

**REVIEW OF LOANS TO ROAD PROJECTS RELATING TO INDIA
INFRASTRUCTURE FINANCE COMPANY LIMITED (IIFCL)**

[Based on Para No. 5.1 of C&AG Report No. 18 of 2020]

INDIA INFRASTRUCTURE FINANCE COMPANY LIMITED (IIFCL)

MINISTRY OF FINANCE (DEPARTMENT OF FINANCIAL SERVICES)

**COMMITTEE ON PUBLIC UNDERTAKINGS
(2022-23)**

NINETEENTH REPORT

SEVENTEENTH LOK SABHA



LOK SABHA SECRETARIAT

NEW DELHI

NINETEENTH REPORT
COMMITTEE ON PUBLIC UNDERTAKINGS
(2022-23)

(SEVENTEENTH LOK SABHA)

REVIEW OF LOANS TO ROAD PROJECTS RELATING TO INDIA
INFRASTRUCTURE FINANCE COMPANY LIMITED (IIFCL) [Based on
Para No. 5.1 of C&AG Report No. 18 of 2020]

INFRASTRUCTURE FINANCE COMPANY LIMITED (IIFCL)
MINISTRY OF FINANCE (DEPARTMENT OF FINANCIAL SERVICES)



Presented to Lok Sabha on 20 March, 2023

Laid in Rajya Sabha on 20 March, 2023

LOK SABHA SECRETARIAT
NEW DELHI

March, 2023 /Phalguna, 1944 (Saka)

CPU No. 1040

Price : Rs.....

© 2023 By LOK SABHA SECRETARIAT
Published under Rule 382 of the Rules of Procedure and Conduct of Business in Lok Sabha (.... Edition) and Printed by the General Manager, Government of India Press, Minto Road, New Delhi- 110002.

C O N T E N T S

	Page No.	
Composition of the Committee (2022-23)	v	
Composition of the Committee (2021-22)	vi	
Introduction	vii	
Acronyms	viii	
REPORT		
PART - I		
I	BACKGROUND	1
II	AUDIT OBSERVATIONS	5
A	Para 5.1.2.1 - Failure to ensure availability of land/ Right of Way (RoW) to the concessionaires	5
B	Issues related to Non Performing Assests (NPAs)	9
C	Para 5.1.2.2 - Not Ensuring Availability of Necessary Clearances/Approvals	13
D	Para 5.1.2.3 - Adjustment of/funding of overdue interest during construction (IDC)	16
E	Para 5.1.2.4 - Sanction of loan for cost overrun without obtaining approval from the Concessioneing Authority	17
F	Para 5.1.2.5 - Advances disbursed by concessionaires	19
G	Para 5.1.2.6 - Inadequacies in review of financial and physical progress	22
H	Para 5.1.2.7 - Disbursement of loan without verifying utilization of previous disbursal	23
I	Para 5.1.2.8 - Inadequacy in site visits	25
III	OTHER FINDINGS OF AUDIT	26
	(a) Sanction and disbursement of loan on the basis of unrealistic projections of traffic/ toll revenue	26
	(b) Non-cognisance of apparent risk while sanctioning a loan under Takeout finance	27
	(c) Equity infusion and Shareholding Pattern	28
PART - II		
	OBSERVATIONS / RECOMMENDATIONS OF THE COMMITTEE	31
APPENDICES		
I.	Minutes of the Sitting of the Committee held on 08.12.2021.....	39
II.	Minutes of the Sitting of the Committee held on 04.01.2022.....	42
III.	Minutes of the Sitting of the Committee held on 12.01.2022.....	45
IV.	Minutes of the Sitting of the Committee held on 23.02.2023.....	47

COMPOSITION OF COMMITTEE ON PUBLIC UNDERTAKINGS (2022-23)

Shri Santosh Kumar Gangwar - *Chairperson*

Members

Lok Sabha

2. Shri Sudip Banyopadhyay
3. Dr. Heena Vijaykumar Gavit
4. Shri Chandra Prakash Joshi
5. Smt. K. Kanimozhi
6. Shri Lavu Sri Krishna Devarayalu
7. Smt. Poonamben Hematbhai Maadam
8. Shri Arjunlal Meena
9. Shri Janardan Mishra
10. Shri Kinjarapu Ram Mohan Naidu
11. Dr. Arvind Kumar Sharma
12. Shri Ravneet Singh Bittu
13. Shri Sushil Kumar Singh
14. Shri Uday Pratap Singh
15. Shri Ramdas Chandrabhanji Tadas

Rajya Sabha

16. Shri Anil Desai
17. Ms. Indu Bala Goswami
18. Shri Syed Nasir Hussain
19. Dr. Anil Jain
20. Shri Prakash Javadekar
21. Dr. Amar Patnaik
22. Shri M. Shanmugam

SECRETARIAT

- | | | | |
|----|---------------------|---|---------------------|
| 1. | Shri V.K. Tripathi | - | Joint Secretary |
| 2. | Shri Santosh Kumar | - | Director |
| 3. | Shri G.C. Prasad | - | Additional Director |
| 4. | Smt. Mriganka Achal | - | Deputy Secretary |

COMPOSITION OF COMMITTEE ON PUBLIC UNDERTAKINGS (2021-22)

Shri Santosh Kumar Gangwar - Chairperson

Members

Lok Sabha

2. Shri Lavu Sri Krishna Devarayalu
3. Dr.Heena Vijaykumar Gavit
4. Shri Chandra Prakash Joshi
5. Smt. K. Kanimozhi
6. Smt. Poonamben Hematbhai Maadam
7. Shri Arjunlal Meena
8. Shri Janardan Mishra
9. Shri Kinjarapu Ram Mohan Naidu
10. Shri Nama Nageswara Rao
11. Dr. Arvind Kumar Sharma
12. Shri Ravneet Singh
13. Shri Sushil Kumar Singh
14. Shri Uday Pratap Singh
15. Shri Ramdas Chandrabhanji Tadas

Rajya Sabha

16. Birendra Prasad Baishya
17. Shri Anil Desai
18. Shri Syed Nasir Hussain
19. Shri Om Prakash Mathur
20. Shri Surendra Singh Nagar
21. Shri k.C. Ramamurthy
22. Shri M. Shanmugam

***Shri Santosh Kumar Gangwar appointed as Chairperson, COPU w.e.f. 13 August, 2021 vice Smt. Meenakashi Lekhi appointed as Minister on 07 July.**

INTRODUCTION

I, the Chairperson, Committee on Public Undertakings (2022-23) having been authorized by the Committee to submit the Report on their behalf, present this Nineteenth Report on 'Review of Loans to Road Projects relating to India Infrastructure Finance Company Limited (IIFCL) (Based on C&AG Audit Para No. 5.1 of Report No.18 of 2020).

