

Chapter - 7

Monitoring of Projects

7.1 Primary responsibility for timely and efficient execution of NHAI projects under PPP mode ensuring requisite quality of work rests with the Concessionaires, independent engineers (IE), safety consultants etc. NHAI is responsible for land acquisition and follow up of fulfilment of conditions precedent by it (NHAI) as well as by the Concessionaire.

Examination of monthly progress reports (MPRs) submitted by the IE/Safety Consultant, initiating action in case of breach, if any, of CA by the concessionaire/IE, etc. in Audit revealed deficiencies in monitoring of implementation of PPP including issues of non-adherence of GoI directions by NHAI impeding effective monitoring, which are discussed in succeeding paragraphs.

7.2 Non-compliance by MoRTH / NHAI of Government's decision for creating independent cadre for NHAI

On NHAI's request for relaxation of Department of Personnel & Training (DoPT), Ministry of Personnel, Public Grievances & Pensions, Government of India guidelines in respect of officers working in NHAI on deputation, DoPT vide office memorandum dated 20 November 2009, conveyed the following decision to MoRTH:

- (i) MoRTH would ensure that within two years, the structure of NHAI would be reformed to provide for its own independent cadre through direct recruitment and absorption of deputationists. The milestone for achieving the goal would be identified by MoRTH and sent through DoPT to the Hon'ble Prime Minister, for information.
- (ii) As a special case, MoRTH will be permitted to retain officers already on deputation even beyond the prescribed period of five years, till October 2012. During this period, extensions shall be given after close scrutiny, to officers selected by a committee headed by Secretary, MoRTH and after approval of Minister, MoRTH.

Subsequent to the above decision, when NHAI forwarded (June 2011) a proposal regarding extension of deputation tenure in respect of 94 manager level officers, MoRTH stated (August 2011) that all recruitments in NHAI have been on deputation basis from PWDs /other government agencies which resulted in NHAI's manpower dwindling to dangerously low level and created a paralysis in the organisation in taking fresh recruitments. MoRTH, therefore, directed (August 2011) that NHAI should start the process of recruitment immediately and give full details of its vacancies and action plan to fill the same, in three months.

Examination in Audit revealed that substantial manpower (officers and officials) of NHAI was on deputation from various government departments. The ratio of persons on deputation to regular employees was 83:17 as at 31 March 2013. This showed that there was a deficiency in efforts of NHAI to comply with the decisions taken by the GoI.

MoRTH stated (September 2014) that NHAI has issues regarding continuity as much of the organisational memory is lost when personnel taken on deputation revert to their parent department/organisation. Considering that the manpower requirements during construction period and maintenance period of road projects substantially differ, NHAI constituting a permanent cadre has certain limitations. However, MoRTH stated that certain steps have been taken by NHAI for creating its own cadre.

7.3 Need to monitor project wise profitability:

NHAI does not maintain project wise accounts which are essential to assess the profitability of a particular project. As such, it was not in a position to assess whether its decisions to go in for improvements to particular stretches were economically viable and profitable. NHAI was also not in a position to provide accurate information to its senior management or MoRTH which could be used while preparing future plans or to assess justification for revenue sharing. This could be observed, as an illustration, from the annuity project of Nagpur-Betul which has already been discussed in Para 4.2.1.1. In this project the annual annuity payment amounted to ₹ 581.60 crore as against projected revenue of ₹ 58 crore which clearly brings out the fact that the project was not financially viable. Due to non-availability of such data, no lessons can be learnt from projects already commissioned and it precludes informed decisions by the sanctioning authority.

MoRTH stated (September 2014) that NHAI is maintaining project wise account in 'Project Financial Management System' (e-PFMS). MoRTH reply is not acceptable as it was noticed that e-PFMS used for accounting is not fully exploited /utilised by NHAI. In e-PFMS there is an option of preparing project wise 'Comprehensive ledger / Monthly Progress Expenditure Statement' but the relevant data are not entered into the program on a regular basis.

7.4 Appointment of Independent Consultant / Independent Engineer (IC/IE)

Article 23 of MCA stipulates that NHAI shall appoint a consulting engineering firm, to act as Independent Consultant / Independent Engineer (IC/IE), from a panel of ten firms or bodies corporate, formed by NHAI in accordance with the selection criteria set forth in MCA. Appointment of IE/IC was to be made not later than the specified period (generally 90 days, from the date of signing of CA). Under PPP mode of execution, NHAI did not exercise any direct supervision of the work executed by the concessionaires, but it relied on the IE/IC to carry out such supervision, which underlines the importance of IC/IE in project execution.

