

CHAPTER XI: MINISTRY OF ROAD TRANSPORT AND HIGHWAYS

National Highways Authority of India

11.1 *Improper contract management by NHAI resulted in loss of revenue*

Failure of National Highways Authority of India to enforce the contractual obligation of Operate, Maintain and Transfer agreement resulted in undue payment of ₹28.92 crore to concessionaire on account of short recovery of toll. Further NHAI had not maintained the highway after termination of agreement with concessionaire resulted in loss of revenue of ₹20.38 crore.

National Highways Authority of India (NHAI) entered (April 2013) into an Operate, Maintain and Transfer (OMT) agreement (agreement) with M/s. Raima Toll Road Private Limited (Concessionaire), for the stretch from Madurai to Kanyakumari section (243.170 Kms) on NH-7. This included construction of project facilities and Operation & Maintenance of the project highway for a period of nine years from 22 September 2013 i.e., the scheduled Commercial Operation Date (CoD). The agreement provided for payment of concession fee of ₹117 crore for the first year with an escalation of 10 *per cent* every subsequent year. In respect of the Concession Agreement, following was observed:

11.1.1 **Undue favour to the concessionaire by accepting inadmissible claim**

Article 22.1.1 of the agreement delegated the sole and exclusive right to the Concessionaire to collect the user-fee from the road users through four toll plazas namely Kappalur, Nanguneri, Salaipudur and Etturvattam. Article 22.8 of the agreement authorises the concessionaire to levy liquidated damages for unauthorised use of the project highway at its own risk and cost and NHAI would not, in any manner, be liable on account of the vehicles using highways without payment of toll dues.

The Concessionaire took over the project highway and started collecting toll (four toll plazas) from September 2013. The Concessionaire, however, defaulted in remittance of full concession fee from the first instalment and failed to maintain the project highway and other project facilities as per the agreement. The Concessionaire also failed to collect toll from the buses of Tamil Nadu State Transport Corporation (TNSTC) from CoD. Due to these failures, NHAI foreclosed the contract and took over (August 2016) the operation & maintenance of the project highway, including the toll plazas.

After takeover of project highway by NHAI, the Concessionaire submitted four claims to NHAI including a claim towards recovery of short-realisation of toll dues from TNSTC. NHAI referred the matter to the committee of three Chief General Managers (3CGMs) for dispute settlement which accepted (September 2017) the claim of ₹28.92 crore towards short-realisation of toll from TNSTC buses and recommended to adjust the same against the total dues recoverable (₹62.52 crore) from the Concessionaire.

Audit observed that the Concessionaire failed to collect and remit full toll dues from TNSTC buses from the CoD and failed to maintain the project highway as per the agreement. Even though the responsibility of collection of toll dues from TNSTC buses remained with the Concessionaire, NHAI accepted the claim of ₹28.92 crore which was not permissible as per the article 22.8 of the agreement.

Management in its reply stated that after due consideration of all the aspects in the agreement and analysing various claims preferred by the Concessionaire, the 3CGMs Committee recommended (September 2017) to accept the claim of ₹28.92 crore as part of amicable settlement and foreclosure of the agreement. Further, the recommendations of 3CGMs Committee were approved by the Independent Settlement Advisory Committee (July 2018) and Executive Committee (November 2018) of the NHAI. NHAI was also endeavouring to recover the said amount of ₹28.92 crore (toll amount short realised from TNSTC buses) from Ministry of Road Transport and Highways (MoRTH).

The reply of the NHAI confirmed its failure to enforce the contractual conditions regarding toll collection. Further, the decision of the Executive Committee to recover the dues from MoRTH did not have the Ministry's concurrence. Thus, the scope of recovery appears remote.

11.1.2 Loss of toll revenue due to non-maintenance of stretches

After the foreclosure (August 2016) of the agreement, NHAI took over the operation and maintenance of the project highway, including toll plazas. In September 2017, a Public Interest Litigation (PIL) was filed for non-maintenance of 50 km stretch under Kappalur toll plaza (one of the part of the whole project highway under agreement). In December 2017, NHAI engaged M/s Yoga & Co. for overlay and repair work of the said stretch. The Hon'ble High Court of Madras (Maduri Branch) ordered (January 2018) NHAI to reduce the rate of toll, by half, for the above stretch of project highway until the road was repaired. Accordingly, NHAI collected toll at half the rate in Kappalur toll plaza amounting to ₹20.38 crore (03 February 2018 to 15 October 2018). The repair work was completed in September 2018 and NHAI was permitted to collect toll at full rates.

Audit observed that after foreclosure (August 2016) of the agreement, NHAI failed to maintain the said stretch of the project highway which resulted in a PIL and subsequent interim order of Hon'ble High Court of Madras for reducing the toll rates by half, which resulted in loss of ₹20.38 crore (50 per cent toll revenue loss).

