



**Report of the
Comptroller and Auditor General of India
on
Rationalisation/ Deferment of Premium in
BOT Projects by NHAI**



लोकहितार्थ सत्यनिष्ठा
Dedicated to Truth in Public Interest

**Union Government (Commercial)
Ministry of Road Transport and Highways
No. 11 of 2022
(Compliance Audit)**

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Preface

This Report has been prepared for submission to the Government under the provisions of Section 19-A of the Comptroller and Auditor General's (Duties, Powers and Conditions of Service) Act, 1971.

This Report of the Comptroller and Auditor General of India contains the results of compliance audit of review of policy of Rationalisation/ Deferment of Premium in Built Operate & Transfer (BOT) projects by NHAI. Out of 20 projects approved for deferment of premium by NHAI, 10 projects were selected by Audit which consisted of 03 four laning projects, 06 six laning projects and one 4/6 laning project.

Audit covered the period from March 2013 to November 2019, and the Audit findings have been subsequently updated upto December 2020 based on Ministry's reply.

The Audit has been conducted in conformity with the Auditing Standards issued by the Comptroller and Auditor General of India.

EXECUTIVE SUMMARY

Brief about audit of the topic:

National Highways were being developed under different mode of execution viz. Built Operate & Transfer (BOT) (Toll), Built Operate & Transfer (BOT) (Annuity) and Engineering, Procurement & Construction (EPC) Mode. In BOT (Toll) Projects, the prospective bidders either quote Viability Gap Funding (VGF) payable to Concessionaires or Negative VGF/ premium payable to NHAI by Concessionaires. National Highways Authority of India (NHAI) proposed a scheme of Rationalisation of premium quoted by Concessionaires in respect of Highways Projects. The original proposal for approval contained two options for rationalisation i.e., Option A which provided for termination and rebidding of such projects; and Option B which provided for permitting rescheduling of total premium payment only in respect of 23 projects listed therein. However, while submitting the final proposal, Option C was included, which permitted rescheduling of premium in respect of all stressed projects and the same was approved (8 October 2013) by competent authority with the directions to constitute an Expert Group, which was to finalise its recommendation on development of framework for determining if a project is stressed or not, the discount rate to be used and the conditions to be imposed. Based on recommendations (22 January 2014) of Expert Group, the benefit under the scheme was to be provided to projects having shortfall in subsistence revenue i.e., Toll Inflows – (Operation & Maintenance Expenses + Premium Payable + Debt Servicing). MoRTH conveyed the approval to NHAI on 04 March 2014. NHAI granted deferment of premium amounting to ₹9,296.25 crore for a period of 8 years to 14 years, to 20 projects (till October 2019).

Significant Audit findings on Chapter III: Formulation and approval of the scheme

- Despite availability of alternatives within the ambit of signed Concession Agreements, NHAI, instead of exploring these options, cited problems faced by Concessionaires due to non-achievement of Appointed Date within stipulated period and probable loss of revenue of ₹98,115 crore to exchequer in the event of termination of these projects,

proposed to bring about scheme for rationalisation of premium in respect of languishing projects.

(Para 3.1)

- NHAH extended undue benefit to concessionaires by resorting to post-tender amendments. The premium payable by the concessionaire was laid down in a legal contract drawn up after an open bidding process, in which premium offered was the one and only parameter in deciding upon the financial bids (request for proposal). Any post tender/ contract amendment tantamounts to vitiating the entire tendering process, against the principle of sanctity of contracts and unfair with respect to other bidders.

(Para 3.2)

- The scheme was formulated on the basis of flawed presumptions. While proposing the Cabinet note, a list of 23 projects, which were awarded on premium but whose Appointed Date was yet to be declared, was annexed and the status of languishing projects, along with need for policy for revival of these projects, was highlighted in the background (Para 2) of the Cabinet Note. Finally, Option C which proposed rescheduling of premium in respect of all stressed projects was approved. However, none of these listed projects availed the scheme. Out of the 23 projects, which formed the basis for inception of this policy, 18 projects could not take off and were subsequently terminated/ foreclosed while the remaining five projects, though started, were not completed till December 2019.

(Para 3.3)

- The policy/ scheme for rationalisation of premium was neither considered nor approved in the NHAH Board Meeting.

(Para 3.4)

- MoRTH failed to adhere to guidelines of the Cabinet Secretariat for circulation/ approval of Cabinet Notes.

(Para 3.5)

- MoRTH/ NHAH failed to provide vital data to expert group for identifying stressed projects.

(Para 3.6)

Based on the Audit findings on formulation and approval of the Scheme for Rationalisation of Premium, Audit recommends that:

- *NHAI may ensure that prevailing provisions of Concession Agreements are followed before proposing any new scheme for granting concessions beyond contractual provisions.*
- *NHAI should avoid post tender/ contract amendments which vitiate the entire tendering process and against the principle of sanctity of contracts.*
- *NHAI/MORTH should abide by the extant rules, procedures and guidelines of government and present the full facts in its proposals, particularly in case of deviations.*
- *NHAI should strengthen its internal systems to ensure timely availability of critical data for policy decisions and evolve a mechanism for fixing responsibility for lapses in ensuring availability of crucial data.*

Significant Audit findings on Chapter IV: Implementation of the scheme

- Instances of huge variation between financial projections at the time of financial close and those at the time of proposal for deferment of premium were noticed. It was seen that, at the time of financial close (while raising debt from banks/financial institutions) the projections were much higher while the projections at the time of making request for deferment of premium were much lower. The variations in projections made by concessionaire varied from 31 per cent to 85 per cent. This shows that the Concessionaires' projections were made to suit their interests and requirements.

(Para 4.1)

- There were huge variations in total project cost of NHAI vis-à-vis Concessionaire's total project cost resulting in high debt servicing. The direct implication of this higher debt servicing is on the subsistence revenue of Concessionaire, which in turn had direct relation with premium deferred.

(Para 4.2)

- NHAI failed to levy penalty upon the Concessionaires applying for such renegotiation. This was to compensate for the special benefit that was being provided to the Concessionaires beyond the signed agreement. In a way, this was to mitigate the moral hazard of reopening a signed agreement to bail out the sector. This resulted in loss of ₹ 51.01 crore to NHAI and undue favour to the Concessionaires.

(Para 4.3)

- NHAI failed to ensure adequate safeguards against exchequer money as modalities of guarantees were left to the discretion of NHAI Board. Bank guarantees to the tune of ₹ 429.89 crore were taken against the deferred premium of ₹ 7363.63 crore, which were inadequate to cover the exposure.

(Para 4.4)

With regard to Audit findings on Implementation of the scheme, Audit recommends that:

- *NHAI may consider introducing a mechanism to review the total project cost/ debt to protect the interest of NHAI in the long term while keeping in reference the termination payments and debt servicing.*
- *NHAI may ensure reasonable amount of bank guarantee to cover the risk of non-payment of deferred premium by the concessionaire, to safeguard the Government interest.*
- *The deficiencies in the granting of approval for deferment of premium in six projects (referred in para 4.5) may be investigated and responsibilities fixed. Further, remaining projects not selected in Audit sampling may be reviewed.*

Significant Audit findings on Chapter V: Monitoring of Projects

- The Concessionaires of many projects regularly invested funds from escrow account to mutual funds and since opening of respective escrow accounts of these projects an amount of ₹ 5,303.73 crore was invested in mutual funds.

(Para 5.1)

- NHAI was irregular in timely review and recovery of excess deferment of premium. Undue favour to the Concessionaires was extended due to non-recovery of excess deferment granted of ₹ 252.97 crore.

(Para 5.2)

- There were deficiencies in real time monitoring of data transferred to NHAI.

(Para 5.3)

- As per conditions for sanction of deferment, the concessionaire had agreed to waive all claims/ penalties/ damages against NHAI on account of any non-compliance of conditions precedent on the part of NHAI either at the time of declaration of Appointed Date or later

to obtain the benefits of the scheme. However, in respect of four projects, the concessionaires, despite availing benefit of deferment of premium, preferred a claim of ₹ 1,575.91 crores on NHAI on various counts including delay in commercial operation date/ non-fulfilment of conditions precedent in contravention to conditions for sanction of deferment of premium.

(Para 5.4)

- As per the conditions of sanction of deferment, the Supplementary Agreement was to be signed within seven working days of receipt of sanction letter by concessionaire for deferment of premium. However, there was delay ranging from six months to one year in respect of three projects.

(Para 5.5)

With regard to Audit findings on monitoring of projects, Audit recommends that:

➤ *The NHAI may ensure that adequate mechanism for regular monitoring of deposits and withdrawals to/from Escrow account is in place and is followed scrupulously. In case of deviations responsibility needs to be fixed*

In addition, NHAI may also review the clauses of Escrow Agreement and explore other compensatory controls including joint operation of the Escrow Accounts etc., to ensure adequate check upon the withdrawals.

➤ *NHAI should ensure regularly reviewing and making timely recovery of excess deferment granted. The balance of ₹ 121.41 crore may be recovered expeditiously.*

➤ *NHAI may review all projects covered/proposed to be covered under the scheme and address issues affecting calculation of subsistence revenue and grant of deferment and revise premium deferment, as required.*

CHAPTER I
INTRODUCTION

Chapter I

Introduction

1.1 Brief about NHAI

The National Highways Authority of India (NHAI) was constituted in the year 1988 by an Act of Parliament and became operational in the year 1995 with a mandate to develop, maintain¹ and manage National Highways vested or entrusted to it by the Central Government. The National Highway projects are executed by NHAI under different National Highway Development Programme (NHDP) phases on different modes of construction i.e., Built Operate & Transfer (BOT) (Toll², Annuity³, Hybrid Annuity⁴), Engineering Procurement & Construction (EPC) Mode⁵. The bidders, in case of BOT (Toll) projects, either quote viability gap funding (to be payable to it by NHAI) or premium (payable to NHAI by it) during construction/ concession period.

1.2 Formulation and approval of the scheme

In March 2013, the NHAI Board considered request of M/s GMR, concessionaire of Kishangarh-Udaipur-Ahmedabad (KUA) project, to revive the project by rescheduling the premium payable to NHAI over concession period. The current premium payment envisaged fixed premium escalating at 5 *per cent* every year over the concession period. The concessionaire proposed to restructure the premium payable to NHAI over the concession period by paying a lower premium at the initial stages of the concession and then gradually increasing the premium payment, duly ensuring that the net present value (NPV) of the total premium amount payable to NHAI is fully protected within the concession period.

The Board considered that there was a general slowdown in the economy which was affecting traffic and revenue potential of road projects. The developers were, thus, finding it difficult to access debt and equity. The Board also noticed that 25 awarded projects,

¹ *The concessionaire has to maintain highways during the concession period in order to permit safe, smooth and uninterrupted flow of traffic during normal operating conditions. This has to be ensured by undertaking routine maintenance, major maintenance and carrying out periodic preventive maintenance.*

² *BOT (Toll Mode) - The concessionaire (i.e., the private partner) is responsible to finance, construct, operate and maintain the road stretch entrusted to him. The concessionaire is entitled to collect and retain the toll collected during the concession period. In case the estimated toll collection falls short of the project costs including return on investment, NHAI provides finance to meet the gap in the form of viability gap funding (VGF). In certain cases, the concessionaires may offer premium/ negative grant instead of getting VGF.*

³ *BOT (Annuity) mode – The responsibility for construction, operation, finance and maintenance rests with the concessionaire and the toll collection responsibility rests with the NHAI. All construction and annual maintenance costs are initially borne by the concessionaire and the same are reimbursed by NHAI by way of annuity payments determined at the time of bidding.*

⁴ *Hybrid Annuity Mode (HAM) – 40 per cent of the project cost is to be provided by the Government as construction support during the construction period and the balance 60 per cent as annuity payments over the operations period along with interest thereon to the concessionaire.*

⁵ *EPC Mode: NHAI is responsible to finance, construct, operate and maintain the road stretch entrusted to it.*

which were to yield gross premium of ₹98,115 crore to NHAI, were yet to reach the Appointed Date⁶ and 13 bids invited by NHAI during 2012-13 had not received any response. Thus, to revive road sector and avoid litigation in case of termination of project, it was envisaged that an appropriate public scheme be made to defer premium payable to NHAI in the initial years by concessionaires and allow the premiums to be repaid during concession period without disturbing the Net Present Value (NPV) i.e., present value of total premium at a prescribed discount/ interest rate, over the length of the concession period.

Accordingly, a note (09 September 2013) and two Supplementary Notes (19 September 2013 and 04 October 2013) were submitted by MoRTH/ NHAI to Cabinet Committee on Economic Affairs (CCEA) to approve a Policy for 'Rationalisation of Premium quoted by Concessionaires in respect of Highways Projects', which permitted rescheduling of premium in respect of all stressed projects.