7.4.1 Audit noticed delays that ranged from six days (End of Durg Bypass project) to 725 days (Delhi-Agra project) in appointment of IC/IE, in 84 out of 94 projects reviewed (**Annexure 10**). Appointment of IE was made in time in only five projects and in five projects information was not made available by NHAI.

7.4.2 MoRTH provided (September 2014) different reasons for delay in appointment of IC/IE, such as NHAI not receiving adequate response to RFQ/RFP, non availability of nominated individuals for various positions of the selected bidder leading to delays in award of consultancy contracts, etc. Further, MoRTH also stated that in all such cases where delay has occurred in appointment of IC/IE, invariably the Project Directors is appointed as the engineer for the project and it is ensured that the monitoring of the project work is not affected.

7.4.3 The reply does not deny the fact that delayed appointment of IEs would impact adversely the monitoring of projects. Contention of MoRTH that during the period of finalising the appointment of IC/IE, the Project Directors (PD) of respective PIUs were given additional charge of the IC/IE, needs to be viewed against the background that a PD usually has regional jurisdiction with several projects on hand and hence he cannot be expected to do justice to this work besides his regular duties. Delay in appointment of IEs thus deprived the projects of the specialised services of an IE, particularly when these were required at the stage of review of drawings (an essential task before the construction) and supervision of construction work in initial stages.

7.5 Appointment of Safety Consultant

Article 18.1.1 of MCA provides that the concessionaire shall comply with the relevant provisions of CA, applicable laws and permits and conform to 'Good Industry Practice' for securing safety of road users. The concessionaire is also required to develop, implement and administer a surveillance and safety programme for providing safe environment on the project Highway and comply with the safety requirements set forth in the relevant schedules of CA.

7.5.1 Article 18.1.2 of MCA provides for appointment of an experienced and qualified firm or organization as the Safety Consultant (SC). The SC is responsible for carrying out safety audit of the project highway and is required to take all other actions necessary for securing compliance with safety requirements as per Schedule 'L' of MCA. Para 4.1 of Schedule 'L' stipulated that appointment of SC is required to be made not later than 90 days from date of signing of CA. Audit observed that SC was appointed in time in only one project (Yamunanagar-Panchkula). Delays ranging from 34 days (Farakka-Raiganj) to 1408 days (Indore-Jhabua) (**Annexure 10**) in appointment of SC were noticed in 61 out of 94 projects reviewed in Audit. There was no provision in the CA for appointment of SC in 31 projects and out of the remaining 63 projects examined in Audit, information was not made available in case of one project by NHAI till March 2014. Thus due to

delay in appointment of SC, safety audits could not be conducted and there was no assurance that safety measures in the construction of projects were not compromised.

7.5.2 MoRTH while admitting the audit observation stated (September 2014) that keeping in view the delay in appointment of SC, it was decided in July 2012 to prepare a panel valid for a year, to be renewed every year. It took about eight to 10 months to prepare documents and finalize the empanelment process. Bids were received in April 2013 and empanelment was completed in May 2013. NHAI further stated that henceforward there may not be any delay in appointment of SC for future projects.

7.6 Premature release of grant of ₹ 769.53 crore

In the case of BOT (Toll) projects, equity support/grant (VGF) shall be due and payable to the concessionaire after the latter had expended the prescribed *percentage* of Equity. Article 25 of MCA provides for release of grant in instalments after expending 80/100 *per cent* of equity which shall be disbursed proportionately along with the loan funds thereafter remaining to be disbursed by the Senior Lenders under the Financing Agreements. The concessionaire should also not be in material breach of CA.