Management in its reply submitted that NHAI taken immediate steps to carry out repair of the project highway including overlay in the affected stretch and after approval (October 2017) of the Competent Authority, competitive bids were invited and the maintenance and repair work was awarded (December 2017) to M/s Yoga & Co. On completion of overlay work, favourable orders were obtained from Hon'ble High Court of Madras for collection of toll at full rate.

The reply of Management is not acceptable as even after foreclosure of the agreement in August 2016, NHAI took 15 months to award (December 2017) the work i.e. after a PIL was filed in September 2017.

Thus, failure of NHAI to enforce the contractual obligation and acceptance of inadmissible claim resulted in undue favour to concessionaire amounting to ₹28.92 crore and non-maintenance of project highway led to a revenue loss of ₹20.38 crore.

The para was issued to the Ministry in December 2019; their response was awaited (June 2020).

11.2 Undue benefit to contractors

NHAI gave undue benefit of ₹14.53 crore to contractors by providing advance at lower rates.

National Highways Authority of India (NHAI) entered into agreements with various contractors¹ on 27/ 28 August 2015 for development of Six Lane Eastern Peripheral Expressway (EPE) on Engineering Procurement and Construction (EPC) basis in six packages. The Appointed date for all these packages was fixed as 14 September 2015 with scheduled date of completion as 11 March 2018.

The contractors (package I to VI), requested NHAI for revising the payment schedule to improve the cash flow. The Executive Committee (EC) granted approval (285th meeting dated 28/ 29 June 2016 and 06 July 2016) for monthly interim advance payment for work done as an ‘Interest bearing advance’ and decided to charge interest rate at ‘SBI PLR’ plus two *per cent* or 10 *per cent* per annum, whichever was higher’. But the contractor of package I and II i.e. M/s Sadbhav Engineering Limited requested (July 2016) NHAI to reconsider the interest rate as the ‘SBI PLR’ plus two *per cent* was on the higher side affecting its liquidity and which would eventually affect the progress of work.

Based on the request of contractor of package I and II, NHAI again took up the matter in the 292nd meeting of EC (03 November 2016) wherein the approval for ‘Base Rate’ plus two *per cent* or 10 *per cent* per annum, whichever was higher, was sought with justification that ‘SBI PLR’ was inadvertently mentioned earlier and the ‘Base Rate’ was contractually/ practically appropriate interest rate. Contrary to the approval sought, EC, considered and approved the interest rate as ‘Bank Rate’² plus two *per cent* based on one-time Fund Infusion Policy of NHAI.

Audit observed that the decision of EC to further reduce the interest rate to ‘Bank Rate’ plus two *per cent* was imprudent in view of the following:

- NHAI, in its proposal submitted to EC, considered ‘Base Rate’ as contractually and practically appropriate as the contract agreement provided for charging ‘Base Rate’ plus two *per cent* in case of delayed payment made by Authority to contractor (Clause 19.9.2) (i.e. in case where NHAI was at fault). Further, contractor (package I and II) who had requested to charge lower interest rate, had undertaken to pay interest at the rate of Base Rate or 10 *per cent per annum* interest rate. However, EC *suo-motu*

¹ M/s Sadbhav Engineering Limited (Package – I and II), M/s Jai Prakash Associates Limited (Package III), M/s Ashoka Buildcon Limited (Package IV), M/s Oriental Structural Engineers Private Limited (Package V) and M/s Gayatri Projects Limited (Package VI)

² Bank Rate is the standard rate at which the Reserve Bank is prepared to buy or rediscount bills of exchange or other commercial papers

decided to charge 'Bank Rate' plus two *per cent* which was not justifiable and resulted in undue favour to the contractor.

- Also, the decision of EC to charge interest at 'Bank Rate' plus two *per cent* as given in one-time Fund Infusion Policy of NHAI was not justified as Fund Infusion Policy (June 2015) was one time measure specifically approved (13 May 2015) by the Government of India (GoI) to revive and physically complete languishing BOT projects.
- Only one contractor, who was executing package I and II, had made the request for reduction in interest rate. However, EC granted the benefit of reduced interest rate to all contractors without analysing the cash flows of other four projects i.e. package III to VI.
- The decision of the EC regarding amendment in payment terms as agreed under Schedule H of the Contracts tantamounts to post tender relaxation of terms of the contractor, which is against the fundamental principles of Contracts.
- As regards liquidity of contractor, NHAI released interest free mobilisation advance of ₹441.79 crore to contractors of package I to VI during the period November 2015 to June 2016.
- Even after approval by EC for charging interest at 'Bank Rate' plus two *per cent*, NHAI continued charging interest at 'Base Rate' plus two *per cent* till completion of project, which was not objected to by the contractors until submission of final bills (July 2018 to December 2018) and the differential interest of ₹14.53 crore³ was refunded only after completion of project. Thus, it was seen that charging 'Base Rate' plus two *per cent* had not affected the cash flow of contractor/ progress of work and they were also granted bonus of ₹129 crore for early completion of work.