The Note and first Supplementary note contained only the following two options for rationalisation:

- Option A: to terminate such projects (awaiting declaration of appointed date) and go for rebidding;
- Option B: to permit rescheduling of total premium payment plan as a one-time measure as a special case in respect of 23 projects listed therein (**Annexure I**).

However, in the second supplementary note (04 October 2013) option C was also included, along with Option A and Option B, as follows:

- Option C: to permit rescheduling of premium in respect of all stressed projects.

Approval of Option C was sought from CCEA (04 October 2013) and the same was accorded by CCEA on 08 October 2013 with the directions to constitute an Expert Group⁷, which was to finalize its recommendation on development of framework for determining if a project is stressed or not, the discount rate to be used and the conditions to be imposed. Final decision on recommendations of Expert Group was to be taken by MoRTH with the approval of Minister of Finance.

The Expert Group submitted its recommendations on 22 January 2014 which were considered and the approved subject to the conditions that:

- i) the financial stress was to be limited to premium payment and not to any cash shortfall on account of Operation & Maintenance (O&M) expenses, debt servicing etc.;

⁶ *“Appointed Date” means the date on which financial close is achieved or an earlier date which both the parties may determine by mutual consent and shall be deemed to be date of commencement of the concession period.*

⁷ *CCEA while approving (08 October 2013) the scheme directed for constitution of an Expert Group headed by Chairman, Economic Advisory Council. The other members in the Expert Group were Secretary, Planning Commission; Secretary, MoRTH; Chairman, NHAI; and Secretary, Department of Expenditure.*

ii) the cutoff date for such special dispensation was set as 04 March 2014 i.e., this dispensation was not available to projects awarded after cutoff date, and;

iii) NHAI Board was to consider each individual case on merit and to impose such conditionality as deemed appropriate to ensure that the government interest was protected.

The approved Policy was conveyed by MoRTH to NHAI on 04 March 2014.

In pursuance of the above policy, NHAI sanctioned deferment⁸ of premium in respect of 20 projects (**Annexure II**) up to October 2019, which consisted of 1 two-lane project, 9 two to four lane projects and 10 four to six lane projects. The premium deferment ranged from 8 to 14 years⁹ and went upto the year 2030-31¹⁰. As against premium of ₹18,952 crore receivable from these projects during the deferment period, premium amounting to ₹ 9,296 crore was deferred.

⁸ *Deferment implies rescheduling the premium payments in such a manner whereby the concessionaire pays lesser than contracted amount of premium in the initial years of concession and then gradually increases the premium payment, while ensuring that the NPV of the total premium amount payable is fully protected within the concession period.*

⁹ *Beawer-Pali-Pindwara-08 years & Gomti Chauraha – Udaipur – 14 years*

¹⁰ *Gomti Chauraha – Udaipur project – from 2016-17 to 2030-31.*

CHAPTER II
MANDATE, AUDIT SCOPE AND
METHODOLOGY

Chapter II

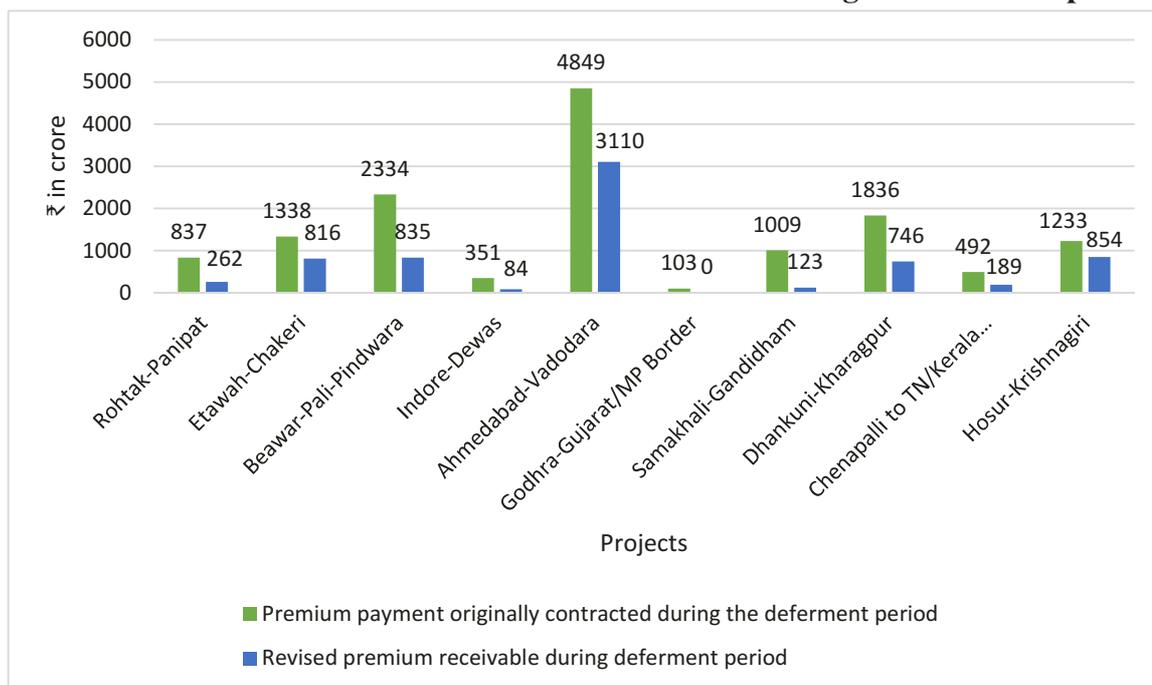
Mandate, Audit Scope and Methodology

The Compliance Audit Report has been prepared under the provisions of Section 13 of the Comptroller and Auditor General's (Duties, Powers and Conditions of Service) Act, 1971. The Audit has been carried out in line with the Regulations on Audit and Accounts, 2007 and Compliance Audit Guidelines, 2016 of the Comptroller and Auditor General of India.

2.1 Scope of Audit

The scope of Audit consists of review of policy for rationalisation of premium quoted by the concessionaires in respect of Highway Projects and its implementation by NHAI. Out of 20 projects approved for deferment of premium by NHAI, 10 projects (figure 1) were selected by Audit which consisted of 03 four laning¹¹ projects, 06 six laning¹² projects and one 4/6 laning¹³ project. Audit covered the period from March 2013 to November 2019, and the Audit findings have been subsequently updated up to December 2020 based on the Ministry's reply.

Chart 2.1: Details of Premium and Revised Premium during the deferment period



2.2 Audit objectives

The Audit objectives were to assess whether:

¹¹ (1) Rohtak-Panipat, (2) Beawar-pali-Pindwara, (3) Godhra-Gujrat/MP Border.

¹² (1) Etawah-Chakeri, (2) Indore-Dewas, (3) Ahmedabad-Vadodara, (4) Samakhiali-Gandhidham, (5) Dankuni-Kharagpur and (6) Hosur-Krishnagiri.

¹³ (1) Chengapalli to start of Coimbatore bypass (6 lane) and Coimbatore bypass to Tamilnadu/ Kerala Border (4 lane).

- i) prescribed process was followed while formulating and approving the scheme for deferment of premium;
- ii) the methodology adopted for implementation of the scheme was proper and adequate; and
- iii) suitable mechanism for monitoring of projects was established and was in operation.

2.3 Audit criteria

The deferment proposals in respect of selected projects were examined keeping in view the following:

- i) Cabinet Note and CCEA approval thereon for the scheme.
- ii) Conditions stipulated by the Ministry while according approval to the scheme.
- iii) Provisions/ Clauses of the Concession Agreement.
- iv) Correctness of proposals received from the concessionaire(s) for deferment of the premium.
- v) Conditions stipulated in the Approvals/ sanction orders.
- vi) Toll revenue.
- vii) Correspondence files.
- viii) Board Agenda/ Minutes.

2.4 Audit methodology

An Entry Meeting was held on 04 July 2019 wherein the Audit objectives, criteria, scope etc., were explained to the auditee and cooperation for the conduct of Audit was solicited. Thereafter, examination of records of NHAI and MoRTH was taken up. The Draft Audit Report was issued to the Management on 29 November 2019 and reply to the Draft Report was received from the management on 27 January 2020. The draft Report was issued to the Administrative Ministry/ Management on 18 May 2020, and Ministry furnished its reply on 14 December 2020.

2.5 Acknowledgement

Audit acknowledges the cooperation extended by the NHAI and the Ministry for timely completion of the audit.

CHAPTER III
FORMULATION AND APPROVAL
OF THE SCHEME

Chapter III

Formulation and Approval of the Scheme

3.1 Formulation of scheme by going beyond clauses of Concession Agreements despite remedy being available within these Concession Agreements

Cabinet Committee of Economic Affairs approved the Scheme with Option C which was to permit rescheduling of premium in respect of all stressed projects.

In this regard audit observed that the Concession Agreements of all the BoT projects contain various Articles under which relief may be extended to Concessionaires, if required. These clauses include:

- i) **Article 28** provides for granting Revenue Shortfall Loan to Concessionaire on actual basis for meeting shortfall in subsistence revenue¹⁴ occurring as a result of an Indirect Political Event, a Political Event or an Authority Default, as the case may be, at an interest rate equal to two *per cent* above the bank rate.
- ii) **Article 13.5.4** provides that in the event of extension of six/four laning date due to reasons not attributable to Concessionaire, the concession period shall be extended by the period equal in the length of period of extension in six/four laning of project.
- iii) **Article 29.1.2** provides that in the event that the Actual Average Traffic falls short of/exceeds the Target Traffic by more than 2.5 *per cent*, the Concession period shall be deemed to be modified in the manner specified therein.

Audit observed that in spite of the above mentioned Articles, NHAI citing problems faced by the Concessionaires due to non-achievement of Appointed Date within the stipulated period and probable loss of revenue of ₹98,115 crore to exchequer in the event of termination of these projects, proposed to bring about scheme for rationalisation of premium in respect of languishing projects. No comparative analysis of the proposed scheme and existing clauses of the signed agreement was done by NHAI before proposal/ approval of the scheme. NHAI, thus, sanctioned deferment of premium amounting to ₹9,296.25 crore in respect of 20 projects (till October 2019) for a period ranging between 08 years to 14 years¹⁵.

Audit observed that the alternatives available in the existing Concession Agreements for providing relief to concessionaires were based on actual traffic/ revenue/ events. However, NHAI opted for scheme for deferment of premium, which was probabilistic and thus had a higher risk of being misused or manipulated. NHAI provided relief for a future period of 08 to 14 years to the Concessionaires. Grant of deferment of premium was even more unjustified particularly in case of four laning projects, where tolling starts after completion

¹⁴ *Subsistence Revenue: Total amount of fee revenue required by concessionaire in an accounting year to meet the sum of Operation & Maintenance expenses and Debt Service.*

¹⁵ *Beawer-Pali-Pindwara – 08 years & Gomti Chauraha – Udaipur – 14 years (other projects deferred premium falling in between).*

of construction of the project. Presuming in advance, that actual toll collection would necessarily be lower than projected, was detrimental to NHAI's financial interest.

Thus, approval of scheme and granting of deferment of premium for future period of 08 to 14 years in one go, based on probable cash flows was an undue favour and detrimental to financial interest of NHAI.

Ministry in its reply (14 December 2020) stated that the policy was kept under the ambit of Article 28 of Model Concession Agreements with minimum deviation from the currently existing Concession Framework, as also recommended by Expert Group. While accepting the fact of grant of deferment on projects, it stated that the same is subject to annual review and is restricted to actual revenue shortfall and concessionaire is required to pay the difference with interest and penal interest. Ministry stated that the Article 13.5.4 and 29.1.2 do not address the shortfall in subsistence revenue requirement of a particular year. Thus, deferment of premium was considered necessary.

The reply of the Ministry seems to be an afterthought as there is no mention in the original Cabinet Note or the supplementary notes that the policy will be kept under the ambit of Article 28 of Model Concession Agreements with minimum deviation from the currently existing Concession Framework. Article 28 provides for grant of revenue shortfall loan in case the realisable fee in an accounting year falls short of the subsistence revenue (i.e., to meet O&M expenses and debt services) as a result of Indirect Political Event, a Political Event or an Authority Default. However, the scheme was proposed considering general slowdown in the economy and further the scheme was based on a probabilistic model where relief to concessionaire was granted on the basis of anticipated subsistence revenue shortfall. Also, NHAI provided relief to Concessionaire for future period of 08 to 14 years in one go instead of year to year basis as provided in Article 28. During a period of five years ending 31 March 2019 (from 04 March 2014 i.e., the date of approval of scheme), NHAI deferred premium amounting to ₹3,796.06 crore against ₹5,750.64 crore of premium payable during that period, in respect of 10 projects selected for review. The reply of the Ministry is also not tenable, as Article 29.1.2 categorically provides for extension/modification in concession period in the event of variation of more than 2.5 *per cent* between actual average traffic and Target Traffic and Article 13.5.4 provides extension of concession period, for six/four laning projects, in case of extension of scheduled completion date due to suspension of construction works for reasons not attributable to concessionaire.