2. The Committee on Public Undertakings (2021-22) selected the above said subject for detailed examination. As the examination of the subject remained inconclusive during the term of the Committee on Public Undertakings (2021-22), the present Committee (2022-23) decided to carry forward the subject so as to complete the unfinished task.

3. The Committee on Public Undertakings (2021-22) were initially briefed about the subject by the representatives of the C&AG on 8th December, 2021. The Committee then took evidence of the representatives of India Infrastructure Finance Company Limited and Ministry of Finance (Department of Financial Services) on 4th January, 2022 and 12th January, 2022 respectively.

4. The Committee (2022-23) considered and adopted the draft Report at their sitting held on 23 February, 2023.

5. The Committee wish to express their thanks to the representatives of India Infrastructure Finance Company Limited and Ministry of Finance (Department of Financial Services) for tendering evidence before them and furnishing the requisite information in connection with examination of the subject.

6. The Committee would also like to place on record their appreciation for the assistance rendered to them in the matter by the Office of the Comptroller and Auditor General of India.

7. For facility of reference and convenience, the Observations and Recommendations of the Committee have been printed in bold letters in Part-II of the Report.

New Delhi;
6 March, 2023
15 Phalguna , 1944(S)

SANTOSH KUMAR GANGWAR
Chairperson
Committee on Public Undertakings

ACRONYMS

BG	Bank Guarantee
BAEL	Barwa Adda Expressway Limited
BHPL	Bareilly Highways Projects Limited
BKEL	Barasal Krishnagar Expressway Limited
CA	Concession Agreement
CLA	Common Loan Agreement
CPBSRPL	Concast Path Bameetha Satna Road Projects Private Limited
DTRL	DA Toll Road Limited
HHPL	Haridwar Highways Projects Limited
ICA	Inter Creditor Agreements
IDC	Interest During Construction
IIFCL	India Infrastructure Finance Company Limited
InvITs	Infrastructure Investment Trusts
IVRCL	Indore Gujarat Tollways Limited
LCF	Lending Confirmation Notice
LIE	Lenders Independent Engineers
MCA	Model Concession Agreement
MEPIPL	MEP Infrastructure Private Limited
NJTBPL	Navayuga Jhanvi Toll Bridge Private Limited
NPA	Non Performing Assets
PCOD	Provisional Commercial Operation Date
PPP	Public –Private Partnership
PSTPL	Pune Satara Toll Road Pvt. Limited
RoW	Right of Way
SIFTI	Scheme for Financing Viable Infrastructure Projects
SLHL	SEW LSY Highway Limited
SMTL	Sai Maatarini Tollways Limited
SPV	Special Purpose Vehicle
SSRPL	Sidhi Singrauli Road Projects Limited

REPORT

PART - I

I. BACKGROUND

India Infrastructure Finance Company Limited (IIFCL) is a public sector financial institution established in January 2006 that is wholly owned by the Government of India. The Company is mandated and governed by the Central Government approved Scheme more commonly known as 'SIFTI'. As per SIFTI, IIFCL is mandated to extend its financial assistance only as a part of Consortium of Lenders with its maximum exposure only up to 20% of the Project Cost. The sectors eligible for financial assistance from IIFCL broadly include transportation, energy, water, sanitation, communication and social & commercial infrastructure. As per SIFTI, IIFCL has been directed to follow the Lead Lender in the Consortium of Lenders in so far as Appraisal, Sanctions, Disbursements and Monitoring of projects are concerned. The resources for carrying out the loan activities are raised by IIFCL through bonds and loans from domestic sources and lines of credit from external sources like Asian Development Bank and World Bank, etc. As per the Department of Financial Services, IIFCL is registered as a NBFC-ND-IFC with the Reserve Bank of India since September, 2013 and follows the applicable prudential norms of RBI.

2. The Committee have been informed that while SIFTI was introduced in 2006, the Scheme has so far undergone ten revised versions since its inception, with the recommendations of Empowered Committee of Secretaries to the Government of India and with the approval of the Finance Minister, as laid out in the scheme. These ten revisions were effected based on the experience of IIFCL in the dynamics of the evolving infrastructure financing environment. While initially, IIFCL was authorized to extend financial assistance to green field infrastructure projects, the later revisions of SIFTI has enabled IIFCL to emerge well as a specialized innovative lender covering not only green field projects through direct lending, but also brown field projects and Infrastructure Investment Trusts (INVITs), and extend financial assistance in the form of newer financial products such as Sub-ordinate Debt, Take-out Finance and Credit Enhancements. The Company has also now been able to foray into the Bond markets

for assisting project SPVs/INVITs in respect of completed projects, in order to enable them to reduce their cost of debt.

3. Highlighting the performance of the Company, MD, IIFCL during the course of the evidence on 04.01.2022 deposited before the Committee as under:

“Our net worth is about Rs. 11,402 crore now. We have an authorised capital of Rs. 10,000 crore. We have received Rs. 9,999.92 crore as paid-up capital from the Government; and our repatriations to the Government by way of dividends, taxes, guarantee fee etc., has been Rs. 4,156 crore. We have made a surplus of Rs. 1,400 crore. We have done our projects. Today, our impact has been that we have sanctioned 500 PPP projects with 26 per cent public private partnerships. We have financed over 28,000 kilometres which is 17 per cent India’s highway capacities. We have sanctioned over Rs. 12,000 crore for 72 projects as far as hybrid annuity model is concerned. In airports, energy, ports and other sectors also, we have participated very well. Our profitability, our cumulative sanctions and disbursements have gone to the order of Rs. 1,74,000 crore; and Rs. 84,000 crore as far as disbursement is concerned. Profitability today is about Rs. 763 crore profit before tax, and it is Rs. 551 crore profit after tax”.

Para 5.1 - Review of Loans to Road Projects

4. IIFCL provides loans to road projects being executed under Public-Private Partnership (PPP) model, based on Concession Agreement (CA) signed between a Concessionaire (the developer) and a Concessions Authority i.e. National Highways Authority of India (NHAI) / State Government Agencies. Key features of the Concession agreement mainly includes, Land Acquisition And Approvals, Local Taxes And Levies Concession Fee, Tolling Arrangements, Revenue Shortfall Loans, Competition, Step-In Right, Termination Rights And Property Taxes etc. Financing activities of IIFCL were largely concentrated in road sector as it has 44 per cent road sector projects which as on March 2019, is about Rs.31,051 crore of its portfolio. As per para 5.1 of the Audit report, Gross non-performing assets (NPA) in road sector was Rs.5,187 crore which is 37.25 per cent of the amount that was outstanding as on 31 March 2019 and the net NPA in road sector was much higher at 17.84 per cent against internally approved overall limit for net NPA at 2.75 per cent of total loan outstanding across all sectors. From the loan accounts of IIFCL, Audit observed that the deficiencies in sanctioning,

disbursement and restructuring of loans of several road projects financed by IIFCL resulted in huge NPA. These road projects include Barasat Krishnanagar Expressway Limited, (BKEL) Sidhi Singrauli Road Projects Limited, (SSRPL), Haridwar Highways Projects Limited(HHPL),DA Toll Road Limited(DTRL), Bareilly Highway Projects Limited(BHPL), Concast Path Bameetha Satna Road Projects Private Limited(CPBSRPL), etc. and many Toll ways.