Thus, the decision of EC to charge 'Bank Rate' plus two *per cent* instead of 'SBI Base Rate' plus two *per cent* or 10 *per cent*, whichever is higher' was imprudent and resulted in loss to NHAI/ Exchequer to the tune of ₹14.53 crore as 'Bank Rate' remained around 6.5 *per cent per annum* whereas 'SBI Base Rate' remained in the vicinity of 9 *per cent per annum*.

Management, in its reply (October 2019) referred to other clauses of the contract agreement pertaining to interest rate and stated that 'SBI PLR' was nowhere mentioned in the contract agreement, whereas, interest was payable at 'Base Rate' plus two *per cent* for delayed payments by either party and SBI 'Base Rate' was discontinued w.e.f. 1 April 2016. Management further stated that NHAI's Fund Infusion Policy (NHAI Circular dated 9 June 2015) provides for financial assistance to contractor on loan basis at 'Bank Rate' plus two *per cent* interest. Accordingly, EC decided that interest rate is to be charged at 'Bank Rate' plus two *per cent* after examining the provision of interest as per contract agreement and existing fund infusion policy of NHAI.

³ Package I- ₹2.64 crore, Package II- ₹2.13 crore, Package III- ₹0.39 crore, Package IV- ₹3.45 crore, Package V- ₹1.99 crore & Package VI - ₹3.93 crore. The package wise amount were arrived on the basis of refund made by NHAI in final running bill

The reply of Management is not acceptable in view of the fact that in the contract agreement only 10 per cent, 18 per cent and 'Base Rate' plus two per cent interest rates were provided whereas interest rate of 'Bank Rate' plus two per cent had not been mentioned, but was subsequently approved by the EC to be charged from the contractor. Further, the decision of EC to change its own decision of charging the interest rate from 'SBI PLR' plus two per cent or 10 per cent, whichever is higher' to 'Bank Rate' plus two per cent was an undue favor to the contractor in view of the fact that the proposal moved in the agenda for approval sought for charging interest at "SBI Base rate' plus two per cent or 10 per cent, whichever is higher'.

As regards NHAI circular relating to Fund Infusion, the terms of the circular were considered and approved by GoI on 13 May 2015 in respect of one time fund infusion to revive and physically complete languishing BOT Projects and hence, was not applicable to EPC projects i.e. EPE package I to VI. The reply of Management regarding discontinuance of 'Base Rate' by SBI is also not acceptable as the base rate was still being continued.

Thus, the injudicious/ *suo-motu* decision of EC to reduce interest rate from 'SBI PLR' plus two per cent or 10 per cent, whichever is higher' to 'Bank Rate' plus two per cent by not considering the proposal for charging interest at 'SBI Base Rate' plus two per cent or 10 per cent, whichever is higher' resulted in adverse financial impact to NHAI/ exchequer and undue financial advantage to the contractors to the tune of ₹14.53 crore.

The para was issued to the Ministry in December 2019; their response was awaited (June 2020).

11.3 Less receipt to Consolidated Fund India due to delay in collection of User fees

The Authority inordinately delayed in commencement of collection of user fees leading to less receipt to the Consolidated Fund India by ₹11.59 crore.

National Highways Authority of India (Authority) entered (September 2015) into an agreement with M/s GR Infraprojects Limited (Contractor) for rehabilitation and upgradation of existing road in Jowai-Meghalaya/ Assam Border having contract value of ₹468.27 crore with a completion schedule by 16 May 2018. The work being a public funded project was executed in EPC⁴ mode. The Highway consisted of two Toll Plazas (TP) i.e., toll plaza-I (TP I) and toll plaza-II (TP II). The work was, however, completed prior to the scheduled completion period and the contractor requested (March 2018) to issue the Provisional Completion Certificate (PCC). The Authority issued (26 July 2018) the PCC w.e.f. 31 March 2018.

The National Highways Fee (Determination of Rates and Collection) Rules, 2008 (Fee Rules), stipulated that the collection of user fee should commence within 45 days from the date of completion of the section of the Highway in case of a public funded project. Hence, the collection of toll for the above Highway should have commenced from 10 September 2018 (i.e. 26 July 2018 + 45 days). The remittance as received from the toll collections is deposited in the Consolidated Fund of India in case of a public funded project.

