

CHAPTER XII: MINISTRY OF ROAD TRANSPORT AND HIGHWAYS

National Highways Authority of India

12.1 Undue benefit to the concessionaire resulted in accumulation of dues

National Highways Authority of India extended undue benefit to a concessionaire by not ensuring timely recovery of concession fee and damages, which resulted in accumulation of dues to the tune of ₹209.20 crore.

National Highways Authority of India (NHAI) entered (December 2012) into an Operate, Maintain and Transfer (OMT) agreement with M/s MEP Hyderabad Bangalore Toll Road Limited (concessionaire) for the stretch from Km 211.000 to Km 462.164 on NH-07. This included construction of 'Project Facilities'¹ and operation and maintenance of the project highway for a period of nine years from 1 February 2013 *i.e.*, the scheduled Commercial Operation Date (COD).

The agreement provided for payment of concession fee of ₹96.30 crore for the first year, with an escalation of 10 *per cent* every subsequent year, payable in twelve equal monthly installments, within three days of the close of every month. The Concessionaire was required to furnish Performance Security in the form of a Bank Guarantee amounting to ₹48.60 crore which could be encashed by NHAI in case of Concessionaire Default or failure to meet any 'Condition Precedent'.

The agreement also provided for levy of damages on the Concessionaire at different rates for delay in achieving the COD, failure to provide Bank Guarantee and execution of Escrow Agreement, delay in completion of 'Project Facilities' and for failure in maintaining the project highway in conformity with the requirements of the OMT agreement. Further, in case of non-completion of the project facilities within scheduled period, failure to furnish performance bank guarantee or failure to make payments to the authority within specified time, NHAI was also at liberty to terminate the agreement.

Audit observed that:

- the COD which was shifted from 1 February 2013 to 5 March 2013, due to reasons attributable to NHAI, could be achieved by the concessionaire only on 16 May 2013 for which NHAI levied (October 2014 and March 2016) damages amounting to ₹5.68 crore on the concessionaire.
- the concessionaire also failed to construct the Project Facilities within the specified time schedule for which NHAI levied (April 2016) damages of ₹133.60 crore as per the agreement.

¹ Construction of three Toll Plazas, three Traffic Aid Posts, three Medical Aid Posts and Street Lights

- there was shortfall in payment of concession fee by the concessionaire in almost every month beginning from May 2013 and as of August 2016, there was short payment of ₹31.40 crore in concession fee to NHAI.
- as of April 2016, NHAI levied an amount of ₹14.09 crore as damages for breach of maintenance obligations.

The total dues recoverable from concessionaire on account of the above as of August 2016 worked out to ₹209.20 crore including interest amount of ₹24.43 crore¹.

Audit further noted that:

- in August 2015, instead of effecting recovery of the then outstanding dues from the Escrow Account, NHAI had accepted post dated cheques (PDCs) amounting to ₹28.91 crore from the concessionaire, drawn on a bank other than the Bank in which Escrow Account was opened. Out of this, only ₹19.91 crore were realised by NHAI. The remaining cheques of ₹9.00 crore were dishonored due to instructions on stoppage of payment by the concessionaire. Reasons for such irregular acceptance of post-dated cheques instead of effecting recovery through Escrow Account were not found on record. Further, NHAI did not initiate any action against the concessionaire as per provisions of Negotiable Instruments Act, 1881 for the cheques that were dishonored.
- instead of depositing the entire toll collection of ₹425.01 crore (May 2013 to July 2016) in the Escrow Account as per the terms of Concession Agreement and, thereafter, getting the same appropriated in terms of the agreement, the Concessionaire deposited only ₹388.74 crore leading to a shortfall of ₹36.27 crore.
- the Escrow Account was not operated in accordance with the priority of payments specified in the Escrow Agreement. Though the dues to NHAI were to be paid on priority compared to repayment of loan and interest by the concessionaire, Audit noticed that toll fees collected and available in the Escrow Account were being used for repayment of loan and interest on such loan relating to the Project before payment of NHAI dues. This reflected absence of effective monitoring of Escrow Account by NHAI, which resulted in accumulation of huge amount of dues.

The Management stated (April 2016) that directions had been issued (February 2016) to the concerned field office to effect recovery of damages of ₹5.68 crore levied for delay in achieving the conditions precedent and COD. As regards recovery of other damages, it was informed that the same were under consideration of a committee constituted by NHAI, since the concessionaire had claimed certain amounts on account of Force Majeure conditions. It further informed that Bank Guarantee was not encashed and post-dated cheques were accepted in August 2015 as a special case and reasons for non-encashment of Bank Guarantee despite dishonor of these cheques were being ascertained from the concerned office (Regional Office (RO) and Project Implementation Unit (PIU), Ananthpur of NHAI).

¹ *As computed by NHAI in terms of the agreement*

The reply of NHAI was not acceptable due to the following:

- The recovery of damages of ₹5.68 crore had not been effected as of November 2016 i.e. even after 42 months of achievement of COD.
- As regards claims made by the concessionaire on account of Force Majeure conditions, PIU Ananthpur of NHAI had recommended (May 2016) to its RO to reimburse an amount of ₹0.51 crore to the concessionaire. The said amount would not have a significant impact on the total outstanding amount of ₹209.20 crore recoverable from the concessionaire.
- Acceptance of postdated cheques drawn on another bank account and inaction as per law despite clear intention by the concessionaire not to pay the dues by stopping payment, was irregular.
- NHAI should have monitored the payments being deposited in the Escrow Account to ensure that the same was operated in accordance with the concession agreement. NHAI should have also ensured that the priority of payment prescribed in Escrow Agreement was complied with, to ensure recovery of its dues.