Further, year to year basis would have the advantage of continuous monitoring and flexibility to adopt to different situations. As regards, no deferment beyond actual revenue shortfall during the year, it was seen that despite grant of this benefit to concessionaire in anticipation of future revenue shortfall, NHAI has not been able to recover the excess deferment of premium granted due to defective implementation and monitoring of the scheme, as subsequently pointed out under para 5.3. Further, yearly review of actuals does not alter the fact that the deferment was granted on the basis of probable revenue loss for 08 to 14 years. Article 28 of Model Concession Agreements addresses the shortfall in subsistence revenue requirement of a particular year and Articles 13.5.4 and 29.1.2 cover the risk of

concessionaire due to delay of work and shortfall in traffic on the road. Hence, adequate risk mitigation mechanism was already provided in the Model Concession Agreement to cater to different situations.

Recommendation No. 1: NHAI may ensure that prevailing provisions of Concession Agreements are followed before proposing any new scheme for granting concessions beyond contractual provisions.

3.2 Extension of undue benefit to concessionaires by resorting to post-tender amendments

The premium payable by the concessionaire was laid down in a legal contract drawn up after an open bidding process, in which premium offered was the one and only parameter in deciding the financial bids (RFP). The bidder was expected to have done due diligence and factored in all the commercial risks before quoting the premium.

Audit observed that any post tender/ contract amendment tantamount to vitiating the entire tendering process and is against the principle of sanctity of contracts. This was not only unfair with respect to other bidders who were not awarded the contract due to lower premium quoted by them but also to potential bidders who could have participated, had this flexibility been offered at the time of bidding. Also, this was against the organisational interest of NHAI.

Audit also observed that this flexibility to pay in the manner as chosen by concessionaires by keeping same NPV was not offered to other bidders. Neither did NHAI explore the more transparent idea of calling fresh bids for these contracts after inserting this flexible clause, subsequent to termination of existing contracts. It was possible that other bidders could have quoted more with so much flexibility provided. Instead, this option was offered only to the successful bidders who had quoted premium aggressively in the first instance but were not able to pay. Yet they were rewarded for their lapse by NHAI by rescheduling premium instead of penalising them.

Ministry in its reply (14 December 2020) stated that Policy of Deferment of Premium has been approved by CCEA and the same has been further examined by Expert Group constituted by CCEA. The policy was a well thought decision of Government after examining all the aspects on the basis of economic stress due to various reasons like approval and clearances related matter, tightening of loan approvals by banks and financial institutions, state specific issues, court orders etc. Further, it was stated that there are several factors which impact the revenue of the toll projects like competing roads, law and order situation, mining ban, economic slowdown etc., and the risk mitigation measures provided in Model Concession Agreement in the form of extension of concession period does not provide cushion against the shortfall in subsistence revenue requirement.

Regarding offer of same discount rate to other bidders, it is stated that termination of these projects was not considered a viable option in the interest of project as explained above.

The reply of Ministry is not tenable as the issue of economic stress was taken care of by Planning Commission while developing framework for Public Private Partnership in National Highways, as articulated under Article 28. Planning Commission also noted that commercial risk, such as rate of growth of traffic, and technical risks relating to construction, operation and maintenance were being allocated to the concessionaires, as they were best suited to manage them. While economic growth would have a direct influence on the growth of traffic and concessionaire cannot manage this element, the Model Concession Agreement/ Concession Agreement, by way of risk mitigation, provided for extension of concession period in the event of lower than projected growth in traffic. The reply of the Ministry regarding non-existence of risk mitigation measures in Model Concession Agreement is not tenable as Article 28 provides¹⁶ for subsistence revenue shortfall loan on yearly actuals and Article 29.1.2 provides for extension of concession period due to shortfall in traffic on target date.

The reply regarding non-viability of option of termination of projects is also not tenable as none of the 23 projects for which the scheme was initially conceptualised, availed the relief under the scheme and 18 out of the 23 projects could not take off due to termination/ foreclosure.

Recommendation No. 2: NHAI should avoid post tender/ contract amendments which vitiate the entire tendering process and against the principle of sanctity of contracts.

3.3 Formulation of scheme on the basis of flawed presumptions

NHAI referred the matter pertaining to revival of Kishangarh-Udaipur-Ahmedabad project to Ministry of Road Transport and Highways (MoRTH/ Ministry) and also proposed that an appropriate public policy, for the projects which were yet to reach the Appointed Date, be made. Though MoRTH declined (14 May 2013) the proposal for revival of KUA Project in view of legal opinion against it, NHAI reiterated its proposal and requested MoRTH to reconsider the matter at the highest level in the Government.

Accordingly, MoRTH circulated (26 August 2013) draft CCEA Note on the proposed scheme to Planning Commission, Department of Expenditure (DoE/ Ministry of Finance), Department of Economic Affairs (DEA/ Ministry of Finance) and Department of Legal Affairs for comments.

Planning Commission, vide OM dated 03 September 2013, stated that the said projects might be terminated and rebid afresh. Department of Legal Affairs stated (02 September 2013) that it did not see any legal or constitutional objection to the proposal contained in the Draft Note.

MoRTH submitted notes on 09 September 2013, 19 September 2013 and 04 October 2013 to CCEA on 'Policy for Rationalisation of Premium quoted by Concessionaires in respect

¹⁶ *Article 28 provides for financial assistance to concessionaire in the form of revenue shortfall loan for shortage in subsistence revenue as a result of indirect political event, political event or authority default.*

of Highways Projects'. CCEA while approving the policy (08 October 2013) directed formation of Expert Group for giving recommendation on development of framework for determining if a project was stressed or not, the discount rate to be used and the conditions to be imposed. Final decision on recommendations of Expert Group was to be taken by MoRTH with the approval of Minister of Finance. The Expert Group, while documenting their concerns on the proposed scheme, observed that decision to renegotiate had already been taken by CCEA and it had a limited mandate. It submitted its recommendations on 22 January 2014 which were considered and the approved scheme was conveyed to NHAI on 04 March 2014.

In this regard, Audit observed the following:

- i) The note dated 04 October 2013 contained three options¹⁷ viz., Option A, B and C, out of which, CCEA approved (08 October 2013) option C. It was observed that on the date of proposal of Option B (09 September 2013), amicable termination of 20 out of 23 projects proposed for revival, had already been approved in the 96th Board meeting dated 23 August 2013. However, this fact was not brought to the notice of MoRTH/ CCEA and a proposal for a policy/ scheme of revival of these projects was proposed.
- ii) It was seen that out of these 23 projects (**Annexure I**), 18 projects could not take off and were subsequently terminated/ foreclosed while the remaining 5 projects, though started, had not been completed till December 2019.
- iii) It was also observed that the proposals dealing with this scheme did not bring out direct relationship between grant of deferment and timely completion of projects. It was also not clear as to how completion of project with the help of deferment of premium was envisaged by NHAI as even the 20 projects¹⁸ which were granted such unprecedented relief in the form of deferment of premium, could not be completed in time.
- iv) Though the purported intent of the scheme was to salvage languishing projects, this scheme only ended up providing relief to concessionaires in the form of deferred premium.

Thus, Audit noticed that while the scheme was initially conceptualised to provide relief to 23 projects which could not take off due to non-achievement of Appointed Date/ Financial Close, this relief was not availed by any of these projects, which shows that the premise/ presumptions considered for such a scheme were flawed as the scheme was subsequently approved (option C) for revival of all languishing projects.

Ministry (14 December 2020) has not specifically replied to the Audit observation.

¹⁷ *Option A provided for termination and rebidding of projects which are unable to fulfil their commitments of premium payment. Option B provided for permitting rescheduling of total premium payment only in respect of 23 projects which had not achieved appointed date. Option C permitted rescheduling of premium in respect of all stressed projects.*

¹⁸ *Deferment of premium granted in 20 projects till October 2019.*

3.4 Non-consideration/ non-approval of policy/ scheme for rationalisation of premium by NHAI Board

NHAI discussed in its 93rd Board Meeting (26 March 2013), the issue of renegotiation of premium in respect of Kishangarh-Udaipur-Ahmedabad project awarded to M/s GMR concessionaire and also raised the issue of other languishing projects in respect of which Appointed Date had not yet been declared. NHAI sought approval of its Board¹⁹ to recommend the proposal submitted by M/s GMR. The same was approved despite strong dissent/ reservations by two Board Members i.e., Secretary, Planning Commission, Secretary, Department of Expenditure. Proposal for revival of other projects which had not achieved Appointed Date within stipulated period was neither moved nor approved in this meeting.

In this regard, Audit observed that though NHAI Board had given its specific approval for only the Kishangarh-Udaipur-Ahmedabad project, NHAI prepared a case for deferment of premium in respect of 25 supposedly languishing projects at that time and proposed the scheme to MoRTH.

Thus, the approval of Board was not for proposing a scheme in respect of other projects but only for one project i.e., Kishangarh Udaipur Ahmedabad project.

Ministry in its reply (14 December 2020) stated that, NHAI had first proposed for the matter to be taken up with the Inter Ministerial Group. Ministry, instead advised NHAI to take the matter in the Board meeting. Thereafter, the proposal was discussed in the NHAI's 93rd Board meeting and with Department of Legal Affairs & other Departments. Ministry also stated that extension of dispensation to all stressed projects was approved by the NHAI Board in its 96th Board Meeting held on 14 August 2013. Ministry further stated that as the scheme of Deferment of Premium was approved by the CCEA, prior approval of Board of NHAI was not required/ insisted.

Ministry's reply is not tenable in view of the fact that NHAI Board had given its specific approval only for Kishangarh-Udaipur-Ahmedabad project in the NHAI 93rd Board Meeting. However, NHAI later prepared a case for deferment of premium in respect of 23 supposedly languishing projects and submitted to Ministry without seeking the approval of the Board.

3.5 Non-adherence to guidelines of Cabinet Secretariat for circulation/ approval of Cabinet Notes

As per Cabinet Secretariat OM dated 16 February 2012, the proposals contained in the final note forwarded by the sponsoring Ministry/ Department to the Cabinet Secretariat should be the same as those included in the note circulated to the Ministries/ Departments at the time of inter-ministerial consultations. If a sponsoring Ministry/ Department makes a substantive change in the original proposal(s) after inter-ministerial consultations, it would be incumbent upon them to re-circulate the note for completing inter-ministerial consultations. Failure to

¹⁹ *The then NHAI Board comprised of Chairman, NHAI and five members who were also the executive heads of their functional wings. In addition, the Board included Secretary, Planning commission, Secretary, Department of Expenditure, Secretary, RTH as its members.*

do so would render the institutional mechanism of inter-ministerial consultations infructuous.

The original Note and First Supplementary Note contained two options for rationalisation i.e., Option A which provided for termination and rebidding of such projects; and Option B which provided for permitting rescheduling of total premium payment only in respect of 23 projects listed therein. However, on submission of Second Supplementary Note, Option C was included which permitted rescheduling of premium in respect of all stressed projects. The CCEA approved (08 October 2013) Option C.

Audit observed that although Option C was a major deviation from earlier proposals of Option A and B, it was not put up and vetted by NHA Board despite directions of MoRTH. In fact, none of the options under the scheme was discussed in the Board. The comments of DoE (Ministry of Finance), Department of Economic Affairs, Planning Commission, Department of Legal Affairs (Ministry of Law), whose comments were sought/ taken while putting up main Note and First Supplementary Note, were also not sought for vetting Option C. This was in clear violation of Cabinet Secretariat instructions on the subject.

Audit also observed that the CCEA was not apprised of the fact that on the date of proposal of Option B, amicable termination of 20 out of 23 projects proposed for revival, had already been approved (96th Board meeting dated 23 August 2013).

Further, as per Cabinet Secretariat/ GOI instructions, proposals concerning sectoral policies/ policy statements, should be accompanied by an action plan with clearly identifiable timelines and milestones for different activities. Planning Commission should also be consulted in all cases concerning matters involving economic policy. However, Audit observed that these instructions were not followed while putting up/ approving the proposal for rationalisation of premium as despite major change in scheme (i.e., inclusion of Option C for approval), the comments of other departments/ ministries were not taken.

Further, although Planning Commission, which was the apex body for framing Model Concession Agreement opined that contracts should be scrapped, the comments/ reservations of Planning Commission were ignored at the time of introducing the scheme. Instead of scrapping these projects, it was decided to revive projects by resorting to deferment of premium.

Thus, the above shows various procedural lapses on the part of MoRTH/ NHA Board during appraisal and approval of the scheme to be implemented by NHA Board in respect of BOT (Toll) projects.