⁴ *Engineering, Procurement and Construction*

It was seen that the concerned Project Implementation Unit (PIU⁵) of the Authority submitted (28 December 2017) draft fee notification to its Regional Office (RO). The same was approved by Ministry on 24 October 2018. The fee notification of both the toll plazas was published on 09 January 2019 and finally, the toll collections at TP I and TP II were started from 01 March 2019 and 25 February 2019 respectively. Thus, the collection of toll was started at TP I and TP II after delays of 171 days and 167 days respectively from the scheduled dates due to excess time taken at various stages of approval as stated below:

Table 11.3.1

Particulars	Date	Time taken in days
Regional Office (RO) forwarded draft notification to NHAI Hqrs (Received by RO on 28.12.2017)	15.01.2018	18
Draft notification by NHAI to Ministry	18.06.2018	154
Approval of Ministry	24.10.2018	128
File received by NHAI for Hindi Translation	16.11.2018	23
With Hindi translation, the file was resubmitted to Ministry	26.11.2018	10
Approval of Hon'ble Minister of Shipping	03.01.2019	38
Publication of fee notification of both the toll plazas	09.01.2019	6
Commencement of toll collections at TP I and TP II	01.03.2019 and 25.02.2019	47 and 52

Audit observed that abnormal delays at various stages of approval for finalisation of notification for collection of toll, resulted in corresponding delay in collection of toll from the users of the Highway which led to less receipt to the Consolidated Fund India by ₹11.59⁶ crore.

Management while admitting the fact of delay in commencement of collection of users fees stated (October 2019) that this was not due to default of any individual but an instance of procedural delay.

Management's reply is not acceptable as procedural delays were within the control of Management and could have been avoided to prevent such loss.

Thus, inordinate delay in commencement of collection of user fees by authority led to less receipt to the Consolidated Fund India by ₹11.59 crore. Audit recommends that the maximum time limit at different levels of approval should be fixed so that collection of toll is commenced within 45 days from the date of completion of the Highway.

The para was issued to the Ministry in November 2019; their response was awaited (June 2020).

⁵ PIU Shillong

⁶ ₹11.59 crore = (171 days x ₹2.99 lakh) + (167 days x ₹3.88 lakh) based on the actual toll collections at TP I and TP II of ₹2.99 lakh per day and ₹3.88 lakh respectively

11.4 Short remittance of additional concession fee

Authority incurred a loss of ₹4.37 crore due to short remittance of additional concession fee by concessionaire to Authority as the concessionaire did not collect fee from overloaded vehicles as per the amended Fee Rules

National Highways Authority of India (Authority) entered into a Concession Agreement (CA) with Soma Isolux Kishangarh Beawar Tollway Private Limited (Concessionaire) on 18 May 2009 for six laning of existing road on Kishangarh-Ajmer-Beawar section of National Highway No. 8 in the state of Rajasthan on BOT mode under NHDP Phase III. As per the CA, the scheduled date of completion of construction of the project was the 910th day from the appointed date⁷ and the concession period was to commence from the appointed date, i.e. 14 November 2009. The scheduled Commercial Operation Date (COD)⁸ was 12 May 2012, however, the concessionaire achieved the COD on 28 April 2015 with a delay of 1,081 days.

Audit examination revealed that as per Article 27.10 of the CA, the concessionaire was to recover a fee from overloaded vehicles at the rate applicable to the next higher category of vehicles. However, the Government of India vide Gazette Notification dated 16 December 2013 amended the National Highways Fee (Determination of Rates and Collection) Rules, 2008 by charging from the overloaded vehicles, a fee equal to 10 times of the fee applicable to such category of overloaded vehicles.

However, the Concessionaire charged fee from overloaded vehicles at the rate applicable to next higher category of vehicles upto 31 March 2016 and from 1 April 2016 fee at double the rate applicable to the category to which overloaded vehicle pertained instead of charging fee equal to 10 times as per Gazette Notification dated 16 December 2013. This had adverse implication on remittance of Additional Concession Fee (ACF) to Authority, and, accordingly, the ACF was short remitted by ₹4.37 crore (October 2015 to September 2018).

Management replied (September 2019) that fee was being collected by the concessionaire as per the provisions of CA. Further, the concessionaire was unable to collect fee at 10 times and had collected the additional user fee for overloaded vehicle to the extent of two times only w.e.f. 1 April 2016.

Management has accepted the Audit contention in respect of short remittance of ACF of ₹4.37 crore on account of short collection of fees on overloaded vehicle by the concessionaire to Authority.

Thus, short collection of fees by concessionaire on overloaded vehicles as per the amended Fee Rules had resulted in short remittance by concessionaire to Authority with consequent a loss of revenue to Authority/ Exchequer of ₹4.37 crore.

The para was issued to the Ministry in December 2019; their response was awaited (June 2020).

⁷ *Appointed date is a date of start of concession period and construction work of the project.*

⁸ *COD is the date from which the Concessionaire has the right to start toll collection*