In four out of selected 94 projects reviewed in Audit, premature release of grant amounting to ₹ 769.53 crore was noticed (details are given in Table 12). The premature/irregular release was on account of considering amount of advance to EPC contractors as expenditure and due to error in working out the pro rata amount of loan remaining to be released while calculating the amount of grant. These cases are detailed below:-

TABLE 12: Premature release of grant

| Name of the project and TPC as per CA | Condition as per CA for release of equity support | Status of adherence to conditions by concessionaire | Amount of grant released prematurely (₹ in crore) | Remarks |
|---------------------------------------|---|---|---|--|
| Lucknow-Sitapur (₹ 322 crore) | After expending 80 <i>per cent</i> of Equity | Till June 2010 concessionaire had contributed and expended ₹119.33 crore out of own funds. After excluding advance of ₹ 39.27 crore to EPC contractor, the equity expended works out to 67.09 <i>per cent</i> only. | 68.00 | Concessionaire had given ₹.39.27 crore as advance to the EPC contractor which cannot be termed as amount expended on the project. Thus release of grant of ₹.68 crore by NHAI in January 2010 to the concessionaire (M/s Lucknow Sitapur Expressway Ltd.) was premature. |
| Kadapa-Mydukur-Kurnool | After expending of 100 <i>per</i> | As at 31 March 2012, the concessionaire infused Equity capital of only Rs. 19 lakh. | 400.01 | By November 2012, NHAI had released grant of ₹ 400.01 crore. As the |

| Name of the project and TPC as per CA | Condition as per CA for release of equity support | Status of adherence to conditions by concessionaire | Amount of grant released prematurely (₹ in crore) | Remarks |
|--|---|---|---|--|
| (₹ 1585 crore) | cent of Equity | convertible debentures (CD) bearing interest @ 14 % p.a. of ₹ 131.03 crore and premium on the shares of ₹ 75.77 crore were treated as Equity by NHAI. As no specific time was fixed for conversion of CDs into equity and as the CDs were interest bearing, they were ineligible to be treated as equity capital. | | concessionaire had not infused equity as required by the CA, the entire amount of ₹ 400.01 crore released so far by NHAI had become irregular/excess release of VGF. |
| Jaipur-Tonk-Deoli (₹ 792.06 crore) | After expending 100 per cent of Equity | The concessionaire had given mobilisation advance of ₹ 148.50 crore to EPC contractor (related party) and its holding company. Records revealed that mobilisation advance of ₹ 22.03 crore and ₹ 1.55 crore remained unadjusted against the work done by the EPC contractor as on September 2012 and March 2013 respectively. | 284.58 | As per CA, the concessionaire was required to expend 100 per cent equity before release of grant. Grant amounting to ₹ 284.58 crore was prematurely released by NHAI in November 2012 to the concessionaire by considering the unadjusted amount of mobilization advance as expenditure on the project. |
| MP/MH Border-Nagpur including construction of Kamptee-Kanhan and Nagpur Bypass (₹ 1170.52 crore) | After expending 100 per cent of Equity | The first tranche of grant of ₹ 35.31 crore released in October, 2010 was worked out by NHAI without deducting the first instalment of loan of ₹ 50 crore already disbursed by the lender to the concessionaire, M/s Oriental Structural Engineers Ltd. | 16.94 | As per CA, the concessionaire was required to expend 100 per cent equity before release of grant, which was to be disbursed in proportion to the loan funds thereafter remaining to be disbursed by the senior lenders under the financing agreements. Accordingly, as of October 2010 grant of ₹ 18.37 crore was eligible to be released. However, NHAI released grant of ₹ 35.31 crore which led to premature release of grant by ₹ 16.94 crore. |
| | | TOTAL | 769.53 | |

It is evident from the above that due diligence was deficient in release of grant by NHAI to concessionaires.

MoRTH replied (September 2014):-

- In the case of Lucknow-Sitapur and Jaipur-Tonk-Deoli, mobilisation advance should be treated as part of project expenditure. The reply of the MoRTH is not acceptable as in both these cases, the EPC contractor was a member of the consortium/Joint venture of the SPV. This JV then infused funds into the SPV on account of equity. This was then subsequently, released by the SPV to the EPC contractor (i.e. member of consortium) as mobilisation advance. The amount of mobilisation advance was not spent by the EPC contractor till the date of release of grant. Therefore, the mobilisation advance could not be assumed/treated as amount 'expended on the project'.
- In the case of Kadapa-Mydukur-Kurnool each tranche of grant was paid by NHAI to the Concessionaire after recommendations of IE only, hence grant is not paid prematurely. However, the Management has not replied on the issue relating to convertible debenture treated as equity.
- In the case of MP/MH Border-Nagpur including construction of Kamptee-Kanhan and Nagpur bypass, the grant was released proportionately based on the loan funds disbursed by lenders to the concessionaire. Reply is not based on facts as pointed out by Audit. Article 25 of MCA provides for release of grant in instalments after expending 80/100 *per cent* of equity which shall be disbursed proportionately along with the loan funds *thereafter remaining* to be disbursed by the Senior Lenders under the Financing Agreements. The first tranche of grant was worked out without deducting the first instalment of loan already released by the lender and before expending 100 *per cent* equity.