Ministry in its reply (14 December 2020) stated that, the decision to include Option C in the CCEA Note was taken in the Ministry and the CCEA approved the Option C, which permitted rescheduling of premium in respect of all stressed projects.

The reply of the Ministry is silent on the issue pertaining to non-vetting and approval of Option C by NHA Board, Inter-ministerial consultations and other issues raised in the Audit observation.

Recommendation No. 3: NHAI/ MoRTH should abide by the extant rules, procedures and guidelines of government and present the full facts in its proposals, particularly in case of deviations.

3.6 Non-providing of vital data to expert group for identifying a stressed project

The Expert Group²⁰ had to give its recommendations on the framework for determining whether a project was stressed or not, the discount rate to be used and the conditions to be imposed. It sought data on tollable traffic, toll revenues, debt servicing obligations, O&M costs, premium payment schedule in respect of 50 projects.

Audit observed that the above data was not furnished to the Expert Group. Consequently, the Expert Group had to finalise its report without reviewing the above data which might be a priori judgement, based on logic rather than facts.

Ministry in its reply (14 December 2020) stated that there was some delay in providing some data to Expert Group and the reason for the same cannot be explained as the related files are not presently traceable in NHAI.

The reply of the Ministry stating delay in submission of data is not tenable as the data was not furnished to Expert Group till the last. This data was fundamental and crucial for taking any economic/ financial decision as deferment of premium is based on revenue shortfall, which is calculated as the difference between subsistence revenue and projected toll revenue, where subsistence revenue is the sum total of amount of O&M, debt servicing and premium payable. However, the Expert Group had to firm up its recommendations without availability of this basic data, which is fundamental in determining the project to be stressed. So far as non-traceability of files is concerned, it is recommended that the Ministry may make further efforts to trace the missing files.

Thus, the framework of the scheme was determined in the absence of traffic data despite being a vital parameter.

Recommendation No. 4: NHAI should strengthen its internal systems to ensure timely availability of critical data for policy decisions and evolve a mechanism for fixing responsibility for lapses in ensuring availability of crucial data.

3.7 Summing Up

At all stages of formulation of scheme, from conception till introduction of Option C in the CCEA Note, it was presented that there was general slowdown in the economy and concessionaires were finding it difficult to achieve financial closure/ Appointed Date due to which, many projects were languishing and NHAI was close to losing substantial revenues. It was stated that these stressed projects could be salvaged by giving them certain

²⁰ *The Expert Group was headed by Chairman, Economic Advisory Council to PM and consisted of Secretary, Department of Economic Affairs; Secretary, Planning Commission; Secretary, MoRTH; Chairman, NHAI; Secretary Department of Expenditure; Secretary, Economic Advisory Council to PM and Joint Secretary, MoRTH.*

concessions in the form of deferment of premium payment in the initial years to the later years. NHAI, despite availability of various alternatives to provide relief to concessionaire within the Concession Agreement, which were based on actual revenues, chose to go beyond the signed agreement and brought about the probabilistic model of deferment of premium, deferring the premium to future periods ranging from 08 to 14 years by resorting to post tender amendments. The major shift in the premise of the scheme, introduction of Option C, was neither put up for approval in NHAI Board nor vetted by Ministry of Finance/ Law or Planning Commission. The whole foundation of scheme proposal rested on revival of these 23 projects, which was never achieved. Rather, the scheme ended up in providing benefit to the concessionaires of those projects which were already under execution and had never before expressed their inability to pay premium, as none of the projects which availed the scheme were completed in time.

CHAPTER IV

IMPLEMENTATION OF THE SCHEME

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Implementation of the Scheme

The scheme for rationalisation of premium in BOT projects in NHAI was approved by CCEA and conveyed to NHAI by MoRTH, with the directions for review of each case on merit by NHAI Board and to impose such conditionality, as deemed appropriate, with a view to ensuring that Government interest is protected. Accordingly, the scheme was implemented by NHAI which reviewed and sanctioned individual cases of deferment of premium.

In this regard, Audit noticed the following issues during review of the implementation of the scheme:

4.1 Huge variations in revenue/ traffic projections by Concessionaires

During review of projections of tollable traffic/ toll revenue made by concessionaires, it was seen that, at the time of financial close (while raising debt from banks/ financial institutions) the projections were much higher while the projections at the time of making request for deferment of premium were much lower. The variations in projections made by concessionaire varied from 31 *per cent* to 85 *per cent*. This shows that the Concessionaires' projections were made to suit their interests and requirements; higher projections to raise more debt and lower projections to obtain the benefit of deferment. However, NHAI failed to exercise due diligence and failed to review the huge variation in toll projections, as detailed below:

i) In case of two projects²¹, percentage increase in toll revenue as projected by concessionaire at the time of request for deferment of premium was almost same (i.e., 10 to 11 *per cent*) as envisaged by NHAI in the financial analysis, whereas at the time of financial close, the rate of growth of toll projections was kept at 14 to 16 *per cent* which shows that revenue projections were pegged up at the time of raising debt. As can be seen in Etawah Chakeri project (chart 4.1), toll projections at the time of deferment were ₹178 crore and ₹662 crore for 2013-14 and 2025-26 respectively, whereas toll projections for financial close were ₹240 crore and ₹1172 crore respectively. Similarly, in Samkhiali Gandhidham Project (Chart 4.2), toll projections at the time of deferment were considered as ₹99 crore and ₹254 crore for 2014-15 and 2024-25 respectively, however, toll projections for financial close were considered as ₹149 crore and ₹596 crore respectively. Financial Analysis reports, in respect of remaining seven projects, were not furnished to Audit.

²¹ *Etawah-Chakeri & Samakhiali – Gandhidham (Financial analysis in r/o three projects furnished viz. Ahmedabad-Vadodara, Etawah-Chakeri & Samakhiali-Gandhidham)*

Chart 4.1

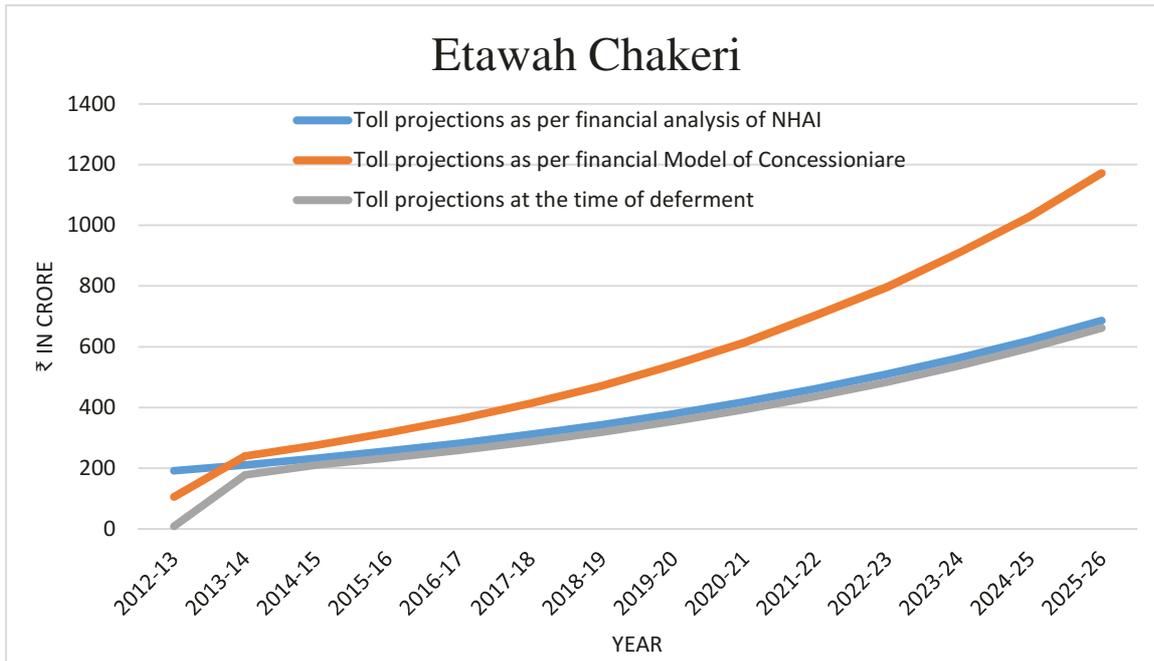
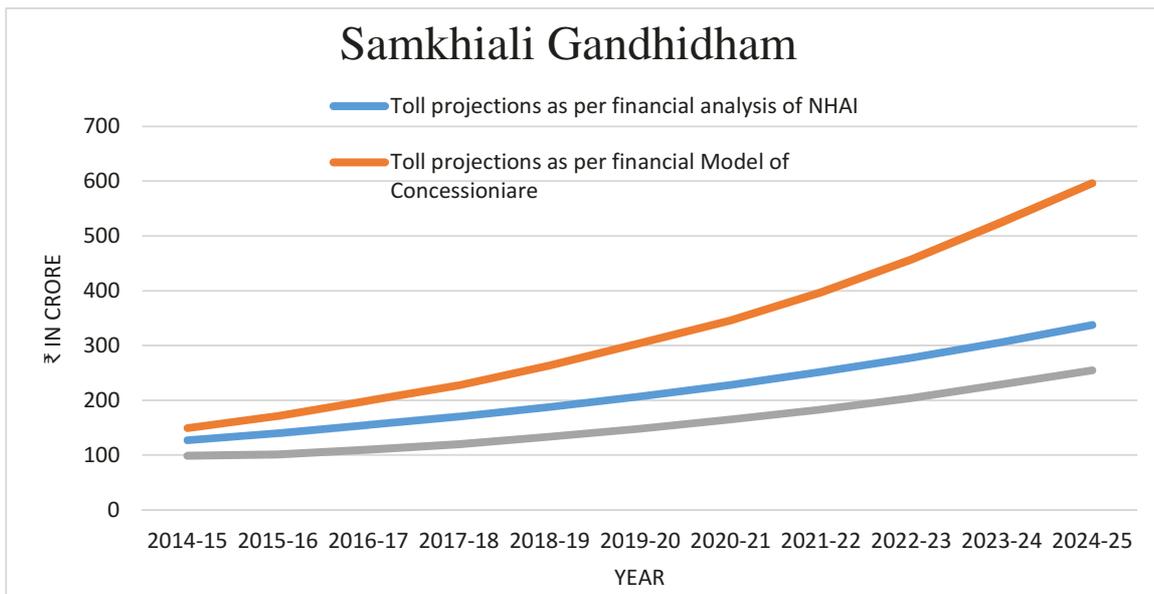


Chart 4.2



ii) Audit further observed that projections made by concessionaires were not reviewed by NHAI indicating that it has failed to carry out due diligence while consenting to Concessionaires figures of shortfall in subsistence revenue. In respect of two projects viz., Indore-Dewas and Ahmedabad-Vadodara, the concessionaires had even projected abnormal increase in toll projections of 80.6 per cent and 125 per cent, respectively, over the previous year.

The above showed that NHAI did not review the traffic projections provided by the concessionaire at different times and only the economic slowdown was quoted for justifying the scheme.

Ministry in its reply (14 December 2020) stated that initially projections submitted by the Concessionaire were considered. However, while considering Premium Deferment, projection of annual revenue growth was restricted to approximately 12 *per cent* without any increase in deferred amount of premium. It further stated that higher revenue projections during the years in which premium has been deferred only resulted in lower deferment of premium. Also, deferment granted is subject to annual review and deferment is restricted to actual revenue shortfall and concessionaire is required to pay the difference with interest and penal interest.

Ministry has furnished amount recoverable from concessionaires i.e., ₹47.48 crore (2014-15 to 2016-17) and ₹38.65 crore (2014-15 to 2015-16) in case of Indore Dewas and Ahmedabad Vadodara project, respectively. NHAI has withdrawn the deferment of premium granted in Indore Dewas project due to which Concessionaire has gone to Arbitration. The concessionaire of Ahmedabad-Vadodara project has also represented against the revised premium demanded by NHAI. This project is also under consideration for withdrawal of premium.

Ministry has not replied on the Audit observation regarding huge variation between revenue projections made by Concessionaire at the time of financial close and at the time of making request for deferment of premium. Management contention of restricting revenue growth rate to 12 *per cent*, is not correct as NHAI during financial analysis of a project considers the same at 10 *per cent* as against the concessionaire projections of 15 to 18 *per cent*. Further, Ministry's reply citing recoveries to be made from two projects, itself strengthens the audit contention as recovery for the financial years 2014-15 and 2015-16 has not been effected even after a lapse of four to five years and the concessionaires are now opting for arbitration. Had the relaxation been given on the basis of yearly actuals, the benefit under the scheme could be stopped in case of default by concessionaire after the first year itself. This also points towards the defective and weak implementation and monitoring of the scheme.