Thus, despite non-compliance with the terms and conditions of OMT agreement, NHAI extended undue benefit to the concessionaire as it failed to initiate timely steps to encash the Bank Guarantee received as Performance Security or to terminate the agreement which led to accumulation of dues to the tune of ₹209.20 crore as of August 2016 against which the Performance Security in the form of Bank Guarantee was only for ₹48.60 crore.

The matter was reported to the Ministry in July 2016; their reply was awaited (January 2017).

12.2 Loss of revenue on account of failure to charge user fee since completion of the project

National Highways Authority of India failed to charge user fee on the four lane highway from Kalmassery Junction on NH 47 to Bolgatty Island which was completed in April 2015. Consequently, it had to suffer revenue loss of ₹19.04 crore.

National Highways Authority of India (NHAI) decided (October 2005) to construct a 4 lane National Highway measuring 17.121 KM, connecting the Cochin Port and National Highway 47 from Kalmasery Junction on NH 47 to Bolgatty Island, to facilitate the connectivity to the International Container Transshipment Terminal (ICTT), Cochin. The work for construction was awarded (May 2007) to a contractor at a cost of ₹329.46 crore, which was later revised (November 2009) to ₹571.26 crore after inclusion of certain additional works. During the construction of the highway, the local public of Mulavukad, an area falling near the alignment of the new highway, had represented (January 2012) for providing a service road parallel to the new highway, upto the ICTT road. However, as there was no provision for the same in the Feasibility Report and Detailed Project Report, the demand was not heeded by NHAI.

The project was finally completed in April 2015. Notification authorizing NHAI to collect fees prescribed therein was issued by Ministry of Road Transport and Highways on 22 May 2015. In July 2015, NHAI entered into an agreement with a tolling agent for a period of six months for collection of user fee at the Toll Plaza, with the obligation to remit ₹3.76 crore on a daily basis to NHAI from 6 August 2015. However, collection of user fee could not be started due to protests from the local public demanding construction of service road. In March 2016, NHAI agreed for construction of the service road at its expense, through Government of Kerala at a cost of ₹24.71 crore. Meanwhile, as the earlier contract for tolling had expired, NHAI awarded (May 2016) the contract for tolling to another agent with a daily remittance of ₹5.62 lakh for a period of three months. However, the second agent also could not collect the user fee due to obstruction by the local public.

Audit observed that a provision for payment of lower amount of user fee from the locals on a monthly basis was made in the toll notification issued (22 May 2015) by the Ministry of Road Transports and Highways. Besides, NHAI would be spending a considerable amount on the construction of the service road. Despite this, it failed to collect the user fee which resulted in non-realisation of revenue of ₹19.04 crore¹ till October 2016.

NHAI stated (August 2016) that the demand for the service road for Mulvukad area started in the year 2013. The provision for providing service road was not included in the scope of the project since the road was intended for connection to the ICTT. It further stated that it did not expect heavy protest from the local public while proposing collection of toll in August 2015 and it had made all efforts to resolve the issues.

The fact remains that despite investing a considerable amount in construction of the highway as well as committing a significant expenditure on construction of service road which was not originally envisaged in the Feasibility Report and Detailed Project Report, NHAI failed to collect user fee resulting in loss of revenue to the tune of ₹19.04 crore upto October 2016.

The matter was reported to the Ministry in October 2016; their reply was awaited (January 2017).

12.3 Incorrect revenue projection in financial analysis

Incorrect financial analysis of the project led to significant under-projection of revenue in the approved project, vis-à-vis its actual revenue potential.

In February 2010, PPPAC² approved a project for six-laning the Dankuni Kharagpur section of NH-6 (km 17.600 to km 129.000) to be executed as a BOT³ (Toll) project on Design, Build, Finance, Operate and Transfer pattern. NHAI had earlier appointed a consultant to develop a feasibility study for the project. The feasibility study report, on which the project was designed, had estimated the total project cost as ₹1396.18 crore and found the project viable with a concession period of 25 years at 15 per cent equity IRR⁴.

¹ as worked out by NHAI for the period from 6 August 2015 to 31 October 2016

² Public Private Partnership Appraisal Committee

³ Build, operate, transfer

⁴ Internal rate of return

As per the project design, it was expected to generate a premium of ₹48.30 crore per annum to be increased annually by 5 *per cent*. Following PPPAC approval, NHAI issued an RFP¹ for the project (March 2010) specifying the total project cost as ₹1396.18 crore and a concession period of 25 years. The project was awarded (February 2011) to M/s Ashoka Buildcon Limited, at a premium of ₹126.06 crore per annum, to be increased annually by five percent. A concession agreement was signed on 20 June 2011 with the SPV² formed for the purpose, M/s Ashoka Dhankuni-Kharagpur Tollway Limited. A supplementary concession agreement was signed on 9 March 2012 to correct the mismatch between the RFP and concession agreement regarding the length allocated to each toll plaza for collection of fees.

Audit noticed that the projections of revenue earnings of the concessionaire from the project were significantly understated in the project design that was approved:

- (i) The road stretch to be developed under the project had two toll plazas, toll plaza-I at km 35.250 and toll plaza-II at km 112.245. The traffic at toll plaza-I (48,098 PCU³ in 2011, projected to reach 1,55,427 in 2035) was much higher compared to toll plaza-II (27,010 PCU in 2011 projected to reach 87,445 PCU in 2035). The project, as bid out and awarded to the concessionaire (as per the RFP document and the concession agreement), provided that Rupnarayan bridge was to be tolled at toll plaza-I. The project, as earlier approved however, indicated that the toll for Rupnarayan bridge would be collected at toll plaza-II. Owing to the much higher traffic at toll plaza-I compared to toll plaza-II, the actual revenue that the concessionaire would generate from the project would be much higher compared to the revenue projections of the approved project design. Audit worked out the under-projection of toll income in the financial analysis of the approved project to be ₹3,945.56 crore, considering a concession period of 25 years.
- (ii) At the time of project design, the stretch of NH-6 from km 17.600 to km 129.00 was already under toll operation being an existing four lane highway. Hence the traffic survey conducted in 2008 for working out the traffic (and hence revenue) projections for the project was based on actual traffic at the existing toll plazas. Being based on actual traffic, there was no case for considering traffic leakage in this projection. The financial analysis of the project, however, considered traffic leakage; - 20 *per cent* for cars and 10 *per cent* for other vehicles. This led to under-projection of toll revenue which worked out to ₹1546.99 crore over the concession period.
- (iii) The financial analysis considered routine maintenance cost also for years of periodic maintenance (periodic maintenance was carried out once in five years). Consideration of routine maintenance cost in the year of periodic maintenance was not justified as in those years, routine maintenance would not be required. This led to over-projection of expenditure on routine maintenance by ₹55.43 crore over the concession period.

¹ *Request for proposal*

² *Special purpose vehicle*

³ *Passenger car unit*

- (iv) The financial analysis did not consider MAT¹ credit that would be available to the concessionaire while working out the project financials. This led to over-projection of expenditure towards actual income tax payable by ₹182.07 crore over the concession period.

Thus, revenue was under-projected and expenditure was over-projected in the financial analysis of the project which formed the basis for its appraisal and approval. The financial analysis considered a concession period of 25 years in which the concessionaire would repay the loan component of the project cost (₹1396.18 crore) and derive a 15 *per cent* IRR. It was determined that with these project parameters, NHAI was likely to obtain a premium of ₹48.30 crore when the project is bid out. Audit re-worked the project financials correcting the expenditure and revenue projections, and observed that the concessionaire would be able to repay the loan in 14 years by when the equity investment would generate a 15 *per cent* IRR with offering a premium of more than ₹48.30 crore. Thus, by correcting the income and expenditure of the project, a concession period of 14 years would be sufficient to generate the same financials projected for a concession period of 25 years in the approved project design. The cash flow over the next 11 years of the concession period (of 25 years), was worked out by Audit to be ₹8,689.77 crore with an NPV² of ₹858.16 crore. Thus, the project was appraised and approved based on incorrect financial projections.

The Management stated (December 2016) that:

- The highest premium was determined with competitive bidding as ₹126.06 crore with five percent annual increase which was not considered in audit.
- Tolling of Roopnarayan bridge was initially considered at toll plaza-II and was subsequently decided for toll collection at toll plaza-I. This fact had been disclosed in the RFP and was known to the bidders before bidding and thus no undue benefit was given to the successful bidder.
- Traffic leakage was projected in the toll income after considering factors like exempted vehicle, reduction in traffic due to toll and discounts due to passes etc. as per toll policy (5 December 2008) of the Government of India. Operation and Maintenance expenses were considered as per the then prevailing norms/information and discussion with the technical consultant. MAT credit was taken into consideration for the initial years.

The Ministry also endorsed (December 2016), the views of the Management.

The Management's/Ministry's contention is not acceptable in view of the following:

- That the premium earned for the project was higher than the projection does not address the fact that the project design, appraisal and approval was flawed on account of significant under-projection of revenues.

¹ *Minimum alternate tax*

² *Net present value discounted @12 per cent per annum*

- As the traffic projection was made based on actual traffic survey at the already existing toll plazas, traffic leakage ought not have been considered. Management itself subsequently decided not to consider traffic leakage for stretches already under toll operation. In the year of periodic maintenance, routine maintenance is not required which has also been subsequently decided by the Management. MAT credit was not taken into consideration as evident from the financial analysis.

Thus, the incorrect financial analysis of the project led to significant under-projection of revenue in the approved project vis-à-vis its actual revenue potential.

12.4 Toll Operations in NHAI

12.4.1 Introduction

National Highways Authority of India (NHAI) was established in 1988 by an Act of Parliament (*i.e.*, The National Highways Authority of India Act, 1988). It has been entrusted with the role of development, maintenance and management of National Highways (NHs) in India. Central Government is empowered under the National Highways Act 1956 to levy fee (Section 7) and make rules (Section 9) for the rates at which the fee is to be levied for services rendered in relation to the use of ferries, permanent bridges, temporary bridges and tunnels on any national highway and the use of sections of any national highway and the manner in which the fee shall be collected, by issue of notification in the official gazette. In the year 1997, Government decided that all 4-lane highways would be tolled. Accordingly, Government published The National Highways (Fees for the use of national highways section and permanent bridge---Public Funded Project) Rules, 1997 which were subsequently superseded by National Highways Fee (Determination of Rates and Collection) Rules, 2008. By virtue of section 16 (2) K of the National Highways Authority of India Act, 1988, NHAI may collect user fee on behalf of the Central Government for services or benefits rendered under section 7 of the National Highways Act, 1956.

12.4.2 Mode of toll collection

NHAI collects toll on roads developed on engineering, procurement, and construction (EPC) mode and also on Build, Operate & Transfer (BOT) Annuity mode through toll collecting agencies. Initially, Directorate General Resettlement (DGR) agencies were engaged for toll collection. Later on, toll collection work has been carried out by engaging concessionaires on operate, maintain & transfer (OMT) basis and by engaging other agencies (other than DGR agencies) through tendering process. In case of collection of toll through DGR contracts and other agencies engaged through bidding, the toll is retained by NHAI besides maintenance obligation of respective National Highways. Under OMT, toll collection rights and maintenance obligation rests with the concessionaire in return for a lump sum amount paid to the NHAI in the form of a concession fee.