5. In view of the deteriorating position of NPAs pertaining to loan accounts of road projects, CAG selected to review the mechanism in vogue for sanction, disbursement, restructuring and monitoring of loans of road projects by IIFCL during the period 2016-17 to 2018-19. The Audit sample was selected based on Stratified Random Sampling Method using IDEA from the total disbursements made as indicated below:

Categories of loan cases during 2016-17 to 2018-19	Total no. of loan cases	No of loan cases selected	% age
NPA cases	49	9	18
Disbursement only	33	9*	27
Sanction having disbursement	12	3	25
Prepayment	32	4	12
Restructuring	4	3	75
Sanction only	18	4	22
Total	148	32	21

* includes one case under Take out Finance Scheme. All other selected cases are under Direct Lending Scheme

6. Out of the aforesaid 32 cases, Audit has commented on 24 cases as in four cases, the borrowers have fully paid the loans and in other four cases of sanctioned loan, no Lending Confirmation Notice (LCN) was received till completion of field audit. The major Audit observations/ findings on 24 loan cases are given in the succeeding paragraphs of the Report.

7. On the findings of the Audit, the Additional Secretary, Ministry of Finance (Department of Financial Services), during the course of evidence on 24.01.2022, shared his views as under :

“सर, जो 24 प्रकरणों को इन्होंने ऑडिट में लिया है, उन 24 प्रकरणों में जो संबंधित परियोजनाएँ थीं, वे सन् 2006 से 2015 की अवधि की थीं और ये मुख्यतः सड़क के क्षेत्र से

थीं। इनमें जो सड़क के क्षेत्र की परियोजनाएँ थीं, मतलब ये दो प्रकृति की थी- एक बीओटी मॉडल पर आधारित थी, जो पब्लिक प्राइवेट पार्टनरशिप (पीपीपी) के तहत थी और दूसरी इंजीनियरिंग प्रोजेक्ट कॉन्ट्रैक्ट (ईपीसी) मॉडल पर थी। लेकिन अधिकांश बीओटी मॉडल पर थी। बीओटी मॉडल के तहत जो कंसेशन एग्रीमेंट जारी किया जाता है, उसका जो आदर्श कंसेशन एग्रीमेंट है, मॉडल कंसेशन एग्रीमेंट (एमसीए) है, यह नेशनल हाइवे अथॉरिटी ऑफ इंडिया (एनएचएआई) ने जारी किया था। इस मॉडल के तहत जो ऋण का भुगतान होना होता था, वह टोल कलेक्शन के द्वारा भुगतान होता था। टोल कलेक्शन सीधे-सीधे रेवेन्यू रिस्क से जुड़ा हुआ है, क्योंकि आपने लोन तो ले लिया और प्रोजेक्ट को अंजाम भी दे दिया, लेकिन उस पर कितना टोल आएगा, यह पूरा नियंत्रण में नहीं है। यह भविष्य के प्रति आपकी प्रोजेक्शन है। वह वास्तव में आएगा या नहीं आएगा, तो इसमें एक रेवेन्यू रिस्क है। रेवेन्यू की प्राप्तियों का जोखिम अपने आप में अंतर्भूत रूप से जुड़ा हुआ है, जिसको कोई निश्चित तौर पर कह नहीं सकता। इस मॉडल की मुख्य बात यह थी कि यह सारा का सारा जो रिस्क है, जो कंसेशनेयर था, जो कॉन्ट्रैक्ट लेता था, उसके ऊपर यह सारा का सारा जोखिम था। रियली स्पीकिंग उसका उसके ऊपर कोई नियंत्रण नहीं था। उसी के ऊपर पूरी जिम्मेदारी थी कि कंस्ट्रक्शन के दौरान जो भी समस्याएँ आएंगी, जैसे भू-अर्जन होना है, पर्यावरण या वाइल्ड लाइफ या फॉरेस्ट की जो क्लियरेंस प्राप्त करनी है या बिजली के खम्भे वगैरह शिफ्ट होने हैं, यूटिलिटी शिफ्टिंग होनी है, ये सभी चीजें उसी के जिम्मे आती थीं। जबकि ये सरकारी दायरे की चीजें हैं, राज्य सरकारों की या कुछ मामले में केन्द्र सरकार की। उस जोखिम के ऊपर कोई नियंत्रण नहीं था, तथापि उसकी पूरी की पूरी जिम्मेदारी और दारोमदार कंसेशनेयर के ऊपर था।

सर, इसी तरीके से शुरू में जो रेवेन्यू फॉरकास्ट दिए जाते थे, वह भी रोड ट्रांसपोर्ट मिनिस्ट्री से प्राप्त होते थे। प्रोजेक्ट बनने के बाद कई मामलों में वास्तविकता उससे बड़ी भिन्न निकली, तो ये सब स्थितियां थीं। ऐसी स्थिति में जब इसको चलाते थे, मान लीजिए, किसी ठेकेदार ने चार-पाँच प्रोजेक्ट्स लिए। अब उसमें से एक भी प्रोजेक्ट में इन किन्हीं कारणों से उसको ऐसी कठिनाई आ गई तो उसकी वित्तीय क्षमता सभी प्रोजेक्ट्स में प्रभावित हो जाती थी। इसलिए जो प्रोजेक्ट शायद ठीक भी चल रहा हो, वहां भी उस प्रोजेक्ट का जो वित्तीय अंश देना था, उसको देने में उसे कठिनाई आने लगती थी। इसलिए पूरे सेक्टर में इसका जोखिम आता था। यही कारण था कि इस क्षेत्र में अधिकांश एनपीए आया।

सर, मैं जो बात समिति के समक्ष रखना चाह रहा हूँ, वह यह है कि जो बातें ऑडिट में उठाई गई हैं, जो कि तत्परता से, डिलिजेंस से संबंधित हैं और जो कुछ अच्छी प्रूडेंट प्रेक्टिसेस से संबंधित हैं, वे अपने आप में बिल्कुल वाजिब हैं। लेकिन इसकी जो मुख्य समस्याएँ थीं, वह मॉडल की स्ट्रक्चरिंग में आधारभूत थी और उसमें जो इम्पेफेक्शन थे, उसी में थीं। एनपीए का प्रमुख कारण, यद्यपि हम बेहतर प्रोसेसेस अपनाएं, बेहतर प्रोसीजर्स अपनाएं, उससे हम हमेशा थोड़ा बहुत स्थिति में सुधार कर सकते हैं, लेकिन मुख्य कारण मॉडल से जुड़ा हुआ था, न कि प्रक्रियाओं के अनुपालन से। प्रक्रियाओं के अनुपालन का

अपना महत्व और जरूरत है, उस बात को हम बिल्कुल यह नहीं कह रहे हैं कि वह उचित है या नहीं है, लेकिन मैं एक पक्ष यह रखना चाह रहा था कि मॉडल में कमियां थीं।“

8. The Committee on Public Undertakings during its term 2021-22 selected the aforesaid Para no. 5.1 of CAG Report No. 18 of 2020 for examination and Report to Parliament. The Committee during the course of examination of the subject, heard the views of the Officers from C&AG, IIFCL and also the Officers from the Ministry of Finance (Department of Financial Services) before finalizing its Report. The observations and findings of the audit have been dealt by the Committee in subsequent chapters of the Report.