4.2 Huge variation in total project cost of NHAI vis-à-vis Concessionaire's total project cost resulting in high debt servicing

During review of the selected projects, Audit observed that in respect of all projects except Beawer-Pali-Pindwara & Godhra-Gujarat-Madhya Pradesh border projects, there was huge variation ranging from 32 *per cent* to 130 *per cent* between total project cost (TPC) as per concession agreement *vis-a-vis* total project cost as per financial close achieved by Concessionaire which resulted in availment of higher loan by concessionaires. Further, the total project cost arrived at by NHAI at the time of Detailed Project Report/ financial analysis

Subsistence Revenue: Total amount of fee revenue required by concessionaire in an accounting year to meet the sum of O&M expenses and Debt Service.

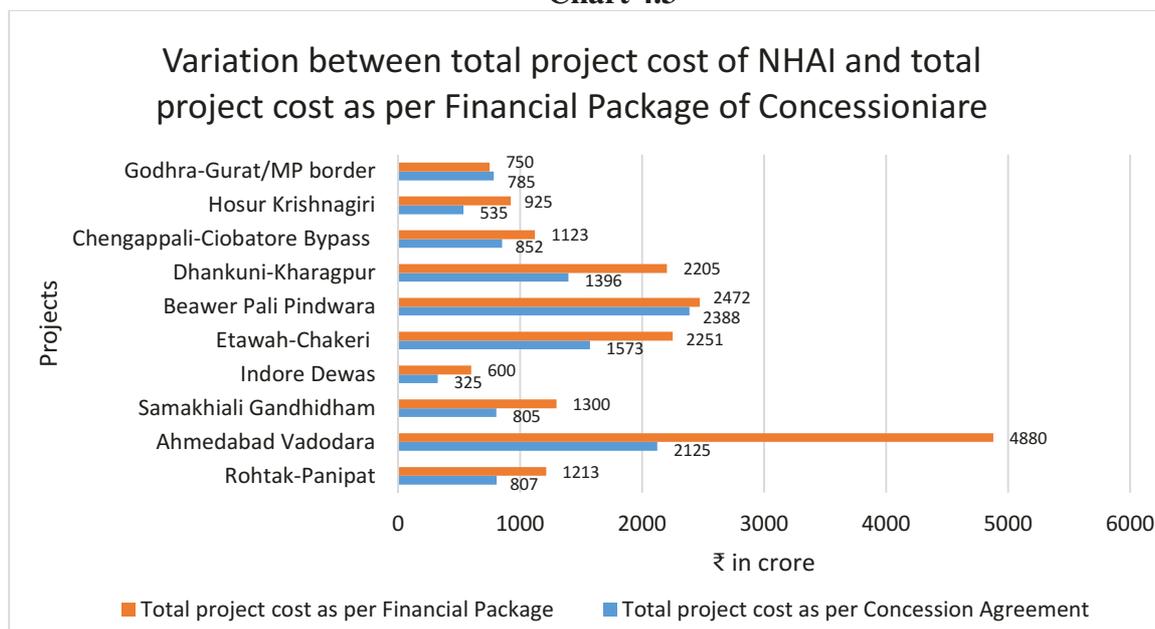
Additional Concession Fee i.e., Premium payable was considered by expert group as part of O&M expenses of Concessionaire.

Subsistence revenue shortfall = Toll Inflows – (O&M expenses + Premium Payable + Debt Servicing)

includes all components including civil cost, contingencies, independent consultant and preoperative expenses, financing cost, escalation during construction period, interest during construction. NHAI's failure in reviewing Concessionaire's total project cost at the time of financial close resulted in Concessionaire availing higher debt from financial institution and further resulting in higher debt servicing. The direct implication of this higher debt servicing is on the subsistence revenue of Concessionaire which in turn had direct relation with premium deferred.

In one case, the debts availed by concessionaires were so high that they even surpassed the total project cost envisaged at the time of entering into Concession Agreement. Thus, the Concessionaires were able to cover NHAI's total project cost by means of debt only.

Chart 4.3



Audit observed that NHAI, despite being aware of such high availment of loan, failed to analyse its impact on revenue shortfall and at the time of formulation of scheme of deferment of premium, only fall in traffic growth due to drop in Gross Domestic Product/ general economic slowdown were considered as reasons for languishing projects with no reference to high debt servicing due to high loans by Concessionaires.

Thus, NHAI failed to review the concessionaires project cost despite the same having impact on the future period subsistence revenue due to higher debt component.

Ministry in its reply (14 December 2020), stated that Concessionaire project cost was determined by bidder/ Concessionaire in consultation with lenders and NHAI had no role in determining the concessionaire project cost. NHAI total project cost is based on applicable system of record at the time of preparation of Detailed Project Report and banks have their own system for assessing the project cost of Concessionaire due to which, the gap is bound to persist on account of varied perceptions of different authorities. Ministry further stated that higher debt does not affect NHAI liability as NHAI termination payment liability is restricted as per NHAI total project cost only which flows from the definition of

“Debt Due”, “Senior Lenders” and “Total Project Cost” as provided in Article 48 of the Concession Agreement.

The reply is not tenable as the total project cost arrived at by NHAI includes all components including civil cost, contingencies, Independent Consultant (expenditure) and preoperative expenses, financing cost, escalation during construction period & interest during construction. Though NHAI may not have any role in determining concessionaire project cost, NHAI cannot escape from its responsibility of diligently reviewing the reason of variation between NHAI’s total project Cost and Concessionaire/ Lenders’ total project cost. NHAI’s failure in reviewing concessionaire’s total project cost at the time of financial close resulted in Concessionaire going ahead with its inflated total project cost. This, ultimately, had direct bearing on the premium deferment granted to concessionaire, as debt servicing is the main expenditure in working out the subsistence revenue shortfall.

Further, MoRTH in its reply has not considered the termination payment which provides for considering 90 *per cent* of ‘debt due determined on the basis of the concessionaire’s total project cost’ and not determined on the basis of total project cost mentioned in Concession Agreement. Therefore, the termination payment is not restricted to NHAI’s total project cost as per Concession Agreement but the Concessionaire total project cost is considered.

Hence, it was important to review the Concessionaire’s total project cost as it not only had bearing on the amount of deferment of premium granted but also on calculation of termination payment, if any.

Recommendation No. 5: NHAI may consider introducing a mechanism to review the total project cost/ debt to protect the interest of NHAI in the long term while keeping in reference the termination payments and debt servicing.

4.3 Non-levy of penalty of ₹51.01 crore resulting in undue favour to the Concessionaires

While recommending the scheme of ‘Deferment of Premium’ by Expert Group, it was envisaged that a penalty with a ceiling of half *per cent* (0.5 *per cent*) of total project cost to be determined by NHAI/ Authority shall be imposed upon the Concessionaire applying for such renegotiation. This was to compensate for the special benefit that was being provided to the Concessionaire beyond the signed agreement. In a way, this was to mitigate the moral hazard of reopening a signed agreement to bail out the sector. It was further provided that in case the Authority was at fault, no such penalty should be levied.

Condition Precedent means set of conditions given in Concession Agreement which NHAI and Concessionaire are required to fulfill before start of construction.

NHAI, before commencement of work, is required to handover required Right of Way (ROW), Environment Clearance, GAD approval for ROB etc.

Audit observed that in case of one project namely Dhankuni-Kharagpur, NHAI delayed in handing over of Right of Way (ROW) to

Concessionaire. In case of the remaining nine projects, there was mutual waiver of non-fulfillment of condition precedent between NHAI and Concessionaire.

However, at the time of grant of deferment, no penalty on account of renegotiation was imposed on concessionaires on the grounds that NHAI delayed in fulfilling conditions precedent.

Audit observed that non-imposition of penalty was an undue favour to the concessionaires as the penalty was to be levied for providing the special dispensation (re-negotiation) and to mitigate the hazard of reopening of signed agreements. The penalty was, in a way, opportunity cost for government in renegotiating the terms of agreement. The grounds of conditions precedent and related penalties were a different issue altogether and had already been addressed under different clauses. Non-imposition of penalty at the time of renegotiation as above has resulted into loss of ₹51.01 crore (**Annexure III**) to the exchequer.

Thus, inspite of clear recommendation of the expert group that non-levy of penalty in case of only one condition i.e., NHAI fault, NHAI failed to levy the penalty in cases where concessionaires were also at fault.

Ministry in its reply (14 December 2020) stated that no penalty is to be levied as per policy approved for deferment of premium in case authority was at fault.

Ministry's reply is not tenable in view of the fact that the recommendation of expert group for non-levy of penalty was applicable to projects where NHAI was at fault in fulfillment of condition precedent. However, in the instant cases of deferment, the concessionaires were also at fault in fulfillment of their condition precedents. Thus, the question of non-levy of penalty in cases where both the parties at fault was an undue favour to Concessionaires.

4.4 Undue favour to the Concessionaires by obtaining inadequate bank guarantees to the tune of ₹429.89 crore against the deferred premium of ₹7,363.63 crore

The Expert Group, in its recommendations, pointed out that there should be adequate safeguards for government for deferred premium payments. After deliberating on scenarios in which the Concessionaire could decide to walk out of the project, especially in case of six laning projects, the Expert Group recommended for obtaining a construction milestone linked performance guarantee in the form of a bank guarantee during the construction period. This guarantee was to be a safeguard against the quantum of the deferred premium including interest thereon and the modalities of this guarantee were left to the discretion of NHAI Board. The details of bank guarantee obtained by NHAI in respect of 10 projects are given in **Annexure IV**.

Out of 10 audited projects, NHAI has bank guarantee amounting to ₹123.78 crore in respect of six projects²² against total deferred premium of ₹2,496.59 crore till March 2019. In

²² *Ahmedabad-Vadodara, Samakhiali-Gandhidham, Dhankuni-Kharagpur, Hosur-Krishnagiri, Etawah-Chakeri and Indore Dewas.*

respect of three projects²³, no bank guarantee were taken at all against total deferred premium of ₹1,273.56 crore till March 2019 on the plea that bank guarantee was not required in case of four laning projects. In one project, namely Godhra-Gujrat/ Madhya Pradesh border, the Concessionaire paid the entire deferred premium and opted out of the scheme.

Audit observed that NHAI failed to ensure adequate safeguards against exchequer money as modalities of guarantees were left to the discretion of NHAI Board. Audit also observed that linking of bank guarantees with achievement of project milestones instead of amount of premium deferred was an undue favour to the concessionaires since project construction completion was due within a short period of 1 year to 2 years whereas the premium was deferred for 08 years to 14 years. This resulted in exposure of NHAI to greater risk for a longer period as is evident from the fact that out of 10 projects, though revised premium is not being paid regularly in three projects and an amount of ₹107.74 crore²⁴ is due to be recovered from the concessionaires of these projects, NHAI does not have any bank guarantees to safeguard its interests and cannot make any recovery but is left with only the option of requesting the concessionaires to make timely payments.

Thus, by not having the adequate bank guarantee, the NHAI is exposed to greater risk as the excess deferments were not being recovered timely by NHAI.

Ministry in its reply (14 December 2020) stated that as per policy/ scheme of premium deferment, a construction milestone linked performance bank guarantee in the form of bank guarantee had to be furnished by the Concessionaire during the construction period, which was to be a safeguard against the quantum of the deferred premium, including interest thereon and also against Concessionaire default, if any, during the construction period after having been permitted to defer the premium due. The modalities of this guarantee were left to the discretion of the NHAI Board. However, this guarantee was refundable at the end of the construction period. Hence, bank guarantee was not considered by NHAI Board in cases where project was completed/ or no completion risk was visualized.

Ministry's reply is not tenable in view of the fact that the modalities of these guarantees were left to the discretion of NHAI Board. However, as pointed out in the Audit paragraph, NHAI failed to adequately safeguard the financial interest (amount of deferred premium plus interest thereon) of NHAI/ Exchequer after completion of project and exposed NHAI to greater risk for a longer period as is evident from the fact that out of 10 projects, though revised premium is not being paid regularly in three projects and an amount of ₹107.74 crore was due to be recovered from the concessionaires of these projects, NHAI did not have any bank guarantee to safeguard its interests.

The above fact of risk exposure can also be substantiated from MoRTH's own reply to, paragraph 4.1, where NHAI/ MoRTH failed to effect the recovery ₹86.13 crore even after

²³ *Chengapalli to Start of Coimbatore Bypass and Coimbatore Bypass to TN/Kerala Border, Beawer-Pali-Pindwara and Rohtak-Panipat.*

²⁴ *(i) Ahmedabad-Vadodra – ₹64.98 crore (ii) Chengapalli to Start of Coimbatore Bypass and Coimbatore Bypass to TN/Kerala Border – ₹33.93 crore (iii) Rohtak Panipat – ₹8.83 crore.*

lapse of 4 years to 5 years and the concessionaires are also opting for arbitration. NHAI, in these cases do not have any financial safeguard, for recovery of the said amount. Hence, there is a need for having bank guarantees.