7.7 Non-levy of Damages amounting to ₹ 67.21 crore due to non-maintenance of Project Highway by the Concessionaire

Article 17.1 of the MCA (2009) provides that the concessionaire shall operate and maintain the Project Highway in accordance with CA either by itself or through O&M contractor. Further, Article 17.8.1 of MCA provides that in the event, the concessionaire fails to repair or rectify any defect or deficiency set forth in the maintenance requirement within the period specified therein, it shall be deemed to be a breach of CA and NHAI shall be entitled to recover damages, to be calculated and paid for each day of delay until the breach is cured, at higher of (a) 0.5 *per cent* of Average Daily fee (in CAs which predate the MCA 2006 this is replaced by ₹ 10000) and (b) 0.1 *per cent* of the cost of such repair or rectification, as estimated by IE. Recovery of such damages is without prejudice to the right of NHAI under CA, including the right of termination thereof. Audit examination revealed that in five projects (where NHAI provided the required information), an amount of ₹ 67.21 crore stood recoverable for non-maintenance of the project highways by the concessionaires as detailed in Table 13:

**TABLE 13: Details of damages for not performing O&M
by the concessionaire as per CA**

| S.No | Name of stretch | Damages in ₹ crore | Audit observations |
|------|-----------------|--------------------|---|
| 1 | Jhansi Lalitpur | 15.93 | <p>Test check of MPRs of August 2012 to October 2012, revealed that IC had pointed out some cases of defects and deficiencies on the project highway, which were not rectified (till October 2012) by the Concessionaire within stipulated period in violation of the CA provisions. Delay in rectifying the defects and deficiencies attracted levy of damages amounting to ₹ 23.64 crore as per provisions of CA. However, the PIU neither pursued the Concessionaire/IC to get the defects rectified within the stipulated time nor levied the applicable damages. Besides, the damages were also not withdrawn directly from the escrow account. NHAI stated (August 2013) that damages were to be charged @ ₹ 10000 per day of default for all the defects taken together. Reply ignores the fact that CA provides for damages for each day of default @ 0.1 per cent of the cost of such defaulted item or ₹ 10000/- whichever is higher. As IE/SC had not worked out the cost of such repair, the damages for each default should have been calculated considering ₹ 10,000 per day of default. Further, while computing the amount of damages in the case of Silk Board Junction to Electronic City, the IE had also adopted the above method adopted by Audit.</p> <p>MoRTH has not agreed (September 2014) with the method used by Audit for calculating the amount of damages. In this regard it is stated that Audit has used the same methodology for calculation of damages as adopted by IE and accepted by NHAI in the case of Silk Board Junction to Electronic City road project.</p> |
| 2 | Gurgaon Jaipur | 17.69 | <p>IE had issued letters beginning from 23 March 2011 and several reminders to carry out repair & maintenance (R&M) of existing highway. IE vide letter dated 02 May 2011 served a final notice to complete the R & M work within 15 days failing which the works were to be recommended to NHAI for completion by another agency and the cost incurred including damages were recoverable from the concessionaire. IE vide its dated 3 May 2011 estimated ₹ 17.69 crore as cost of outstanding R&M work including damages @ 20 per cent for delay and breach of O&M obligations by the concessionaire. As the concessionaire failed to perform his obligations within time, NHAI called (4 May 2011) bids for the above work. There was nothing on record to show that the repairs & maintenance were carried out or any damages were levied on the concessionaire. MoRTH stated (September 2014) that as the highway was subsequently maintained by the concessionaire, no damages were levied. The reply did not provide any details of the date by which the repairs were completed and also did not explain the reasons for not levying damages on the concessionaire for breach of CA.</p> |

