

## Chapter - 6

# Revenue from Toll

## 6.1 Non-realization of toll revenue

As per Rule 3(2) of NH Fee Rules 2008, NHAI is required to commence collection of toll within 45 days from the date of issue of provisional completion certificate or issue of notification, whichever is later. NHAI circular dated 16 September 2002 clearly specified the need for advance planning for levy of toll fee and required action to be initiated for fee notification at least 120 days prior to likely date of completion of the project.

In BOT (Annuity) projects as the toll rights vest in NHAI, it is imperative that to avoid toll revenue loss, toll collection should start immediately after project completion. Audit, however, noticed delays in commencement of toll collection in annuity projects either due to delay in achieving Commercial Operation Date (COD) or due to delay in issue of toll notification by MoRTH. This delay resulted in non-realization of estimated revenue of ₹ 430.84 crore, as discussed below:

Out of 20 selected annuity projects, six projects were completed and were eligible for toll collection. Audit scrutiny of these projects revealed as under:

- In 6 Annuity projects<sup>24</sup>, delay from scheduled date of completion (COD) to actual date of PCC ranged from 101 days to 906 days which resulted in NHAI forgoing toll revenue of ₹ 259.47 crore.
- Delay in issue of toll notification, after the date of PCC ranged from 36 days to 595 days which resulted in forgoing of further toll revenue of ₹ 157.65 crore.
- In 3 annuity projects<sup>25</sup> even after toll notification, delays were noticed ranging from 51 days (Jhansi-Lalitpur) to 214 days (Kosi Bridge), resulting in forgoing of toll revenue of ₹ 13.72 crore.

MoRTH in its reply accepted (September 2014) the delay in toll collection and submitted that such delays were mainly due to non fulfilment of conditions precedent (i.e. handing over of land, forest clearance, etc.) on the part of NHAI.

<sup>24</sup> Islam Nagar-Kadthal 101 days, (ii) Maharashtra-AP Border (package 6) 233 days, (iii) Jhansi-Lalitpur 305 days, (iv) Kosi Bridge Project 674 days (v) Bara-Orai 807 days, and (vi) Gorakhpur Bypass 906 days.

<sup>25</sup> (i) Jhansi-Lalitpur, (ii) Maharashtra-AP Border pkg 6, (150 days) and (iii) Kosi Bridge (214 days).

## 6.2 Short recovery of ₹ 29.79 crore as Additional Concession Fee

Clause 26.2.1 of CA provides that the concessionaire shall pay to NHAI a percentage of total realisable fee as additional concession fee to be calculated as specified in the respective CAs in case of 6-laning projects. Further, clause 26.3 of respective CA provides that for calculating the additional concession fee, the total realisable fee shall be the maximum of the two: (a) the actual PCU or (b) specified number of PCU. Concession fee of ₹ 29.79 crore was short realised in three 6-laning projects as per details given in Table 11.

**TABLE 11: Short recovery of additional concession fee**

Name of the project	No. of PCU actually taken	PCU required to be taken	Period of short remittance	Amount (₹ in crore)	MoRTH reply
Badarpur Elevated Highway (M/s Badarpur Faridabad Tollway Ltd.)	Lesser than the PCU agreed in CA - 68,300	68,300 PCU	Nov-2010 to Oct- 2011	2.92	MoRTH stated (September 2014) that notice for recovery has been issued.
Surat-Dahisar (IRB Surat Dahisar Tollway Private Ltd.)	Lesser than the PCU agreed in CA - 51,375	51,375 PCU	2009-10 to 2011-12	12.87	MoRTH stated (September 2014) that action for recovery will be taken based on the recommendations of IE.
Gurgaon-Jaipur (M/s Pink City Expressway Pvt. Ltd.)	Unauthorised discounts were given to multi axle vehicles and local taxis/Trucks and Buses, which resulted in short realisation of toll fee, of which NHAI's share worked out to ₹ 14 crore			14.00	MoRTH stated that toll was charged by the concessionaire as per the provisions of the CA; however, the matter is under further examination.
<b>Total</b>				<b>29.79</b>	

