 143(3) of Income Tax Act 1961	In time	Overdue
8	2007-08	101.81 Cr + interest	U/s 143(3) of Income Tax Act 1961	In time	Overdue

You are hereby requested to show-cause as to why a penalty for non-payment of outstanding demand should not be levied under section 221(1) of the Income-Tax Act, 1961. For this purpose, you may appear before me personally or through an Authorized Representative at **11.30 AM on 19.03.2018** or may send a written communication to reach me on or before the date. Please note that no further opportunity will be provided to you.

Yours faithfully,

(Om Prakash Meena)
Asstt. Commissioner of Income Tax,
Circle-18(2), New Delhi

OM PRAKASH MEENA
Asstt. Commissioner of Income Tax
Circle-18(2), New Delhi