Recommendation No. 6: NHAI may ensure reasonable amount of bank guarantee to cover the risk of non-payment of deferred premium by the concessionaire, to safeguard the Government interest.

4.5 Project specific deficiencies while granting approval for deferment of premium

4.5.1 Samakhiali Gandhidham Project

i) The concessionaire had initially requested (17 March 2014) NHAI for deferment of premium for only one year i.e., 2014-15. However, NHAI directed Concessionaire to submit revised request indicating the cash flows in the project till the end of the concession period.

Audit observed that though Concessionaire was interested in deferment of premium for one year only (amounting to ₹71 crore), on the directions of NHAI, the concessionaire requested for deferment of premium for 11 years resulting into premium amounting to ₹886.21 crore being deferred. The above action of NHAI was against norms of financial propriety.

Management in its reply (27 January 2020) accepted that the concessionaire initially applied for deferment of premium of only one year and would apply the same principle for subsequent years.

Ministry's reply is not specific to Audit observation.

ii) While putting up the case of deferment of premium, the traffic on the target date (31 March 2019) was anticipated at 41,225 passenger car units (i.e., 32 per cent decrease) and an increase of 4.8 years in concession period was worked out, which was considered for deferment/ repayment of premium by NHAI (23 May 2014). Audit observed that as per NHAI's own Toll Plaza Information system, the passenger car units per day as on 24 March 2017 was 62,619 which means it had already achieved target traffic two years ahead of the target date. This shows that NHAI based its calculations on speculative data and extended undue benefit to concessionaire in the form of deferment of premium. It was also observed that the initial deferment was granted by NHAI for an amount of ₹886.21 crore. However, subsequently the same was increased by ₹46.62 crore without any justification. Management replied (27 January 2020) that as per terms of sanction, viability of premium deferred was examined up to the end of concession period without considering the extension of 4.8 years and in view of Audit observation deferred premium for future years is being re-examined without considering extension of concession period as the concession period is not likely to be extended in view of passenger car units of target date.

However, Ministry has not furnished reply to Audit observation.

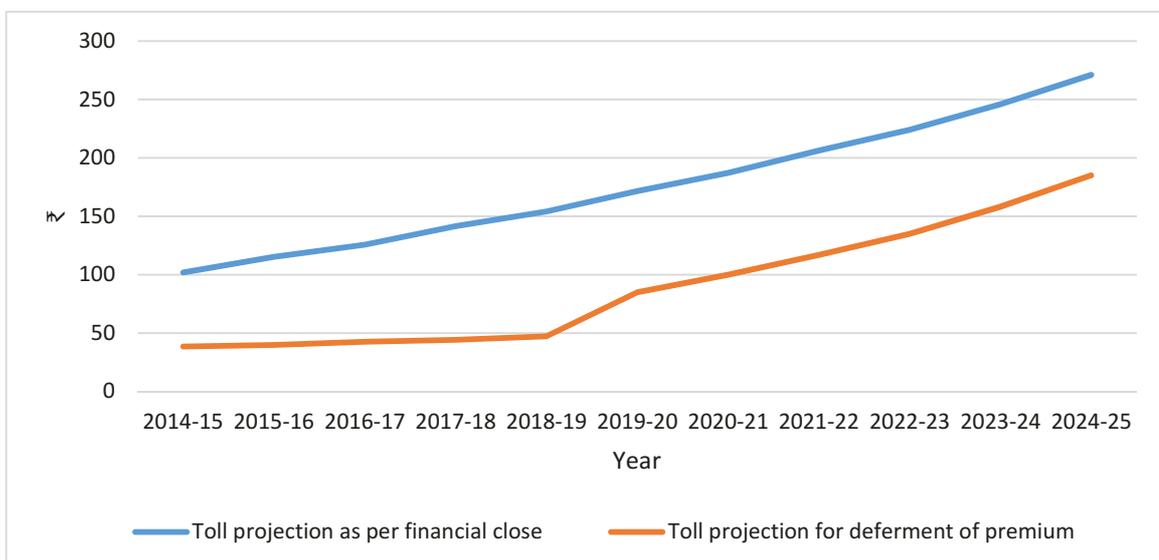
4.5.2 Indore Dewas Project

i) Concessionaire requested (25 March 2014) for deferment of premium from 2014-15 to 2022-23 which was granted by NHAI. As per the proposal contained in the agenda for approval, the Concessionaire was to clear all over dues of ₹16.49 crore (for November 2013-June 2014).

Audit observed that NHAI, on the one hand failed to collect premium of ₹16.49 crore due from the concessionaire and on the other hand extended undue favour to concessionaire by granting deferment for the period 2013-14, beyond the approval of the Board, thus rendering deferment for that year irregular.

ii) It was also observed that in its projections for deferment of premium, the concessionaire also showed a steep increase from ₹47.08 crore to ₹85.03 crore of the amount of toll collection in the year ending 31 March 2020 i.e., increase of 80.6 *per cent* in projected revenues of 2019-20 over previous year (Chart 4.4). The projected amount of operation & maintenance expenditure during the same year was increased from ₹3.95 crore to ₹20.74 crore over the previous year on account of proposed major repair to be carried out by the concessionaire as per the provisions of Concession Agreement. Audit observed that the increase in the expected toll revenue may have been shown to match these increased operation & maintenance outflows and to demonstrate the feasibility of the proposed deferment so that the concessionaire may be able to avail the scheme. The projected increase in revenue was neither justified in Concessionaire's request letter nor reviewed by NHAI.

Chart 4.4: Projections of toll revenues for deferment of premium



Ministry has not furnished reply to Audit observation raised in the para. However, it has stated that the deferment of premium granted has been withdrawn for non-compliance of the conditions of the approval by the Concessionaire.

4.5.3 Beawer Pali Pindwara Project

The deferment of premium was approved (23 May 2014) considering that the project would achieve completion in June 2014. However, the project achieved commercial operation date on 11 June 2015. Due to this delay, the concessionaire requested for revision in deferment. The same was considered and approved by NHAI without obtaining approval of the Board.

Audit observed that grant of deferment even before declaration of commercial operation date/ start of tolling, presuming that actual toll collection would necessarily be lower than projected and project would be under stress was detrimental to NHAI's interests.

Also, while granting deferment during 2014, it was assumed that the commercial operation date would occur on 17 June 2014. However, the sanction for deferment was issued on 19 June 2014 which means that the project had already over shot its target date of commercial operation date. Yet, no cognizance of actual situation on ground was taken and deferment was granted based on anticipations only.

Ministry in its reply (14 December 2020) stated that deferment was approved by NHAI Board on the basis of projection based on anticipated commercial operation date and actual commercial operation date was granted in June 2015 instead of June 2014, accordingly premium deferment was revised. As the overall premium deferred and individual year deferment were less than the approval of Board, Board approval was not considered necessary.

The Ministry has accepted the Audit observation that premium deferment was granted one year prior to commercial operation date based on anticipation only. Thus, deferment was granted on hypothesis that the project would face economic stress after a year.

4.5.4 Rohtak Panipat Project

The tolling on the stretch commenced from 09 January 2014 and the concessionaire applied for deferment of revenue on 09 April 2014. Thus, actual data on collection of toll was available only for three months on the basis of which the premium deferment amounting to ₹575.32 crore was granted on projections, for a period of 13 years.

Ministry has not replied specifically to the audit observation.

4.5.5 Dhankuni Kharagpur Project

The Concessionaire had been requesting NHAI to make good loss of revenue due to non-payment of toll by operators of buses and mini-buses. This revenue loss, as claimed by Concessionaire, stood at ₹72.34 crore for the period April 2012 to February 2019.

Audit observed that till the time of deferment of premium in August 2015, the Concessionaire had already laid claim for loss of revenue amounting to ₹24.25 crore. However, this issue was not looked into while considering request for deferment despite the fact that such non-payment of toll results in stress on the project resources which might result revenue shortfall and may, consequently, impact amount of premium deferred.

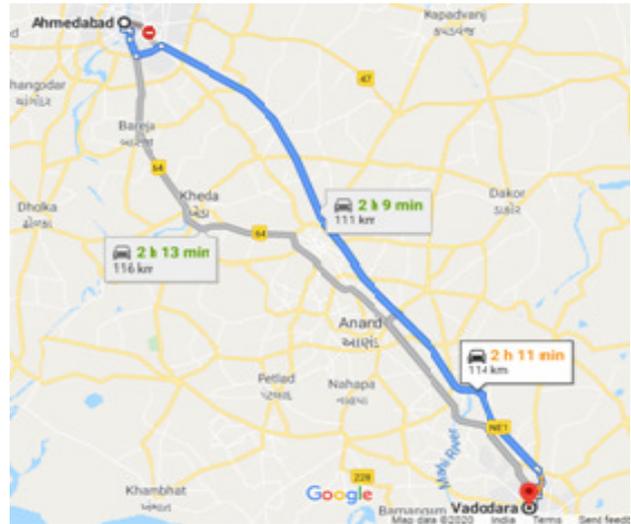
Ministry has accepted (22 December 2020) the audit observation and stated that all the toll revenue receipt including claim on account of toll shall also be considered.

4.5.6 Ahmedabad Vadodara Project

i) This project consists of two stretches i.e., NH8 (which was to be upgraded) and Ahmedabad Vadodara Expressway (already existing, shown in blue color in Figure 4.1). As on the date of deferment (06 June 2014), the stretch of NH-8 was not even complete and the concessionaire had been collecting toll on the existing stretch of Ahmedabad - Vadodara Expressway only.

Figure 4.1: Collection of Toll

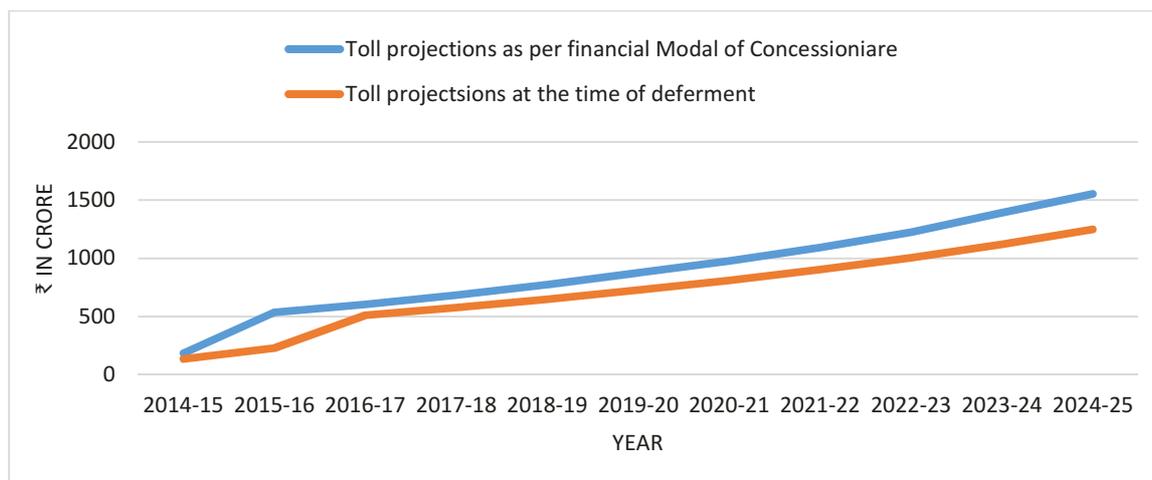
Audit observed that the deferment was granted even before start of tolling on NH-8 which was to be six laned and expected toll figures were reduced despite a difference of approximately 1.5 years between date of grant of deferment and scheduled date of completion of NH-8. The same was neither justified in Concessionaire's request letter nor reviewed by NHAI. Audit also observed that while putting up the proposal to the Board, actual toll revenue data for previous years was not appraised to the Board and the proposal was mooted and accepted on the basis of projections only.



Ministry in its reply (14 December 2020) stated that action for withdrawal of deferment of premium has already been initiated.

ii) Audit also observed that at the time of projections for financial close and for deferment, the toll revenue was expected to increase by approximately 190 *per cent* and 125 *per cent* respectively (Chart 4.5) over previous year w.e.f. year of COD for NH-8 stretch despite both the stretches being parallel. Acceptance of projections of such high toll revenue without any valid rationale were not justified on the part of NHAI, as this ultimately resulted in benefit to the Concessionaire who subsequently claimed deferment of premium on the basis of lesser expected toll collection with respect to those overestimated expected toll figures.