12.4.3 Audit Objectives

Audit examined the toll operations in NHAI to assess:

- a) whether toll collection was started promptly on completed stretch of road;

- b) whether bidding process for engaging toll collection agencies was efficient; and
- c) whether toll collected was deposited promptly into Consolidated Fund of India.

12.4.4 Scope of Audit

There were 82 stretches of National Highways (NHs) which NHAI has developed under EPC mode. In the States of Jammu & Kashmir, Punjab, Uttar Pradesh, Rajasthan and Madhya Pradesh, out of the above, Audit selected 27 stretches (comprising of 37 projects) for conducting the thematic audit. NHAI had set up 23 toll plazas on 36 projects (one project, *i.e.*, Agra Bypass, was under construction) as on 31 March, 2016. Names of stretches/projects/toll plazas and the States where these are located are given in **Annexure-VIII** to this Report.

12.4.5 Audit Findings

12.4.5.1 Realisation of user fee

Government of India (GoI), vide notifications issued from time to time, entrusted different sections of National Highways (NHs) to NHAI for development and up-gradation. Subsequently, NHAI awarded contracts for construction of NHs. As per Rule 3(2) of National Highways Fee (Determination of Rates and Collection) Rules 2008, applicable from 05 December 2008, NHAI was required to commence collection of user fee within 45 days from the date of completion of the section of National Highway, permanent bridge, bypass or tunnel as the case may be, constructed through a public funded project. Further, sub-Rule 6(b) of the amendment to the aforesaid Rules {vide G.S.R. 15(E) dated 12 January, 2011} stipulated that after recovery of capital cost through user fee realised, in respect of a public funded project, the fee leviable would be reduced to 40 *per cent* of the user fee for such section of National Highways, bridge, tunnel or bypass, as the case may be, to be revised annually in accordance with the rules.

(I) Non-realisation of user fee due to delay in handing over of a part of project to OMT Concessionaire

NHAI signed (16 May 2013) a concession agreement (CA) for toll collection of Jhansi-Lakhnadon Section (packages C-3 to C-9) km 99.005 to km 415.089 (length 316.084 km) under OMT contract at a concession fee of ₹38.00 crore per annum. Article 21.1.3 of CA provided that concession fee would be discounted on pro-rata basis for incomplete length of the project highway, till its handing over to the concessionaire by NHAI on per day basis.

The stretch, except the incomplete length of 38.272 km of package C-8, was handed over to the concessionaire on 06 October, 2013. The stretch was incomplete due to slow progress of work by the EPC contractor. The concessionaire had thus paid concession fee on pro-rata basis from 06 October 2013 for the completed section (at 85.90 *per cent* of the concession fee) till the date of handing over of the remaining stretch. NHAI handed over the balance stretch of 38.272 km on 26 February 2015 to the concessionaire.

Thus, due to non-handing over of 38.272 km of road to OMT concessionaire, NHAI failed to realize the premium of ₹7.72 crore for the period from October 2013 to February 2015.

MoRTH in its reply (17 February 2016) accepted the delay in completion of the C-8 package and stated that the supervision Consultant M/s. Renardet S.A. Consulting had recommended liquidated damages of ₹21.9 crore to be recovered from the contractor M/s. Ssangyong Construction Co. Ltd. as per the terms of the contract. Management further stated that the recommendations of the consultant for imposition of LD were under the consideration of NHAI.

(II) Non-realisation of user fee due to delay in issue of toll fee notification

With a view to commence the toll collection within 45 days from the date of completion of the project, NHAI vide circular dated 16 September 2002 asserted need for advance planning for levy of user fee and required that action was to be initiated for issue of fee notification at least 120 days prior to the likely date of completion of project so that all work relating to approval of fee notification could be completed on or before the completion of the project.

Audit observed that in respect of 12 toll plazas (out of a total of 23 toll plazas established for collection of toll which were test checked) there was delay in issue of fee notifications after completion of the projects. The delay ranged from nine days (Rithola toll plaza) to more than 43 months (Chittoura toll plaza). The delays were attributable to various reasons such as delay in initiating the proposal for approval of draft fee notifications¹ (especially in case of Titarpani toll plaza where more than one year was taken by RO Bhopal), delays in movement of files between MoRTH and NHAI², procedural delays³ and misplacement of records for toll collection of Chittorgarh Bypass at Rithola toll plaza. In respect of two toll plazas⁴ reasons of delay were not on record. Audit further noticed that MoRTH / NHAI took inordinate time, ranging between more than two months and nine months, in preparing Hindi version of fee notifications in respect of four toll plazas⁵, which was avoidable, as NHAI has separate Hindi Division at its Corporate Office and MoRTH and Government printing press are also located in the same city *i.e.*, Delhi.

Audit has worked out an amount of ₹301.80 crore (**Annexure-IX**), on the basis of bid amount quoted by the successful bidder, which NHAI could not realise due to reasons stated above. Consequently, realisation of the Project Cost of the respective road stretches would also be delayed.

MoRTH replied (17 February 2016) that delays in Toll notification were mainly due to procedural delays in MoRTH and Ministry of Law in vetting the notification and time taken on the part of NHAI in furnishing clarifications on queries raised by MoRTH and Ministry of Law for issue of notification. MoRTH stated further that they had taken corrective steps like dispensing with the vetting of each and every notification by Ministry of Law and introduction of monthly review meetings of JS (Toll) with CGM (CO) NHAI.

¹ *Malthone, Mehar, Titarpani and Thandikhui toll plaza*

² *Ahmedpur and Mandev Nagar toll plaza*

³ *Choukadi, Chittoura and Muzaina Hatim toll plaza*

⁴ *Nawabaganj and Anantram toll plaza*

⁵ *Mandaw Nagar, Anantram, salemgarh and Chittaura toll plaza*

Impact of above corrective steps taken by MoRTH would be assessed by Audit in future audits.