II. AUDIT OBSERVATIONS

A. Para 5.1.2.1 - Failure to ensure availability of land/ Right of Way (RoW) to the concessionaires

9. Audit observed that in road financing, the lenders (IIFCL and Banks) have negligible physical security against the loan dues as the main assets of the project i.e. land, road and other structures thereon, constructed by the concessionaire (borrower) are owned by the Concessions Authority (mainly NHAI). The loan is serviced mainly from toll revenue generated from operations of commercially viable road projects completed under BOT model. Hence if toll revenue does not start and yield the requisite revenue, the loan becomes unserviceable and NPA. In case the project remains incomplete for any reason, there exists inter alia no mechanism in the Concession Agreement (CA) to compensate the borrower for the work done so that the lenders are paid their dues as discussed below:

(a) If Concession Agreement (CA) is terminated by Concessions Authority (NHAI) for Concessionaire's (Contractor) default, a termination payment (equivalent to 90 per cent of debt dues) would be payable by the Concessions Authority to the Concessionaire provided the project is issued the Project Completion Certificate/Provisional Project Completion Certificate i.e. Certificate of Provisional Commercial Operation Date (PCOD) by Concessions Authority. PCOD is issued by the Concessions Authority only after completion of at least 75 per cent work on the project, thereby permitting the Concessionaire to collect toll revenue from operations of the project, pending completion.

(b) the Appointed Date, which shall also be deemed to be the date of commencement of concession period, shall generally be fixed only on or after each and every condition precedent to the CA including availability of unencumbered Right of Way(RoW) to the land to the Concessionaire to the extent of at least 80 per cent of the total area of project is either satisfied or waived off by the Concessing Authority.

10. Audit in their report pointed out that these aforesaid provisions in the CA increases the risk level of the road projects if the Concessionaire commences the work in the project before having possession of the required RoW and the project is unable to achieve PCOD. Further, the condition for availability of minimum 80 per cent RoW before first disbursement was stipulated in 14 cases (58 per cent) examined in Audit, while the condition of 100 per cent RoW for loan disbursement after appointed date was found included in only two cases (eight per cent). In six cases, the pre-disbursement conditions of Common Loan Agreements (CLAs) either did not quantify (i.e. stipulated only 'reasonable availability of RoW') or did not include any specific clause on the issue of requirement of RoW. As a result, the loan was sanctioned without mitigating the risk of non-availability of atleast 80 per cent RoW of the project on appointed date before disbursement of first loan instalment and it was one of the main reasons that out of six loans, three loans amounting to Rs. 674.35 crore turned into NPA and one loan related to NJTBPL had to be restructured. These four cases are indicated as under:

Sl. No.	Name of contractor	Name of project	Length of road in KM	Provision of availability of RoW in CA as on Appointed Date in per cent	Actual availability of RoW at the time of first disbursement by IIFCL in per cent	Date & amount of first disbursement Date
1	IIGTL	4 laning of Indore to Gujarat	155.15	80	51.43	January 2011
2	BKEL ⁶	4 lane highway on the Barasat-Krishnagar	84.317	80	14.73	December 2011
3	BHPL	2 lane road on NH24 from Bareilly to Sitapur	151	80	72	June 2011
4	NJTBPL	Development of a Greenfield alignment connecting NH-31	50.943	80	23.55	August 2012

11. Besides this, in other two loan cases i.e. DA Toll Road Limited (DATRL) and Pune Satara Toll Road Pvt. Limited (PSTPL), due to non-availability of RoW, the projects got delayed and the loans had to be restructured thrice with extension of time for original Scheduled Commercial Operational Date(COD) (as per CLA) from January and April 2016 to January and April 2019 in respect of DATRL and PSTPL respectively. The loan of IIFCL amounting to Rs. 591.78 crore (DATRL: Rs. 400 crore, PSTPL: Rs. 191.78 crore) in the projects was still at high risk.

12. Audit observed that IIFCL continued to disburse the loan despite NHAI not making available the balance land within six months of appointed date or descopeing the work on non-available land, which is indicative of the fact that lenders including IIFCL did not adequately protect their interest before disbursement of loan. Therefore out of the 6 cases, 3 loans amounting to Rs. 674.35 crore turned into NPA.

13. In May 2020, IIFCL, in response to the aforesaid Audit observation stated that NHAI has been declaring Appointed Date without complying with agreed terms of providing RoW. Besides, NHAI often declares availability of RoW at 3C/3D stage whereas the RoW is supposed to be declared at 3G/3H stage. In case of Bareilly Highways Projects Limited (BHPL) and Barasat Krishnagar Expressway Limited (BKEL), NHAI neither made the balance RoW available within six months of Appointed Date nor de-scoped the RoW, which was not made available, resulting in erosion of viability of the road project. NHAI delayed handing over of RoW in case of IIGTL while in case of Navayuga Jhanvi Toll Bridge Private Limited (NJTBP), it failed to fulfill its duty to provide RoW within the scheduled period, which adversely affected the project. IIFCL added that as per SIFTI, it was supposed to follow the appraisal carried out and disbursements made by the lead bank, which was adhered to by IIFCL. The Ministry in June 2020 endorsed to the views of the Management.

14. Audit further pointed out that the reply of IIFCL is to be viewed against the fact that as per SIFTI, IIFCL is to finance viable projects only. Without the required unencumbered RoW for construction of road, the viability of the project cannot be established and that to itself is a risk. IIFCL was required to safeguard its interest by

ensuring inclusion of suitable pre-disbursement clauses in the CLA on pre-availability of RoW and its compliance to mitigate the risk, which was not done.