Chart 4.5: Projections of toll revenues for deferment of premium



Audit observed that the Concessionaire went to High Court and lodged a claim for loss in revenue due to an alleged competitive state road. This loss of revenue claim is again based on projected toll revenue figures, which, despite being overestimated was accepted by NHAI without critical analysis.

Ministry in its reply (14 December 2020) stated that deferment is subject to annual review and based on annual review of FY 2014-15 and 2015-16, an amount of ₹38.65 crore has been worked out as excess deferment.

The reply of Ministry strengthens the Audit contention pertaining to overestimation of expected toll figures resulting in higher amount of deferment of premium. Also, NHAI failed to recover the same even after a lapse of five years. Due to grant of deferment of premium for future years, NHAI has to continue with deferment of premium for future years despite non recovery of excess deferred premium of previous years. No reply was furnished by the Ministry on claims on account of competing road.

Recommendation No 7: The deficiencies in the granting of approval for deferment of premium in six projects (referred in para 4.5) may be investigated and responsibilities fixed. Further, remaining projects not selected in Audit sampling may be reviewed.

4.6 Summing Up

NHAI was assigned the responsibility for review of each case on merit and to impose such conditionality, as deemed appropriate, to ensure protection of Government interest. However, Audit observed various instances of lapses on the part of NHAI to adequately review such cases of deferment of premium. Besides other project specific deficiencies in review/approval of deferment of premium, there were huge, unexplained, and unjustified variations in revenue/traffic projections of concessionaire and also between total project costs of NHAI and Concessionaire. Also, not only NHAI failed to levy penalty on the concessionaires applying for such renegotiation of contracts, but it also failed to ensure adequate safeguards against exchequer money by not having adequate guarantees for the deferred premium.

CHAPTER V
MECHANISM FOR MONITORING OF
PROJECTS

Chapter V

Mechanism for Monitoring of Projects

The sanction letters for deferment of premium stipulated various conditions for monitoring such as no change in the waterfall prescribed for withdrawal from the Escrow account, submission of Bank guarantees, restrictions on O&M expenditure, waiver of all claims/penalties/damages against NHAI by concessionaire, submission of financial details etc.

In this regard, deficiencies noticed in the monitoring of conditions stipulated for grant of deferment of premium are as follows:

5.1 Investment of funds amounting to ₹5,303.73 crore from escrow account to mutual fund

Article 31 of the Model Concession Agreement provides for opening and management of escrow account as well as order of payments to be made out of it. As per this, payment of concession fee carries priority over many other payments (including investments such as mutual funds). Condition of the sanction letter for deferment also prohibited any change in this waterfall mechanism²⁵.

During test check of records, Audit observed that out of 10 projects, the Concessionaires of 07 projects²⁶ regularly invested funds from escrow account to mutual funds and since opening of respective escrow accounts of these projects, audit could map an amount of ₹5,303.73 crore (**Annexure V**) which was invested in mutual funds. In addition to investment, instances of diversion of funds to other projects were also noticed²⁷. This is in contravention to Concession Agreement as well as conditions of sanction of deferment of premium. However, NHAI neither took any action to enforce the above clauses of Concession Agreement/ sanction letter nor did it take any action against the Concessionaires for breach of sanction conditions/ Concession Agreement clauses despite the fact that out of seven Concessionaires, three Concessionaires²⁸ have not even been

²⁵ *Waterfall mechanism is the term used to describe priority based mechanism in flow of payments from the escrow account. The escrow account is operated by the concessionaire, who gives instructions to the escrow banker for its operations. Article 31 of the Concession Agreement as well as the Escrow Agreement describe the waterfall mechanism for withdrawals and receipts from/to the Escrow Account. According to it, the amount in Escrow account can be used, in following order only- for taxes due and payable, construction of project highway, O&M expenses, Concession Fee due and payable to Authority, Debt servicing, payment of damages, reserve requirements etc. Only after all these obligations of payments are met, the balance can be utilized elsewhere.*

²⁶ *Ahmedabad-Vadodara – ₹562.25 crore, Samakhiali-Gandhidham – ₹465.76 crore, Indore-Dewas – ₹416.08 crore, Beawer-Pali-Pindwara – ₹1,257.93 crore, Hosur-Krishnagiri – ₹243.89 crore, Rohtak-Panipat – ₹427.40 crore & Dhankuni-Kharagpur – ₹1,930.42 crore. Escrow accounts of two projects viz. Godhra-Gujarat MP border and Etawah-Chakeri were not furnished whereas no such instance was found in “Chengapalli to Start of Coimbatore Bypass and Coimbatore Bypass to TN/Kerala Border project”. Also, details of all escrow/sub escrow Accounts being operated by concessionaires was not furnished in r/o any of the projects.*

²⁷ *Beawer-Pali-Pindwara project.*

²⁸ *Ahmedabad-Vadodra – ₹64.98 crore, Rohtak-Panipat – ₹8.83 crore, Chengapalli to Start of Coimbatore Bypass and Coimbatore Bypass to TN/Kerala Border – ₹33.93 crore.*

paying revised premium and an amount of ₹107.74 crore is due to be recovered from these concessionaires.

Audit also observed that statements of escrow accounts contained numerous entries where no/ incomplete narration regarding nature of transfer of funds was given. In the absence of narration, Audit could not review transfer of funds effected through those entries.

Thus, NHAI failed in its responsibility to monitor the Escrow Account in violation to stipulated condition of sanction granted and Concession Agreement. Modification in the manner/order of withdrawal from Escrow Account poses risk of diversion/misappropriation/misutilisation of public funds which are intended to be utilised for specific purpose.

Ministry in its reply (14 December 2020) stated that investment in mutual fund are temporary investments and has no bearing on the calculation of revenue shortfall. However, to check the same an effective monitoring system has been initiated and suitable action shall be initiated against the defaulting concessionaire. In respect of Indore Dewas Project, premium deferment order has already been withdrawn. Other projects are also being reviewed as a normal course of action to enforce clauses of CA/ sanction letter for premium deferment. Remedial action taken will be intimated to Audit in due course of time.

Ministry has accepted the Audit observation and has stated that the projects pointed out by Audit are being reviewed and in respect one project the deferment has been withdrawn.

Recommendation No 8: The NHAI may ensure that adequate mechanism for regular monitoring of deposits and withdrawals to/from Escrow account is in place and is followed scrupulously. In case of deviations responsibility needs to be fixed

In addition, NHAI may also review the clauses of Escrow Agreement and explore other compensatory controls including joint operation of the Escrow Account etc., to ensure adequate check upon the withdrawals.

5.2 Undue favour to the Concessionaires due to non-recovery of excess deferment granted of ₹252.97 crore

One of the clauses of the sanction letter provides that if revenue deficit, as actually seen on review at the end of the year, is lesser by more than 5 per cent of the figures given under the projections, the concessionaire would be liable to pay a penalty of 2.5 per cent additional interest over and above the normal interest of bank rate plus 2 per cent on the said excess.

In respect of eight projects, Financial Consultants appointed by NHAI worked out a recovery of ₹166.48 crore (excluding interest/ penal interest) on account of excess deferment granted. However, NHAI has been able to recover only ₹26.05 crore from the Concessionaires and ₹140.43 crore remains to be recovered from the concessionaires. It was also observed that NHAI has not been regular in carrying out such reviews besides delay of two to four years in carrying out such reviews.

Thus, NHAI was not regular in carrying out timely review and recovering excess deferment of premium.

Ministry in its reply (14 December 2020) stated that suitable action has been initiated against the concessionaire for non-payment of premium demanded on the basis of review and till December 2020, recovery of an amount of ₹252.97 crore had been pointed out by financial consultants. Against this, ₹131.56 crore has been recovered.

As can be seen from the Ministry's reply, an amount of ₹121.41 crore was yet to be recovered.

Recommendation No.9: NHAI should ensure regularly reviewing and making timely recovery of excess deferment granted. The balance of ₹121.41 crore may be recovered expeditiously.

5.3 Deficiencies in monitoring of real time data transferred to NHAI

While sanctioning deferment of premium to concessionaires, one of the conditions stipulated by NHAI was real time access of NHAI to data on traffic/ toll collection at toll plazas. During review of records, it was seen that NHAI got conducted audit of toll plazas on Hosur- Krishnagiri, Samakhiali-Gandhidham, Indore-Dewas and Ahmedabad Vadodara project during the period from July 2017 to February 2018, through independent auditors. This was done with a view to verify correctness of toll data submitted by concessionaire vis a vis real time data.

The above Audit Reports pointed out various issues such as, difference in the toll revenue/ number of transactions between transport management system database vis a vis NHAI data base, non/ short reporting of transactions, duplicate transactions, delay in transfer of data to NHAI, discrepancy/ mismatch in class/ count of vehicles, use of hand-held devices at toll plazas without intimating NHAI, etc.

However, Audit did not come across any action taken report/ follow up action on audit/ real time monitoring of above projects. This has serious implications for NHAI as in all the above Audit Reports of independent auditors, chances of revenue loss due to above issues have been pointed out. NHAI has also failed to take any action against the concessionaires²⁹ for deficiencies/ discrepancies noted in transfer of real time data to NHAI despite same being in contravention of sanction conditions of deferment.

Thus, NHAI failure in efficient & effective monitoring of real time data poses a financial risk as the toll collection is being done by concessionaires.

Ministry in its reply (14 December 2020), has mentioned efforts made in capturing traffic data but is silent on the issues raised by Audit i.e., action taken, if any, on the real-time monitoring of the projects/follow up action on the audit reports.

²⁹ Dhankuni-Kharagpur, Ahmedabad-Vadodara, Samakhiali-Gandhidham, Indore Dewas, Hosur-Krishnagiri.

5.4 Non-withdrawal of claims against NHAI

As per conditions for sanction of deferment, the concessionaire had agreed to waive all claims/ penalties/ damages against NHAI on account of any non-compliance of conditions precedent on the part of NHAI either at the time of declaration of Appointed Date or later to obtain the benefits of the scheme. The Expert Group, in its report, also stated that in lieu of the special dispensation being offered to the concessionaires, they must agree not to file any additional claims pertaining specifically to non-fulfillment of condition precedent, over and above what is provided in Article 4 of the Model Concession Agreement (article pertains to rights and obligations of the parties with respect to condition precedent).

However, Audit observed that in respect of four projects³⁰, the concessionaires preferred a claim of ₹1,575.91 crore on NHAI on various counts including delay in declaration of commercial operations date/ non-fulfillment of conditions precedent. This was in contravention to conditions for sanction of deferment of premium.

Thus, in-spite of non-lodging of claims by concessionaires, being a precondition for sanction of deferment of premium, the concessionaires preferred claims on NHAI on various grounds.

Ministry (14 December 2020) has stated that the efforts are being made in consultation with the project offices to take suitable action against the non-compliant concessionaires.

5.5 Delay in signing of supplementary agreement between Concessionaire and NHAI

As per the conditions of sanction of deferment, the Supplementary Agreement was to be signed within seven working days of receipt of sanction letter by concessionaire for deferment of premium. However, Audit observed that there was delay ranging from six months to one year in respect of three projects³¹.

Thus, there was procedural failure for timely signing of supplementary agreement between NHAI and respective Concessionaires.

Ministry has accepted (14 December 2020) the delay in signing of supplementary agreement.

5.6 Project specific deficiencies in monitoring

i) In respect of Samakhiali-Gandhidham Project, the Concessionaire had not been submitting data pertaining to toll collected from overloaded vehicles though it preferred a claim of ₹25.8 crore on NHAI for loss of revenue due to non-charging from overloaded vehicles.

Audit observed that in the absence of data on toll collection from overloaded vehicles, the same could not be considered for calculation of subsistence revenue though as per

³⁰ Samakhiali-Gandhidham – ₹252.22 crore, Beawer-Pali-Pindwara – ₹371 crore, Indore-Dewas - ₹915.81 crore, Etawah-Chakeri – ₹36.88 crore.

³¹ Beawer-Pali-Pindwara (Revised SA not signed), Indore-Dewas, Chengapalli to start of Coimbatore bypass and Coimbatore bypass to Tamil Nadu/ Kerala Border.

Concessionaire's own estimates, 76.09 *per cent* of the total vehicles were overloaded vehicles. Also, even if no increase in tollable vehicles and toll rates is considered, the amount of toll revenue from overloaded vehicles comes to ₹77 crore (approx.) on the basis of above claim of Concessionaire, which needs to be considered for calculation of subsistence revenue and recovery of excess deferment from Concessionaire.

Ministry in its reply (14 December 2020) has assured that point raised by Audit will be considered while calculating revised admissible deferment amount.

ii) In respect of Rohtak-Panipat Project, it was observed that there has been evasion of fee by road users on the stretch. Request by the Concessionaire for setting up of temporary toll plazas and recommendation on the same by Independent Engineer/ Regional Office has not been acted upon. No action also been taken to avoid such evasion although the delay on such issues might affect calculation of subsistence revenue by the concessionaire and ultimately have adverse consequences for payment of premium to NHAI.