(III) Non-realisation of user fee due to delayed start of toll plaza

There were delays ranging from three days (Rithola toll plaza) to 549 days (Thandikhui toll plaza) in commencement of toll operations in respect of 15 out of the 23 toll plazas, even after issuance of fee notifications. Reasons for delay in commencing of toll operation were delay in appointment of toll collecting agencies¹, delay in construction and providing basic utilities², lack of State Government support³ and procedural delays⁴. Further, the reasons of delay in appointment of toll collection agencies were mainly due to re-invitation of bids, delay in selection of toll agency, non-submission and delay in submission of bank guarantee. Audit has worked out an amount of ₹204.87 crore (**Annexure-X**), on the basis of bid amount quoted by the successful bidder, which NHAI could not realise due to reasons stated above. Consequently, realisation of the Project Cost of the respective road stretches would also be delayed.

MoRTH in its reply (17 February 2016) accepted the delays brought out in the Audit observation and stated that various improvements had been made in bidding system for expeditious finalisation of bids for engagement of contractor for user fee collection. These were: (i) the bidding was made simpler by pre-qualifying the bidders and eliminating repeated submission of documents in physical form and after pre-qualification only financial bid was submitted on e-portal by pre-qualified bidders, (ii) time schedule of 12 days had been prescribed for completion of activities from Letter of Award to take over of toll plaza, (iii) to take care of exigencies, a system of obtaining e-quotations (7 days for submission) from pre-qualified bidders had been introduced, (iv) to take care of delays in construction of permanent toll plaza, a new format of e-quotation had also been introduced wherein the selected bidder first made temporary arrangement for tolling and then collected toll latest by 30 days from Letter of Award (LoA).

Impact of above corrective steps taken by MoRTH would be assessed by Audit in future audits.

(IV) Short recovery of toll revenue due to delay in revision of user fee

National Highways Fee (Determination of Rates and Collection) Rules, 2008 came into force prospectively from the date of its publication (*i.e.*, 5 December 2008) in the official Gazette. These fee rules permit increase in base rate from ₹0.40 to ₹0.65 per km, charging of 1.5 times toll rates for the length of Bypass, tunnel, bridge portion, inclusion of new category of vehicle *i.e.*, oversized vehicle and annual fee revision in case of public funded projects.

Audit observed that, existing toll collection contracts elapsed between January 2009 and May 2009 in case of the three toll plazas (Paduna 1 February 2009, Daffi 18 May 2009

¹ Ronahi, Mandaw Nagar, Muzaina Hatim, Malthone, Mehar, Chittoura and Titarpani toll plaza

² Ahmedpur, Choukadi and Salemgarh toll plaza

³ Chollang, Rajbagh and Thendikhui toll plaza

⁴ Rithola toll plaza

and Anantram 10 May 2009), NHAH was required to send fresh fee notification proposals for these toll plazas to MoRTH, based on Fee Rules 2008. However, Audit observed that:

(a) In the case of Paduna and Anantram toll plazas, NHAH delayed submission of the proposals for revision in toll rates, to MoRTH, due to which fee notifications for toll rates as per NH Fee Rules 2008 could be published only in the month of December 2012 and July 2012, respectively. Thus, despite elapse of existing toll contracts in respect of Paduna and Anantram toll plazas on 1 February, 2009 and 10 May 2009, respectively, NHAH continued collecting toll at the pre-revised rates as per NH Fee Rules, 1997 and letter of award for collection of toll as per NH Fee Rules, 2008 were issued on 22 February 2013 for Paduna and 30 January, 2013 for Anantram. Audit worked out the differential amount of ₹85.70¹ crore (₹30.22 crore for Paduna and ₹55.48 crore for Anantram) up to the date of publication of fee notification under revised NH Fee Rules 2008.

(b) In the case of Daffi toll plaza, no fresh notification as per Fee Rule 2008 was published till the project was handed over (12 September 2011) to the concessionaire on BOT basis. Audit worked out loss of toll revenue of ₹55.55 crore² for the period from 18 May 2009 to 11 September 2011 due to non-issuance of toll fee notification.

MoRTH in its reply (17 February 2016) stated that the amendment to NH Fee Rules 2008 for transition from 1997 fee rules to 2008 fee rules was published on 12 October 2011. Therefore, considering the delay from publication of original Fee Rules 2008 (05 December 2008), might not be appropriate and immediately after the amendment was published, the cases were submitted to Ministry.

The reply of MoRTH was not acceptable as the amendment dated 12 October 2011 in NH Fee Rules 2008 referred to in the reply was only in respect of agreements and contracts that existed at the time of introduction of NH Fee Rules 2008 and which were still continuing on the date of the aforesaid amendment dated 12 October 2011. As contracts in respect of Paduna, Daffi and Anantram toll plazas had lapsed in 2009, NHAH should have initiated fresh proposals for fee notification as per NH Fee Rules 2008 prevailing at that time, which was however not done as brought out above. This resulted in loss of ₹141.25 crore to public exchequer.

12.4.5.2 Bidding process

NHAH is required to commence collection of user fee within 45 days from the date of completion of the section of NH. NHAH estimates the annual potential collection (APC) of the stretch proposed for tolling on the basis of prevailing Fee Rules and the traffic survey conducted for seven consecutive days and 24 hours of each day. Based on the APC, NHAH invited bids from the prospective bidders. There were two kinds of bids invited for engagement of toll collection agency namely regular bid (for one year) and short term bid

¹ Based on the amount of bid quoted by the highest bidder as per NH Fee Rules 2008 (₹47.07 crore per annum for Paduna and ₹45.98 crore per annum for Anantram) and that quoted by the same bidder as per NH Fee Rules 1997 (₹36.81 crore per annum for Paduna and ₹28.51 crore per annum for Anantram).