## 6.3 Toll revenue of ₹ 303.62 crore diverted as investment rather than being spent on construction work

**6.3.1 Delhi-Agra:** LOA for the project was issued to successful bidder i.e. M/s Reliance Infrastructure Ltd. on 19 May 2010. M/s Reliance Infrastructure Ltd. promoted and constituted SPV (i.e. the concessionaire) in the name of M/s DA Toll Road Private Ltd. and the certificate for incorporation was issued on 26 May 2010. The escrow agreement was entered on 01 February 2011 and the appointed date for the project was declared as 16 October 2012 at the request of the concessionaire, who started toll collection from the appointed date as per CA provisions. There was no progress of the project as on 27 June 2013 (1<sup>st</sup> milestone).

Article 31.3.1 of CA as well as the escrow agreement provides that withdrawals from escrow account during the concession period can only be as per order of preference specified in CA such as taxes due, construction of the project highway, payment of concession fee etc. and surplus available, if any, can be utilised as per the instructions of Concessionaire.

The concessionaire invested an amount of ₹ 78.32 crore from the toll collection during the period 16 October 2012 to 21 February 2013 and 01 April 2013 to 31 May 2013 in Reliance Liquid Funds. The status of investment in mutual fund during 22 February 2013 to 31 March 2013 could not be ascertained in the absence of escrow account statement at the PIU.

Escrow agreement provides for investment of only surplus fund and not the entire toll collected.

Concessionaire collected toll of ₹ 120 crore till end of August 2013 and has been utilizing the same for its ancillary objects rather than focusing of project construction. NHAI's action to declare the Appointed Date based on the request of the concessionaire even though environment clearance as well as NOC from the Pollution Control Board was pending was premature. NHAI's action allowed the concessionaire to begin toll collection without making any progress on the project highway. This has subjected the road users to payment of toll without the corresponding benefit of improved travelling conditions.

**6.3.2 Pune-Satara:** The concessionaire, M/s PS Toll Pvt. Ltd. was to complete the construction activities of the Pune-Satara project in accordance with the project completion schedule of CA. The concessionaire failed to achieve project milestone – I (30 March 2011) as well as project milestone – II (1 October 2011) even after 90 days grace period from the respective dates assigned to each of the aforesaid milestones. This was so despite the fact that NHAI had handed over 85.84 *per cent* of unencumbered land on Appointed Date. The Concessionaire commenced collection of toll from Appointed Date and continued to collect toll though it failed to achieve the I<sup>st</sup> or II<sup>nd</sup> milestone or to commence work as per CA.

As per article 31.3.1 of the CA as well as clause 4.1 of escrow agreement (August 2010) with AXIS Bank, any withdrawals from Escrow Account during the concession period could only be utilised in order of preference specified in CA such as taxes due, construction of the project highway, payment of concession fee etc. and surplus available, if any, can be utilised as per the instructions of concessionaire. The concessionaire collected toll from the date of appointment i.e. October 2010 to March 2014 amounting to ₹ 542.17 crore out of which ₹ 225.30 crore (up to 8 August 2012) were invested in Reliance Liquid Fund /Reliance Money Manager Fund which was in contravention of article 31.3.1 of CA and clause 4.1 of Escrow Agreement. Even after lapse of 42 months, only 64.99 *per cent* of the project was completed up to March, 2014 and despite payment of toll charges, road users were deprived of benefit of 6-laning of the project.

In the 'Exit Conference' held with MoRTH and NHAI on 22 July 2014, NHAI admitted that the audit observations are factual.

MoRTH replied (September 2014) that the discrepancies in the escrow account have been streamlined. However, no reply has been provided by MoRTH on the diversion of toll revenue.

**Recommendation 9:** *NHAI would need to initiate timely action for issue of fee notification and plan in advance for levy of toll fee to avoid loss on account of delayed collection of toll.*

**Recommendation 10:** *NHAI needs to critically review the system of declaration of Appointed Date and also design a mechanism to ensure that the concessionaire does not derive undue advantage of the funds at its disposal by diverting toll revenue into financial instruments rather than investing them for approved project purposes.*