Ministry in its reply (14 December 2020) has stated the installation of temporary toll plaza to contain evasion of user fee by the road users is in process.

iii) In respect of Indore-Dewas project, w.r.t. clause 3 (j) of the sanction letter, it was seen that despite grant of deferment of premium, the project has continued to be under stress. It is not even meeting its debt service payment requirements and has availed Funded Interest Term Loan (FITL). However, the NHAI has not taken any action in terms of sanction letter such as consideration of project for termination.

Ministry in its reply (14 December 2020) has stated that the deferment sanction has been withdrawn from the erring concessionaire.

iv) In respect of Chengapalli to TN/Kerala Border (6/4 lane) project, as per financial close accepted by NHAI, the capital cost of project was determined as ₹1,123 crore as against the total project cost of NHAI i.e., ₹852 crore. The concessionaire was to infuse equity of ₹325.72 crore and term loan of ₹797.45 crore in the debt equity ratio of 71:29.

However, Audit observed that as against the above agreed arrangement, the concessionaire infused equity of ₹217.09 crore and raised total debt of ₹1,044.48 crore³² (₹246.56 crore in excess of loan as per financial close). This resulted in overleveraging of the project as debt ratio of the project stood at 83:17 against the approved ratio of 71:29.

However, as the amount of interest actually due/ paid from 2015-16 to 2018-19 was not available, audit could not work out the impact of same on deferment during above period. Audit also noticed discrepancy in amount of equity and debt infused as per financial statement vis-a vis amount infused as per Escrow Account statement.

Ministry in its reply (14 December 2020) has stated that deferment has been granted on the basis of debt of ₹797.45 crore only but has not furnished any working for substantiating the

³² Out of ₹1,044.48 Crore, ₹861.35 crore (₹797.92 crore plus ₹63.43 crore) debt from bank, ₹124.99 crore CCD from IFCI and ₹58.14 crore optionally convertible debentures (initially secured loan sponsors).

stated fact. As regards discrepancy in the amount of debt and equity in the escrow account and as per financial statement, Ministry has replied that the same is under review.

Thus, the above shows that NHAI, instead of resolving the above project specific issues resulting in lower substance revenue, granted relief under the scheme.

Recommendation No.10: NHAI may review all projects covered/proposed to be covered under the scheme and address issues affecting calculation of subsistence revenue and grant of deferment and revise premium deferment, as required.

5.7 Summing Up

The sanction of deferment of premium entailed various conditions which the concessionaire was required to abide by. However, Audit noticed various instances of breach of such conditions of sanction of deferment. There were many cases of investment of funds mutual funds from escrow account, grant of excess deferment of premium to concessionaires, delay in signing of supplementary agreements, non-withdrawal of cases against NHAI by concessionaires and other project specific cases. These instances point towards inadequacies in monitoring by NHAI.

CHAPTER VI

CONCLUSION

Chapter VI

Conclusion

NHAI, citing distress in the economic environment, wherein the concessionaires were finding it difficult to achieve financial close for their projects, proposed a Scheme, whereby existing Concessionaires, who were finding it difficult to pay the premiums quoted upfront, were allowed to reschedule their premium payments over the concession period keeping the net present value of the total premium payable as the same. Hence, NHAI proposed a scheme for rescheduling of premium in respect of all stressed projects.

The scheme for rationalisation of premium quoted by Concessionaires in respect of highway projects was brought about by NHAI in violation of parameters of competitive bidding as well as not being in conformity with the existing clauses. The scheme was formulated on the basis of flawed presumptions. Further in violation of instructions of Cabinet Secretariat for proposing a Cabinet Note, comments of various Ministries/Departments/Planning Commission were also not sought for vetting Option C, which finally formed the basis of the scheme. Crucial data was not also furnished to the Expert Group for developing a framework to identify stressed projects, etc. The ostensible goal of NHAI for conceptualisation of this unprecedented relief to concessionaires was to revive languishing projects pending declaration of Appointed Date/start. However, none of these projects obtained the benefit of the scheme. Rather, the scheme was availed by concessionaires of projects which were already under execution and had never before expressed their inability to pay the quoted premium.

Out of 10 projects test checked, Audit observed a number of deficiencies in the implementation of the scheme like huge variation in revenue/traffic projections by concessionaires, variation of total project cost of NHAI & Concessionaire, non-levy of penalty, extension of deferment of premium for longer period, extended benefit on speculative data etc. Further, insufficient bank guarantees were provided in six projects, while four projects did not have any bank guarantee. NHAI also failed to monitor Escrow Accounts in violation of Concession Agreements.

NHAI thus failed in its duty to carry out due diligence during formulation, implementation as well as monitoring of the scheme to safeguard the interests of NHAI/ Exchequer, thereby, putting recovery of deferred premium amounting to ₹9,296.25 crore at risk.



(R.G. Viswanathan)

**Deputy Comptroller and Auditor General
(Commercial) and Chairman, Audit Board**

New Delhi

Dated: 31 March 2022

Countersigned



(Girish Chandra Murmu)

Comptroller and Auditor General of India

New Delhi

Dated: 31 March 2022

ANNEXURES

Annexure I (referred to in Para 1.2)

Status of 23 projects submitted to CCEA by MoRTH under Option B

Sl. No.	Name of the Project	Whether terminated/ foreclosed
1	Kota-Jhalawar	Yes
2	Kishangarh- Udaipur- Ahmedabad	Yes
3	Hospet- Bellary- KNT/AP Border	Yes
4	Shivpuri-Dewas	Yes
5	Raipur-Bilaspur	Yes
6	Cuttuk-Angul	Yes
7	Rampur-Kathgodam	Yes
8	Lucknow-Sultanpur	Yes
9	Vijaywada- Eluru- Gondugulanu	Yes
10	Obdullahganj- Betul	Yes
11	Solapur- Mah./KNT Border- Bijapur	Yes
12	Aurangabad- Barwaadda	Yes
13	Rajahmundry-Gondugolanu	Yes
14	Jalgaon-Gujarat/Maharashtra Border	Yes
15	Jind-Punjab/Haryana Border	Yes
16	Anandapuram- Vishakhapatnam - Ankapalli	Yes
17	Amravati-Jalgaon	Yes
18	Coimbatore-Mettupalayam	Yes
19	Hospet-Chitradurga	No
20	Mah/KNT border- Sangareddy	No
21	Solapur-Mah/KNT Border	No
22	Agra- Etawah Bypass	No
23	Barwa adda-Panagarh	No

Project mentioned from serial no 19 to 23 were ongoing as on the date of Audit.

Annexure II (referred to in Para 1.2)

NHAI sanctioned deferment of premium in respect of 20 projects

Sl. No.	Name of project	Project-2/4/6 lane	Date of Start	Scheduled date of completion	Actual date of completion	Number of years for which premium deferred	Premium payment originally contracted during deferment period (₹ in crore)	Premium deferred (₹ in crore)	% of Premium deferred
1	Etawah-Chakeri	6 laning	Mar 2013	Sep 2015	Nov 2016	10	1,337.91	521.55	38.98
2	Indore-Dewas	6 laning	Nov 2010	May 2013	May 2015	10	350.92	267.01	76.09
3	Ahmedabad-Vadodara	6 laning	Jan 2013	Dec 2015	Nov 2018	11	4,849.26	1,739.37	35.87
4	Samakhiali-Gandhidham	6 laning	Sep 2010	Mar 2013	Feb 2015	11	1,008.71	886.21	87.86
5	Dhankuni-Kharagpur	6 laning	Apr 2012	Sep 2014	CC/PCC not issued	10	1,835.51	1,089.37	59.35
6	Hosur-Krishnagiri	6 laning	Jun 2011	Dec 2013	Apr 2016	12	1,232.71	378.95	30.74
7	Belgaum-Dharwad	6 laning	Dec 2010	Jun 2013	Aug 2015	11	509.83	216.03	42.37
8	Chitradurga-Tumkur-Bypass	6 laning	May 2011	Aug 2013	Jul 2014	10	2,044.3	405.41	19.83
9	Chengapalli to Coimbatore bypass	6/4 laning	Sep 2010	Mar 2013	Oct 2015	11	492.21	303	61.56
10	Rohtak-Bawal	4 laning	May 2011	Nov 2013	Aug 2013	10	158.51	117.66	74.23
11	Beawar-Pali-Pindwara	4 laning	Dec 2011	Jun 2014	Jun 2015	8	2,334.18	1,499.44	64.24
12	Gomati Chauraha-Udaipur	4 laning	Apr 2013	Oct 2015	Dec 2015	14	296.64	175.35	59.11

Sl. No.	Name of project	Project-2/4/6 lane	Date of Start	Scheduled date of completion	Actual date of completion	Number of years for which premium deferred	Premium payment originally contracted during deferment period (₹ in crore)	Premium deferred (₹ in crore)	% of Premium deferred
13	Godhra-Gujarat/MP Border	4 laning	Mar 2011	Aug 2013	Oct 2013	10	103.4	103.4	100.00
14	Orissa Border-Aurang	4 laning	Feb 2013	Aug 2015	May 2016	13	501.33	457.16	91.19
15	Nagpur-Wainganga Bridge	4 laning	Apr 2012	Oct 2014	Jan 2015	10	327.8	143.11	43.66
16	Hyderabad-Yadgiri	4 laning	Aug 2010	May 2012	Dec 2012	9	142.23	115.41	81.14
17	Baleshwar to Kharagpur	4 laning	Jan 2013	Sep 2015	Dec 2015	9	449.75	203.81	45.32
18	Muzaffarpur-Barauni	2 laning	Jul 2012	Jul 2014	Jun 2016	11	69.81	54.76	78.44
19	Mulbagl-AP/Karnataka Border	4 laning	May 2013	May 2014	Jun 2015	10	70.38	43.93	62.42
20	Rohtak-Panipat	4 laning	Apr 2011	Oct 2014	Jan 2014	13	836.93	575.32	68.74
	TOTAL						18,952.32	9,296.25	49.05

**Annexure III (Referred to para 4.3)
Statement for calculation of penalty**

(₹ in crore)

Sl. No.	Name of the Project	Total project cost as per Concession Agreement	Penalty @ 0.5 per cent as a percentage of total project cost
1	Rohtak-Panipat	807	4.04
2	Ahmedabad-Vadodara	2125.24	10.63
3	Samakhiali-Gandhidham	805.39	4.03
4	Indore-Dewas	325	1.63
5	Etawah-Chakeri	1573	7.87
6	Beawer Pali-Pindwara	2388	11.94
7	Chengappalli to start of Coimbatore bypass and Coimbatore bypass to Tamil Nadu/Kerela border	852	4.26
8	Hosur-Krishnagiri	535	2.68
9	Godhra-Gujarat/Madhya Pradesh border	785.5	3.93
	Total		51.01

Annexure IV (referred to in para 4.4)

Undue favour to the Concessionaires by obtaining inadequate bank guarantees

Sr. No.	Name of the Project	Total amount of premium deferred (₹ in crore)	Premium deferred as on 31.03.2019 (₹ in crore)	Amount of BG as per sanction letter (₹ in crore)	BG as a percentage of premium deferred as per sanction	BG available as on Nov 2019 (₹ in crore)
1	Ahmedabad-Vadodara	1739.37	1192.28	315.70	18.15	21.00
2	Samakhiali-Gandhidham	886.21	345.71	38.07	4.30	38.07
3	Dhankuni-Kharagpur	1089.37	417.01	29.48	2.71	29.48
4	Hosur-Krishnagiri	378.95	145.51	12.21	3.22	0.80
5	Etawah-Chakeri	521.55	223.13	21.50	4.12	21.50
6	Indore Dewas	267.01	172.95	12.93	4.84	12.93
7	Chengappalli to start of Coimbatore bypass and Coimbatore bypass to Tamil Nadu/Kerela border	303.01	102.39	0	0.00	NA
8	Beawer-Pali-Pindwara	1499.44	919.92	0	0.00	NA
9	Rohtak-Panipat	575.32	251.25	0	0.00	NA
10	Godhra-Gujarat/MP Border	103.4	25.91	0	0.00	NA
TOTAL		7363.63	3796.06	429.89		123.78

Annexure V (referred to in para 5.1)

**Project wise detail of Fund Invested by concessionaire from Escrow Account
to Mutual funds**

(₹ in crore)

Name of the project	Investment in Escrow Account
Dhankuni-Kharagpur	1,930.42
Indore-Dewas	416.08
Ahmedabad-Vadodara	562.25
Hosur-Krishnagiri	243.89
Rohtak-Panipat	427.4
Beawar-Pali-Pindwara	1,257.93
Samkhiali-Gandhidham	465.76
TOTAL	5,303.73

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