15. When enquired by the Committee as to why IIFCL did not work to protect its interest by incorporating suitable pre-disbursement clauses in the Common Lending Agreement on pre-availability of Right of Way and its compliance to mitigate the risk, IIFCL in this regard submitted as below:

“All such sanctioned terms and conditions are laid out in the Common Loan Agreements (CLAs) and Inter Creditor Agreements (ICAs) which all lenders in the Consortium are signatories to. As per the prevalent practice in the country, in any Consortium Lending, the Lead Bank assumes the responsibilities of being the central information repository and for the purpose of coordination of the monitoring, disbursements and any other issues that may arise during the course of project implementation. Accordingly, the other lenders in the Consortium rely on the central Lead Bank and follow the Lead Bank in the process. The Lead Bank appoints service providers such as Lenders Independent Engineers (LIE), Chartered Accountants and Financial Advisors, Lenders Legal Counsel, etc. for the purpose of closer monitoring of the project implementation. Through these agencies, the project monitoring is closely carried out by the Lead Bank. The other lenders in the consortium are kept informed by the Lead Bank about the developments in the regular meetings of the Consortium, and by way of other communications.”

16. On the aforesaid issue, MD, IIFCL during the course of evidence on 04.01.2022 clarified as under:

“The evolution of the road sector in 2015 onwards, saw the first constitution of the Kelkar Committee after which the recommendations were done by the Kelkar Committee. It included addressing most of the issues which I just mentioned before including the arresting the time overruns, bringing about the reforms in the concession contracts and instituting instruments for long-term lending and all that. Then 2016 saw the introduction of hybrid annuity models. Process like 80 per cent ROW which was introduced as a must for project preparation because earlier, the projects could be prepared even with lesser than 50 per cent of land acquired. This was the stage when we saw the compulsory land acquisition before preparation of projects, which was instituted in the Concession Agreement itself. “

17. Audit however did not find the response of IIFCL satisfactory, It further observed that IIFCL didn't ensure viability of the project and failed to explain as to why adequate pre-disbursement clauses were not brought into the CLAs. Regarding reliance on lead

bank's appraisal, Audit further pointed out that the Inter Creditor Agreements (ICA) had a 'no reliance' clause which provided that the lenders had to undertake their own assessment. As per SIFTI, IIFCL's borrowings may be guaranteed by Government of India. Hence, it becomes imperative that IIFCL undertakes risk assessment comprehensively to mitigate risks and adequately provides for and enforces conditions in this regard in contracts/agreements.

B. Issues related to Non Performing Assets (NPAs)

18. When the Committee asked about the Non Performing Assets of the Company, IIFCL in a written note informed that the Company's Gross NPA was 13.90% and Net NPA was 5.39% as on 31st March 2021 out of the total loan book of Rs. 36688.89 crore. IIFCL further informed the Committee that the top ten non-performing accounts with the Company and the status of recovery/ resolution of the loans was as under:

S. No.	Project Name	Resolution status
1	Jaypee Infratech Ltd.	Case in NCLT
2	Corporate Power Ltd (Phase I & Phase II)	Debt Assigned to ARC
3	MEP Infrastructure Pvt. Ltd	Resolution Plan in progress
4	Essar Power Gujarat	Resolution Plan in progress
5	Barwa Adda Expressway Ltd	Resolution Plan in progress
6	GVK Power (Govindwal Sahib) Ltd	Resolution Plan in progress
7	Sai Matarini Tollways Ltd (SMTL)	Request for release of Termination Payment sought from NHAI
8	IVRCL Indore Gujarat Tollways Ltd.	Request for release of Termination Payment sought from NHAI
9	Bareilly Highways Project Ltd	Case in Debt Recovery Tribunal (DRT)
10	KVK Nilachal Power Pvt. Ltd.	Case in NCLT

19. When asked about the measures taken to address issues related to NPAs, IIFCL informed that it has put in place a Board approved NPA Management Policy which lays out the Directions and Guidelines for time-bound resolution of NPA by taking proactive actions towards close monitoring, constant follow-up and evolving suitable modes for early resolution/recovery of dues in line with the prescribed norm/ guidelines of Reserve Bank of India (RBI) and other applicable statutory/ regulatory authorities or directions from the Central Government. Besides that, IIFCL follows various avenues for resolution

/ recovery, which are generally to be exercised in line with the Lead Bank / Lenders Consortium, as under:

“(a) Resolution plan, inter-alia, involving cost overrun financing, restructuring, change in management, refinancing etc.

(b) Restructuring involving deferment of principal and interest repayments, funding of interest, carving out unsustainable portion into various debt instruments etc.

(c) Last mile financing / Cost overrun funding / One Time Fund Infusion (OTFI) in road projects

(d) Exit strategies

(e) One Time Settlement (OTS) / Negotiated Settlement / Compromise Settlement

(f) Legal Action & recovery including reference to NCLT under Insolvency and Bankruptcy Code (IBC) and Debt Recovery Tribunals.

(g) Sell down to Asset Reconstruction Company (India) Limited and / or any other Asset Reconstruction Company (ARC) / other entities.

(h) Follow up with Authorities for Termination Payments.”

20. In addition to these measures, IIFCL in a written note informed that it has set up a specialized Recovery and NPA Management Department and has strengthened this department with officers with specialized skills in recovery and NPA management. The capacities of this functions were further strengthened with external experts including an independent High Level Advisory Committee which is chaired by retired Honourable Judge of the Madras High Court and two former Executive (Whole-time) Directors of Public Sector Banks and Financial Institutions.

21. On the issue of Non Performing Assets, MD, IIFCL during the course of evidence on 04.01.2022, further clarified as under:

“The asset quality has improved substantially. We were having an NPA of 19.7 % which has reduced to 13.9 % last year and 5.39 % net last year. The RBI had given us time till 2024 to achieve these figures. But we have achieved it last year itself. The majority of asset quality, which was about 63 per cent BBB and low quality assets, has decreased to 42 per cent. Thirty-two per cent of our assets which were AAA to A, high quality assets, has risen to 58 per cent right now. That means, our high quality asset is 58 per

cent. Recoveries have improved. We were having a lot of problems in recoveries because termination payments were not forthcoming from the NHAI and other concessionary authorities. Last year, we made a headway. Now, it is Rs. 1,700 crore. We have also put a high level committee for assisting us in the non-performing assets and reducing the NPAs. Those outcomes are all being seen.”

22. MD, IIFCL during the aforesaid evidence before the Committee explained about the problems faced regarding Termination payments as under:

“The other part is termination payments. Termination payment has been a major issue for us. The termination payments have not been forthcoming. It is only in the last year that we have started demanding termination payments from the NHAI. So, now it started flowing in. We hope in the future it will flow in faster. I completely agree with the Hon’ble Member, because if an arbitration award is given or if a conciliation award is given, at least 90 per cent of the amount must be made good by the NHAI before we go to the next level. There is a Conciliation Committee, after that arbitration takes place and after that they go to the court. But the NHAI never gives us the termination payments. They put us in the loop and it takes a long time. It is a time-consuming process and it has been affecting not IIFCL alone. I am talking for the banking sector and for the financial institutions also. IIFCL is just one institution. As a policy advocate and as an institution that needs to throw out the issues, we are throwing out all the issues now. Termination payment is being done by the NHAI itself. It is a conflict of interest. NHAI is a concessioning authority as well as a termination payment giver. Both these functions are housed in the same authority is again a conflict of interest. It is best that the termination payments are outsourced to an insurance company. The NHAI must be an institution that subscribes to the insurance premium for such a termination payment so that once the event happens the insurance company comes in and issues the termination payments. Then, the banking sector and the financial institutions will be saved of the delay.”