² Loss worked out by comparing toll actually collected by NHAH during the period as per NH Fee Rules 1997 and that collected by BOT concessionaire i.e., M/s Soma Isolux Varanasi Aurangabad Tollway Pvt. Ltd., under NH Fee Rules 2008).

(for three months). Based on the bids received, the work of toll collection was awarded to the highest bidder by NHAI.

(I) Loss of toll revenue due to lack of transparency in bidding process

NHAI completed the Chittorgarh bypass in October 2009 and toll collection started from 28 December 2009 on the basis of Fee Rules 2008. NHAI invited (21 October 2011) bids, for engaging new toll collection agency as the annual contract with previous toll agency viz. M/s Sangam (India) Ltd at Rithola toll plaza was due to expire on 10 December, 2011. Considering that after expiry of the present tolling contract the user fee was to be collected on the basis of Fee Rules 2008 (for which NHAI's proposal for amendment in Rules was pending in the MoRTH at the time of NIT), LOA for a period of one year was issued (29 December 2011) to the successful bidder M/s Virender Kumar Vyas at an amount of ₹ 27.13 crore per annum (0.74 per cent above the APC mentioned in NIT), who started toll collection with effect from 10 March 2012. As MoRTH did not notify amendment in Fee Rules 2008, NHAI asked M/s Virender Kumar to revise the amount of toll remittance from ₹27.13 crore per annum to ₹39.23 crore per annum as per prevailing Fee Rules 2008. However, M/s Virender Kumar offered (February 2012) NHAI an amount of ₹31.35 crore per annum till amended Fee Rules were notified. Based on the negotiation with M/s Virender Kumar, NHAI agreed for an amount of ₹33.65 crore per annum without inviting fresh bids.

As the above contract was to lapse on 9 March 2013, NHAI invited (24 December 2012) fresh bids, through e-bidding, for toll collection for a period of one year at APC of ₹44.55 crore per annum (increased by 36.05 per cent). Only one bid was received in physical form. However, as the bidder failed to upload the financial bid, it was not considered. NHAI again invited (22 February 2013) short notice bid for three months period and awarded the contract to the existing toll collecting agency at highest quoted price of ₹11.12 lakh per day for a period of three months or till regular arrangement was made, whichever was earlier. Simultaneously, NHAI invited (28 March 2013) regular bid, for a period of one year, at APC of ₹48.06 crore per annum. The only bid received from M/s Ridhi Sidhi for ₹51.04 crore per annum was accepted and an agreement for a period of one year from 5 June 2013 to 4 June 2014 was entered into (3 June 2013) with the party, accordingly.

Audit observed that due to lack of transparency in the bidding process and inviting the bid on the basis of parameters which were not approved and did not exist at the time of inviting the bids, the NHAI sustained loss of revenue of ₹15.22 crore¹.

MoRTH in its reply (17 February 2016) stated that the work was awarded to the highest bidder following competitive, transparent bidding process (total 4 e-quotations) for the intervening period from 28 March, 2013 to 04 June, 2013, at a remittance of ₹40.59 crore, whereas, the audit has considered a remittance of ₹33.65 crore for this period which was not correct. Further, this remittance was only for a short period of about 3 months (*i.e.*, 1/4th of a year), while in calculating the loss, the audit has considered this remittance with

¹ {₹51.04 crore less 10 per cent of ₹51.04 crore (towards growth in traffic and user fee) – ₹33.65 crore}*452/365

full one year remittance of ₹51.04 crore in subsequent regular bid. Moreover, comparison of two bids of different durations (viz. short period v/s 1 year) which were opened on different dates (viz. short period bid in March 2013 and 1 year bid in May 2013) might not be appropriate.

The reply was not acceptable, as Audit compared only regular contracts of M/s Virender Kumar and M/s Ridhi Sidhi which were entered into a duration of one year. Moreover, the amount of the contract entered into with M/s Ridhi Sidhi for subsequent period had been reduced by 10 *per cent* to accommodate increase in traffic/user fee over the previous period.

(II) Loss of toll remittance due to incorrect details in bid document

NHAI commenced toll operation for the completed length of 31.500 km, out of total length of 50.873 km of Agra to Makhanpur section, at Tundla toll plaza since April 2009 as per toll notification dated 31 March, 2009. NHAI invited bids (23 October, 2012) for collection of user fee only for a length of 31.500 km *i.e.*, from km 219.00 to km 250.50 with an APC of ₹28.23 crore per annum. NHAI awarded (12 February, 2013) the contract for a period of one year, to M/s Ayushajay Construction Pvt. Ltd. (being the highest bidder) at a toll remittance of ₹39.60 crore per annum for a length of 31.500 km. After, completion of Road Over Bridge (ROB) in February 2013, a revised fee notification for the entire stretch of 50.873 km was published on 7 February 2013. The toll collection started from 14 February 2013. Before completion of a period of one year, NHAI invited bids on 30 December 2013 for collection of user fee for the same length of 31.500 km again, on the basis of APC of ₹47.75 crore per annum. Out of two bids received, the bid of M/s MEP Infrastructure Developers Pvt. Ltd. at ₹45 crore, being the highest, was accepted and contract was awarded to them. However, NHAI published the rate of user fee to be collected at Tundla toll plaza for the total length of 50.873 km from km 199.600 to km 250.500 of Agra to Makhanpur section of NH-2 in two newspapers on 30 March 2014 without considering the fact that contract for toll collection was awarded only for 31.500 km.

MoRTH in its reply (17 February 2016) stated that there was a typographical error in tenders in mentioning the section as from km 219.000 to km 250.500 instead of km 199.660 to km 250.500 and in the RFP rate of user fee was mentioned for the length of 50.873 km. Accordingly both toll agencies collected the user fee rate for the entire length of 50.873 km, and hence, there was no revenue loss to exchequer.