| S.No | Name of stretch | Damages in ₹ crore | Audit observations |
|------|---------------------------------------|--------------------|---|
| 3 | Panipat-Jalandhar | 5.74 | During the period (March 2010 to July 2012), IE conveyed to NHAI on five occasions, of the continuing failure of the concessionaire in maintaining the project highway. Damages for breach of CA conditions, along with penal interest, amounted to ₹ 5.74 crore. NHAI had neither recovered the damages nor did it withdraw the amount directly from the escrow account. Ministry has replied that the decision of the Hon'ble Supreme Court of India was given only on 16 May 2014 and the work for completion of the balance stretch would commence soon. |
| 4 | Trissur-Angamalli | 27.54 | IE calculated (August 2013) an amount ₹ 23.26 crore (upto 31 July 2013) towards damages for failure on the part of the concessionaire to maintain the project highway and a cumulative amount of ₹ 27.54 crore upto 31 December 2013. Ministry stated that based on IE's recommendation action was initiated to recover the damages from Escrow Account, however, till date no positive response has been received from the Escrow Banker/Concessionaire. |
| 5 | Silk Board Junction - Electronic city | 0.31 | IE had pointed out (May 2012 to August 2012) failure on the part of Concessionaire to maintain project highway and recommended levy of damages of ₹ 0.31 crore. NHAI imposed a penalty of ₹ 0.31 crore on the Concessionaire. MoRTH has replied (September 2014) that an amount of ₹ 10.70 lakh has been recovered against the penalty amount. |
| | TOTAL | 67.21 | |

7.8. Non-Setting up of PPP Project Monitoring units

7.8.1 The Guidelines, approved by CCI, for Monitoring of Public Private Partnership (PPP) Projects, provide for creation of a two tier mechanism to monitor the performance of PPP projects:

- A PPP Projects Monitoring Unit (PMU) at the project authority level.
- A PPP Performance Review Unit (PRU) at the Ministry or State Government level as the case may be.

Based on reports furnished by PPP PMU of NHAI to PPP PRU at MoRTH, the latter was required to send quarterly reports to Planning Commission with a copy to Ministry of Finance. Planning Commission, in consultation with Ministry of Finance, was required to prepare a summary of these reports along with recommendations relating to further action/improvements for being placed before CCI.

7.8.2 MoRTH stated (September 2014) that all PPP projects are being monitored at the highest level in NHAI as well as MoRTH. The reply needs to be viewed in conjunction

with the reply furnished by NHAI in August 2013 wherein it was stated that the issue of creation of monitoring units was deliberated upon between MoRTH and NHAI and it was decided that NHAI would develop a PPP monitoring module by September 2013. However, with regard to the module and on the question of submission of quarterly reports to the Planning Commission, no additional reply has been given by the Ministry.

7.8.3 Thus, CCI was not being apprised of the progress as well as deficiencies, if any, in implementation of various projects under NHDP.

7.9 Irregular Release of Performance Security of ₹ 14.55 crore

As per Article 37.1.1 (c) of the MCA, if the concessionaire did not achieve the latest outstanding project milestone and continues to be in default for 120 days, the concessionaire would be deemed to be in default and the contract/concession could be terminated by NHAI if such default was not cured in 60 days. Further Article 9.3 of MCA provided that the performance security (PS) would be available for a period of one year from the 'appointed date.' PS could be released earlier upon the concessionaire expending on project construction, a sum that was not less than 20 *per cent* of the total project cost; provided that the concessionaire was not in breach of CA.

Audit examination of the project of 2-laning with paved shoulder of Raibareilly-Allahabad section revealed that while the Concessionaire had not achieved project milestone -II despite elapse of more than eight months from scheduled date (i.e. 13 January 2013), there was nothing on record to show that NHAI had imposed penalty on the concessionaire. Audit further noticed that NHAI released (July 2013) Performance Security of ₹ 14.55 crore to the Concessionaire in contravention of the aforesaid provisions of MCA.

MoRTH replied (September 2014) that performance security was released on 29 July 2013, based on the recommendation of the IE in accordance with the provisions of the Concession Agreement. The reply of MoRTH is not acceptable as concessionaire had not achieved the milestone-II despite lapse of more than eight months from scheduled date. Failure to achieve the project milestone in stipulated period is a breach of contract.

Recommendation 11: *NHAI needs to ensure that norms for release of grant are consistent across concession agreements. Due diligence needs to be exercised over release of grants to concessionaire to avoid premature release of grant.*

Recommendation 12: *MoRTH/ NHAI needs to urgently set up Performance Review Unit/ Projects Monitoring Units and ensure that the requisite reports are placed before the CCI.*