23. Elaborating further on the drawbacks of Concession Agreement and Termination Payments under SIFTI, the MD, IIFCL elucidated about the process as under:

“There are other things like the termination payments for the stalled projects. The Ministry has come out with a Circular, in the first half of 2019, that termination payments will be available for projects which are stalled. But that Circular has not been operated so far. So, stalled projects are suffering. That is one side. On the other side, for revenue shortfall suffering projects, there is a clause in the concession agreement itself that the NHAI can give loan for such revenue shortfalls which has never happened so far. That clause has not been invoked so far in any project. So, if these things happen, they will

help in getting the road projects back in the track. Not only that, most importantly, I would completely agree with the C&AG's recommendation of the tripartite agreement that is to be there among the concessionaire, concessioning authorities and the lenders. Today, the lender is not a party to the tripartite agreement. Therefore, what happens between the concessionaire and the concessioning authority happens to be a kind of bipartite process where lenders have to go for separate approvals with the concessioning authorities. If a tripartite agreement is instituted, this will also solve a lot of problems for the lenders and lenders being the maximum stakeholder in a project, with almost 70 per cent of the project cost, they deserve this. Many of the progressive countries have also put in place these tripartite agreements among the concessioning authorities, concessionaires and the lenders. We need to do that in India. I think it is high time."

24. When asked about any changes in policy brought about after conduct of audit and whether any efforts were made to address the issues of NPAs, the Addl. Secretary, Ministry of Finance (Department of Financial Services) during the course of evidence on 12.01.2022, deposed before the Committee as under:

“सर, जो बिल्ड ऑपरेट ट्रांसफर (बीओटी) मॉडल था, उसको भी बदल दिया गया है। आज की तारीख में एनएचएआई की ओर से हाइब्रिड एन्युटी मॉडल है। इस मॉडल की कई कमियां काफी हद तक दूर कर दी गई हैं, जो उसका वित्तीय एक्सपोजर और रिस्क था, टोलिंग के स्थान पर उसको एन्युटी गारंटीड है। उसको प्रारंभिक 40 प्रतिशत वित्त पोषण मिल जाता है, जिससे उसकी वित्तीय क्षमता बरकरार रहती है और वह फाइनेंशियल क्लोजर अचीव कर पाता है। इस प्रकार इसकी जो कई आधारभूत और अंतर्भूत कमियां थीं, उनको दूर किया गया है।

सर, तीसरी चीज यह है कि जो सिफ्टी (एसआईएफटीआई) योजना है, सिफ्टी योजना में पहले केवल अग्रणी बैंक के ऊपर दारोमदार था। अब नई योजना जो वर्ष 2017 से सिफ्टी का नया स्वरूप आया है, उसमें प्रत्येक लेंडर को, चाहे वह अग्रणी न भी हो, जैसे आईआईएफसीएल किसी भी मामले में अग्रणी नहीं था, वह अब खुद की अंडर राइटिंग और उसमें परीक्षण कर सकता है और कर रहा है। इस प्रकार कुछ आधारभूत कारण जो इस ऑडिट के सामने उजागर हुए हैं, उनको एड्रेस किया गया है। इन पर कुछ कार्रवाई और अच्छी प्रगति हुई है। इसका परिणाम यह है कि आईआईएफसीएल के वित्तीय परिणामों में भी यह परिलक्षित हो रहा है। वर्ष 2019 में आईआईएफसीएल का प्रॉफिट ऑफ्टर टैक्स 102.43 करोड़ रुपये था, जो बढ़ कर फर्स्ट हाफ ऑफ सितंबर, 2021 तक 553.37 करोड़ रुपये हो गया है। इसी प्रकार से

एनपीए लेवल 18.53 प्रतिशत था, पूरे क्षेत्र में मैंने जैसे बताया कि 23.62 प्रतिशत था, तो यह 18.53 प्रतिशत से घट कर अब 14.24 प्रतिशत हो गया है, तो स्थिति में समय के साथ थोड़ा सुधार हो रहा है।”

C. Para 5.1.2.2 - Not Ensuring Availability of Necessary Clearances/Approvals

25. Audit observed that one of the conditions for loan disbursement in all CLAs was that the Concessionaire shall obtain all requisite statutory and other necessary approvals, including the forest, environmental and pollution clearances/ approvals before commencing disbursement. The status of the compliance of pre-disbursement conditions before first disbursement of loan in the selected cases is as under:

Category of Loan	Sample size	Compliance to pre-disbursement condition of all clearances/ approvals	
		Yes	No
NPA	9	3	6
Fresh sanction & disbursement	3	3	0
Old sanction & disbursement	9	8*	0
Restructuring	3	2	1
Total	24	16	7
*One case pertained to take out finance where clearance issue was not applicable			

26. Audit noted that in 29 per cent (7 out of 24) cases, the loans were disbursed despite non-compliance of the pre-disbursement conditions of obtaining environment/ forest clearance and other necessary approvals before first disbursement. Delay of 13 months to 95 months in obtaining statutory clearance has resulted in delay in completion of work and consequently turning of six loan cases in NPAs and restructuring of one loan case.

27. In response to Audit’s observation, IIFCL submitted that the Concessionaire had issued the draw down notice confirming that all the pre-disbursement conditions in CLA had been satisfied and all the necessary certificates had already been provided. As per SIFTI, IIFCL disbursed the amount in line with what the lead bank disbursed in the Project. In this regard, Audit retorted stating that that the Inter Creditor Agreement (ICA) required the lenders to decide on sanction/ disbursement of facility based on their independent judgement without reliance on information provided by any other lender.

28. When asked the reason for not obtaining environment/forest clearance and other necessary approvals, although these are pre- disbursement conditions to be met for sanction of loan, IIFCL in a written note informed the Committee as under:

“As per SIFTI, IIFCL is to follow and be in line with the Lead Bank appraisal/sanction, which it has been diligently complying with. While the Lead Banks/Lenders do stipulate conditions for obtaining environment/forest clearance and other necessary approvals as pre-disbursement conditions during sanction of loan, IIFCL has ensured that such conditions are pre-requisites for any sanction of its loans. Further, IIFCL has also ensured the compliance of these conditions, in line with the Lead Bank. In addition to the above conditions, IIFCL has also commenced its independent appraisals and has been stipulating additional terms and conditions based on its own experience of such sectors and the nature of the project and its specialized financing requirements, for ensuring better viability of the project. These efforts have also been appreciated by the Lead and other lenders in the various consortiums.”