Reply of the MoRTH was not acceptable as APC of ₹28.49 crore was assessed by a survey agency M/s S-4 International on the basis of a length of 31.500 km (from km 219.000 to km 250.533) for a traffic census for a period of seven days from 4 November 2012 to 10 November 2012. Accordingly, APC for entire length of 50.873 km proportionately worked out to ₹50.15 crore for the year 2013-14 and ₹55.17 crore for the year 2014-15. Against this, NHAI realized toll remittance of ₹41.83 crore and ₹49.08 crore (approx.) respectively. Tenders were invited and agreements were entered with toll collecting agencies for a length of 31.500 km. Against this, toll agencies actually collected toll for a length of 50.873 km and this resulted in undue financial benefit of ₹11.13 crore (approx.) to the toll agencies during the years 2013-14 and 2014-15.

12.4.5.3 Undue burden on road users

(I) Undue levy of user fee at Salemgarh toll plaza on undeveloped road

A fee notification was published (22 May 2012) for tolling at Salemgarh toll plaza (km 357.000) for a total length of 46 km from Kasia to UP/Bihar Border from km 320.800 to km 366.800. Accordingly, NHAI started toll operation on 16 December 2012 for a length of 46 km. Audit scrutiny of records revealed that the above length of 46 km included a section of 5.885 km (from km 360.915 to km 366.800 under Project Implementation Unit (PIU) Muzaffarpur) which had not been developed so far (December 2014). Thus, collection of toll of ₹6.23 crore by NHAI from road users for the period from 16 December 2012 to 05 August 2015 was unjustified and avoidable.

MoRTH accepted (17 February 2016) the audit observation and stated that toll collection for this section was stopped on 05 August, 2015. Further MoRTH / NHAI stated that as the user fee had been deposited into Consolidated Fund of India (CFI) it has not resulted in undue favour to any private concessionaire.

The fact remained that the road users were unduly charged for undeveloped section of toll road.

(II) Non-compliance with guidelines issued by MoRTH for calculation of capital cost of road projects

Government introduced a new sub rule 6(b) in NH Fee Rules 2008 vide Gazette notification dated 12 January 2011 which stipulated reduction in user fee to 40 *per cent* after recovery of the capital cost of the projects. MoRTH issued guidelines (OM dated 24 January 2013) on the method of working of capital cost after two years from the date of introduction of new fee rule. As per the guidelines, capital cost *inter alia* included interest during construction period (IDC), land acquisition cost comprising of cost of land acquired for the project during 10 years preceding the start of the project, cost of rehabilitation and resettlement, shifting of utilities, tree cutting and compensatory afforestation and amount spent on major maintenance costs to enhance the durability of the highways. Guidelines further provided that since various components of the cost of the project occur at different points of time, those would be all brought to the date of completion of the project by indexing each with wholesale price index (WPI) for the intervening period. Expenditure incurred before the year 2005 was considered as incurred during the year 2005. Net revenue collection from the project after deducting the operation cost would be discounted at 12 *per cent* to arrive at their present value as on the date of completion of the project.

Scrutiny of records revealed that NHAI did not comply with MoRTH guidelines while working out the capital cost incorporated in fee notifications. NHAI did not prepare project wise balance sheet and cash flow at the end of each year as suggested in the Guidelines. Further, amount of IDC was not appropriated to the project costs. Non-appropriation of accumulated amount of IDC to the respective projects was ₹11316.44 crore as on 31 March, 2016. Non-appropriation of accumulated IDC has also been pointed out in the Comptroller and Auditor General's report on audit of the annual accounts of

NHAI for the years 2012-13, 2013-14 and 2014-15. Audit noticed in four PIUs¹ the cost of the various components of the project cost were not indexed with WPI till the date of completion of the projects. Thus reduced rate of toll user fee being dependent on complete recovery of capital expenditure, MoRTH / NHAI would not be in a position to fix the correct date of commencement of such reduced rate of recovery accurately in respect of a particular road stretch, in the absence of correct project wise costs.

MoRTH stated (May 2016) that the recoverable capital cost of all the Operate, Maintain and Transfer (OMT) projects (including projects under four PIUs mentioned in the audit observation) were being reviewed by NHAI to comply with the MoRTH guidelines referred to.

12.4.5.4 Collection of user fee without issue of fee notification by MoRTH

Construction of Varanasi-Ramnagar-Mughalsarai (VRM) bypass was completed by the State Government of Uttar Pradesh in May 1999 and toll collection started from 25 July 1999. In terms of the GoI order dated 4 February 1999 VRM Bypass along with the stretch from Kanpur to Barwa Adda of NH-2 in the states of Uttar Pradesh/Bihar was entrusted to NHAI for development. State Government handed over the stretch to NHAI on 30 September 2000 and NHAI started collecting toll from the same day without issue of any fee notification by the MoRTH. As per Rule 3(2) of Fee Rules 1997, the rates of fees and the period of collection would be decided and specified by notification in the Official Gazette by the Central Government. Scrutiny of records revealed that NHAI did not send any proposal to Ministry for issue of fee notification, permitting collection of user fee on VRM bypass. Audit considered that collection of user fee of ₹16.02 crore by NHAI on VRM bypass from 30 September 2000 to 17 May 2008 without issue of any fee notification by the GoI, being in contravention of the Fee Rules 1997, was irregular.

MoRTH while accepting the audit observation stated (17 February 2016) that State PWD and NHAI were executing agencies of MoRTH and MoRTH might swap NH entrusted to them. Ministry further stated that in this case as the toll collection was already in operation by State PWD and the same was taken over by NHAI, a small amendment replacing State PWD with NHAI, was required to be got published, which was not done.

