

OFFICE OF THE COMPTROLLER AND AUDITOR GENERAL OF INDIA

NEW DELHI

4th AUGUST, 2022

Compliance Audit Report on Rationalisation/Deferment of Premium in BOT Projects in NHAI tabled in Parliament

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. Compliance Audit Report No. 11 of the Comptroller and Auditor General of India on Rationalisation/Deferment of Premium in BOT Projects in NHAI was tabled in Parliament here today.

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).

The report highlights deficiencies in formulation & approval of the scheme, implementation of the scheme and monitoring of the projects. The prominent findings of the report are discussed below: -

1. 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)**

- NHAI 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 NHAI 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/NHAI failed to provide vital data to expert group for identifying stressed projects. **(Para 3.6)**

2 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)**

3 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)**

4. Recommendations by Audit

- 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.
- 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.
- 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.

BSC/SS/N/35-22