29. In response to IIFCL’s aforesaid reply, Audit further contended that the ‘No Reliance’ Clause (5.12) of Inter Creditor Agreement required the lenders to decide on sanction/ disbursement of facility based on their independent judgment without reliance on information provided by any other lender. This was not complied. The Ministry’s reply is silent about the reasons for non-compliance.

30. The Committee also felt that the disbursement of loan without ensuring availability of statutory clearances (being pre-requisite for disbursement of loan) was failure of IIFCL’s procedure/mechanism of internal control and desired to know about the corrective measures taken by IIFCL. In this regard, IIFCL in a written note submitted as below:

“Accordingly, IIFCL in line with Lead Bank’s and the ICA’s terms and conditions of sanction has diligently been following the pre-disbursement conditions regarding statutory clearances/approvals with the lead lenders approval wherever required. In view of this observation by C&AG, IIFCL has in 2019 setup a Credit Support Department to further strengthen IIFCL’s project financing process. The main objective of this function would be to independently confirm that all the pre-disbursement conditions are duly and fully complied with at time of first and last disbursement. Accordingly, it is pertinent to state that IIFCL has been duly complying with all pre-disbursement conditions in all the projects sanctioned by IIFCL as stipulated in the ICA and as per Lead Lenders approvals.”

31. When asked about the different levels of internal controls available in IIFCL for sanction and disbursement of loans and at what level these lapses were committed and if any action was taken against the delinquent officials, the Company responded as under:

“While IIFCL considers Lead Bank/Lender appraisals, it has put in place its own internal Control Systems for Sanction, Disbursements and Monitoring. The Company has in place a Credit Policy which lays out the various mechanisms, standards, processes, procedures and delegations for infrastructure project finance. As per the Policy the delegated authority for all types of Sanctions is the Management Committee of the Board comprising Board members. The internal credit sanction process comprises of a New Business Committee which vets the proposals and admits the same for appraisals, if the proposal is found to be in line with the provisions of SIFTI. Thereafter, the proposals are appraised and examined from multi- disciplinary angles viz. technical, legal and financial.

The proposal is also examined from various Risk perspectives by the Risk Management Department headed by the Chief Risk Officer, before being placed for consideration. The proposals are placed before a Credit Committee for necessary recommendations. Thereafter the credit proposals are placed before the competent Authority being the Management Committee of the Board for final sanction.”

32. During the course of evidence on 04.01.2022, MD, IIFCL further elaborated on the monitoring issue as under:

“Two or three major measures, which we have introduced last year, are as follows. Till now, in the sector, we have all been following a very manual and very methodical process of monitoring. There, we have now, digitised the monitoring; and we have put our own software for monitoring the projects online and on a real-time basis, which will make a difference not only to IIFCL but to the entire banking sector.”

33. The Committee noted that much of the corrective efforts mentioned by IIFCL, including independent verification of disbursement conditions, pertain to the period after the issue of the Audit observations as mentioned by CAG in their Report.

D. Para 5.1.2.3 - Adjustment of/ funding of overdue Interest During Construction (IDC)

34. Audit observed that the loan for a project is sanctioned based on the project financials, including *inter alia*, the proportion of interest during construction (IDC) in the project cost. Audit noticed that during disbursement of loans, IIFCL adjusted a higher proportion of loan against IDC than what was approved during loan sanction. The Audit stated that Promoters were required to meet the shortage of funds towards Interest during Construction (IDC). However, it was observed in Audit that loans were disbursed/ adjusted by IIFCL to recover overdue IDC to postpone declaring loan as NPA. With these adjustments, the loan account remained 'standard' though no repayment was made by the borrower as per the loan servicing schedule. Audit noticed six such instances in the sample audited wherein Rs. 284.47 crore was adjusted against the admissible limit of Rs. 124.89 crore. This has resulted in excess adjustment of IDC by Rs.159.58 crore and deferment of NPAs by 4 months to 43 months as detailed in table below:

(Rs. In crore)

Sl. No.	Name of borrower	Inbuilt portion of IDC in loan (IIFCL)	Actual IDC adjusted by IIFCL	Excess adjustment	IDC adjustment through self disbursement	Deferment of NPA
1	BKEL	14.89	44.00	29.11	--	March 2016 to March 2017
2	BHPL	56.82	71	14.18	--	
3	IIGTL	23.98	87.42	63.44	--	July 2013 to January 2017
4	SLHL	9.66	29.7	20.04	5.88	November 2015 to September 2016
5	CPBSRPL	4.52	10.71	6.19	--	--
6	SSRPL	15.02	41.64	26.62	4.02	May 2018 to December 2018

35. When asked about the reasons why lenders defer the account of borrower from becoming Non Performing Assets by adjustment/funding of overdue Interest during Construction (IDC) in case of default/delay in serving the IDC of road projects, IIFCL in a written note informed the Committee as under:

“The Infrastructure Project cost includes the interest during construction (IDC) as an integral and essential component. During construction of the project this component does not have or realize any revenue or income. This component which is an integral part of the project cost needs to be funded as provided for in the CLA/loan documents.

Further as a general practice in the Indian Banking Sector, lenders have been honouring the loan agreements by funding this IDC component with a lending perspective as the project is not expected to generate any revenue or income until and unless it gets completed. While the lenders prudently monitor the projects in various stages, certain inadequate preparations such as non-availability of land as per provisions of the Concession Agreement, Environment and Wild Life clearances, etc. may cause some delays which earlier have been commonly experienced in the Indian construction/infrastructure sector milieu. This may however, not be construed as the only reasons for defaults. IDC has therefore been seen as a legalized cushion well as per the provisions of the loan documents to service interest component during the construction stage so that there is no undue burden on the project for servicing the loan during the construction stage when it does not earn revenue or income. This practice has been in vogue in banking and financial sector uniformly across all projects and sectors, and it is not to be viewed as any undue favour to any concessionaire. While most of time related delays may be due to the earlier imperfect environment while initially ushering in new Public-Private-Partnership (PPP) projects, most projects have been seen to weather such difficulties and overcome the issues and also get completed. Often such time delays result in cost-overruns. In the Indian banking sector, cost-overruns are dealt separately and not as integral to the original project sanctioned limit.”

E. Para 5.1.2.4 - Sanction of loan for cost overrun without obtaining approval from the Concessioneing Authority.

36. Audit observed in their report that as per Common Loan Agreements, the promoter shall bring in additional funds for the cost overrun, if any. Accordingly, any loan disbursed towards cost overrun (by signing supplementary agreements with the concessionaire) without getting the project cost revised from the Concessioneing Authority (NHAI) would not constitute the debt due for the purpose of termination payment. Audit further observed that the CAs provided that in the case of termination of CA, the Concessioneing Authority shall make termination payment towards the ‘debt dues’ of senior lenders subject to the condition that the amount of debt due shall be determined with reference to the terms of Financial Agreements (including CLA). The CLAs stipulate that ‘The promoter/ sponsor of the Concessioneing company gives a

shortfall undertaking that they would invest additional funds in the project in case of any cost overrun and/ or gap in means of financing due to whatever reasons.