Though Ministry has admitted the audit observation, however, reply did not indicate whether any action would be taken to regularise the above irregularity.

12.4.5.5 Delay in remittance of amount of toll

As per instructions of MoRTH, the amount of toll collections should be deposited by NHAI into the Consolidated Fund of India (CFI) within three days of its collection/receipt in account of PIUs. Accordingly, NHAI directed (25 April 2012) PIUs to remit toll collection from toll plazas on the same day through Real Time Gross Settlement (RTGS) into toll account of NHAI headquarters. PIUs also issued instructions to the banks to transfer the balance of toll amount to NHAI Headquarters' toll account on the same date. Deficiencies noticed in this context during audit are discussed as under:

¹ *Agra, Gorakhpur, Lucknow and Narsinghpur*

(I) Delay in remittance of user fee to Headquarters toll account

In a test check of records made available to Audit in respect of seven PIUs of NHAI, Audit noticed 152 instances of delay in the transfer of toll amount to Headquarters' toll account in respect of 11 toll plazas¹ (**Annexure-XI**). The delay ranged from 3 days (Chaukadi toll plaza) to 33 days (Titarpani toll plaza).

MoRTH in its reply (17 February 2016) accepted the delay in case of PIU-Lucknow and Agra and stated that the concerned banks had been instructed to remit the toll collection amounts to Consolidated Fund of India (CFI) as per the standing orders issued to the banks in line with NHAI OM dated 25 April, 2012.

(II) Delay in deposit of user fee in the CFI by NHAI

(a) 'Para H' of preamble of the contracts, entered by NHAI with toll collecting agencies provided that contractors were required to deposit the amount of user fee latest by Tuesday of every week. In five PIUs² the toll collecting agencies did not remit the toll collected during the last month of tenure of the agreement to NHAI bank account, as such NHAI recovered the outstanding amount from performance security of the toll collecting agencies. Audit noticed that NHAI did not deposit the toll amount so recovered by adjusting performance security, into CFI within the stipulated period of three days. In six instances, NHAI deposited a sum of ₹13.66 crore in CFI with a delay of five months (Ahmadpur toll plaza) to eight months (Tundla toll plaza) from the last date of the contract (**Annexure-XII**).

(b) Audit noticed that toll collection amount of more than ₹10 crore (highest amount of ₹15.63 crore as on 31 October 2013) was lying in the accounts of Regional Office (RO), Lucknow during the period from 2 September 2013 to 14 December 2013 and 18 June 2014 to 30 July 2014. This was the amount recovered through encashment of performance securities of the contractors towards short deposit of toll remittance. Non-remittance of the same to NHAI headquarters for onward transfer to the CFI was in violation of instructions issued by MoRTH/ NHAI.

MoRTH in its reply (17 February 2016) stated that remittance of encashed performance security due to any default of contractor was not a remittance received from contractor and could not be insisted upon for immediate deposit as mentioned above.

The above contention of MoRTH is not acceptable because possible default in deposit of user fee collected by contractor was secured through obtaining performance security from the contractor and, hence, the forfeited amount of performance security should have been deposited in CFI without delay.

(III) Short recovery of damages due to delay in deposit of user fee collected

Toll collection agency of Tundla toll plaza and Paduna toll plaza, viz. M/s MEP Infrastructure Developers Private Limited, was irregular in depositing the user fee with

¹ Tundla, Rithola, Paduna, Chaukadi, Mandawnagar, Muzaina hatim, Salemgarh, Nawabganj, Ronahi, Ahmadpur and Titarpani

² PIU Jalandhar, Agra, Lucknow, Udaipur and Narsinghpur

NHAI since inception *i.e.*, from March 2014 and July 2014, respectively. In case of Tundla toll plaza, Authority encashed performance security of ₹3.75 crore in June 2014 and the toll agency replenished the performance security for an amount of ₹3.01 crore only from 7 August 2014 to 14 October 2014. Due to delay in remittance of the user fee, NHAI levied penalty and recovered ₹23.58 lakh from the toll agency (up to December 2014). In case of Paduna toll plaza, Audit noticed that in spite of notice issued (02 January 2015) for termination by NHAI, the tolling agency did not remit the toll as per agreement terms. However, NHAI did not initiate legal action against the defaulting toll agency though a sum of ₹13.67 crore of toll amount collected by the toll agency in the two toll plazas was outstanding (March 2015).

MoRTH intimated (16 May 2016) Audit that the outstanding amount along with penalty had been recovered from the toll agency except an amount of ₹0.74 crore in respect of Paduna toll plaza.

Conclusion

Right of collection of user fee on NHs developed by NHAI under EPC mode had been entrusted to NHAI by the Government. Audit noticed that NHAI could not realise toll at various toll plazas due to delay in approval and issue of fee notification (₹301.80 crore), delay in start of toll operations (₹204.87 crore), delay in revision of user fee rates (₹141.25 crore) and other procedural lapses in issue of fee notification (₹7.72 crore). Audit further noticed loss of toll revenue due to inefficient bidding process for engagement of toll collecting agencies (₹26.35 crore). NHAI did not adhere to MoRTH guidelines regarding maintenance of project wise balance sheet and cash flow. The reduced rate of toll user fee being dependent on complete recovery of capital expenditure, MoRTH / NHAI would not be in a position to fix the correct date of commencement of such reduced rate of recovery accurately, in the absence of correct project wise costs.

MoRTH in its reply (17 February 2016) stated that they had taken corrective action for timely processing of cases in MoRTH / NHAI and timely issue of fee notification and hiring of toll collection agencies. MoRTH further stated that recoverable capital cost of all OMT projects was being reviewed by NHAI to comply with MoRTH guidelines. The impact of the above corrective steps taken by MoRTH / NHAI with regard to toll operations would be assessed in future audits.