37. Audit noted that IIFCL had sanctioned and disbursed loans of Rs. 356.88 crore and Rs. 347.85 crore towards cost overrun including additional IDC, without ensuring prior approval of revised project cost from the concessioning authority in four cases as detailed below:

(Rs in crore)

Particulars	Sanction of cost overrun	Disbursement	Remarks
BHPL	58.69	53.45	The promoter company had also suffered substantial operating losses and was under Corporate Debt Restructuring with one of the directors of the promoter company being arrested in July 2015 for an alleged real estate fraud.
HHPL	51.96	51.96	At the time of sanction of both the above stated cost overruns by IIFCL, the promoter company had suffered loss of Rs.773.09 crore by 31 March 2014 and was under Corporate Debt Restructuring. The release of additional fund under such circumstances was highly risky.
IIGTL	108.64	108.64	Profitability of the promoters had turned into NPA since 2012-13 and credit rating had gone down to 'D' in 2013-14.
REPL	137.59	133.80	-
Total	356.88	347.85	

38. When asked about the reason for sanctioning cost overrun despite there being a condition in Common Loan Agreements for bringing the additional funds for the cost overrun, IIFCL in a written note stated as under :

“While it is well desirable that projects get implemented as per schedule, yet despite the various risk assessments, credit appraisals, due diligence and monitoring, there may be uncontrollable factors due to which projects get delayed, which may be well beyond the control of the borrowers. While CLAs do contain provisions for the borrowers to infuse funds in case of any shortfall, but the shortfalls may sometimes go beyond the capacity of the borrowers.

It is pertinent to mention that after making initial disbursements, it would generally not be feasible to halt further disbursements on account of issues pertaining to time delays (which are generally common) and certain CLA non-compliance which are of regular/renewable in nature. Such halting of fund disbursements during the construction phase may only add and increase stress in the account with gradual

decline in project viability. Historically, it has been observed that initiating substitution clause is not very successful and may lead to further value erosion in the project.

In such situations, such decisions need to be carefully deliberated with the various stakeholders and discussed in detail with the Consortium of Lenders. It needs to be kept in mind that infrastructure assets are ones that serve as public goods. Such decisions must also consider the overall public interest and the economic opportunity losses that may accrue in the absence of such projects. Generally, as per the practice in the Indian banking sector, the Lead Bank considers and assesses the various aspects pertaining to the project including the future viability prospects before issuing the Lenders Confirmation Notice (LCN). The issues which are controllable are considered and salient actions are also envisaged to bring the project back to its schedule. This includes the assessment of the additional cost over-run on account of time over-run. Considering that it will be in the best interest of the lenders to ensure continuance of the project implementation, the RBI has also permitted Cost over runs in projects to the extent of 10% of the project cost. Further, it is the industry practice to stipulate terms and conditions that will require the borrower/concessionaire to infuse any additional funds in case of any.”

39. In response to IIFCL’s contention, Audit clarified that the reply of IIFCL is to be viewed against the fact since cost overrun was funded by the lenders without ensuring approval of revised project cost by the Concessioneing Authority and despite the deteriorating financial position of the Concessionaires/ promoters, IIFCL had written off loan of Rs. 253.46 crore in case of Bareilly Highways Projects Limited (BHPL) and Rs. 156.96 crore in case of Haridwar Highways Projects Limited (HHPL) as the Concessioneing Authority had terminated the CAs.

40. On being asked about the mechanism evolved to safeguard interest of IIFCL in case of cost overrun not approved by concessioneing authority, IIFCL didn’t submit any specific reply.

F. Para 5.1.2.5 - Advances disbursed by concessionaires

41. Audit observed that the Common Loan Agreements (CLAs) inter-alia stipulated that lenders shall review the Engineering, Procurement and Construction (EPC) contract before making disbursement of first instalment of loan. In case of all the selected projects, the EPC contracts were awarded by the concessionaires to their promoter companies and these contracts provided for allowing interest free advance without any

security and any time limit for recovery, except in one case of – Barasal Krishnagar Expressway Limited (BKEL) where provision for a Bank Guarantee (BG) was included. Audit noticed that there were deficiencies of following nature in release/ adjustment/ recovery of the advances in 8 cases as under:

- (a) In 7 cases, an amount of Rs.1392.45 crore was given as advance to promoter companies. Amount of advance given to these promoter companies was equal to or more than their equity contribution.
- (b) In 1 case, provision for mobilization advance was inserted only through a Supplementary EPC and mobilization advance given in this case was revolving.
- (c) In another case, mobilization advance of 10% was given to Promoter Company which further gave only 5% advance to sub-contractor thereby retaining interest free advance of Rs. 165.30 crore.
- (d) In 2 cases, the Concession Agreement was terminated and IIFCL wrote off entire loan amount of Rs.132.2 crore and mobilization advance remained unadjusted.
- (e) Neither CA certificates nor LIE's reports contained details of advances paid/utilized.

42. The Committee noted that IIFCL did not vet the Engineering Procurement Construction (EPC) contracts although it had every right to do so and did not ensure that the terms of Engineering Procurement Construction contract were fair, transparent and not unduly favourable to the promoter companies. Similarly, the concessionaires were allowed to extend mobilization advances to their promoter companies without adequate provisions for Bank Guarantees/ encashable security and there was no independent evaluation /monitoring of the project done as per agreed terms/milestones to safeguard its own interest by IIFCL.

43. When asked about the reasons for allowing to extend mobilization advances to their promoter companies without any independent evaluation/ monitoring of the project, IIFC in a written note submitted as under:

“As a part of financial assistance to PPP infrastructure projects, the contractual/ concessioning obligations of the Primary Lenders are with the Borrower at SPV

level and not with the sub-contractors/service providers being engaged by the borrower which includes EPC contractor who is a sub-contractor of the SPV. Further, on behalf of the Consortium of Lenders, the Lead Bank, inter alia, holds the responsibility to evaluate, examine, release of funds, monitor end-use, and deal with any such sub-contractors or service providers in order to ensure that the engagements are fair and transparent and are in the interest of the Project / Consortium of Lenders. The Lead Bank also appoints various service providers and facility agents such as Lenders Legal Counsel, LIE, Chartered Accountants, Insurance Advisors, etc., whom the Lead Bank utilizes for ensuring proper due diligence.

In any project, an advance amount is released to the EPC to mobilize the necessary resources for commencing the project. This is done with a view to achieve the target mile stone of project completion. It is industry practice to give interest free mobilization advance to mobilize the men and material at site including acquisition of raw material, advances paid to the quarries, advance money to suppliers such as cement, steel, bitumen etc. As such making such a payment to the EPC contractor forms part of the EPC contract.

The other member lenders of the consortium neither hold such responsibilities nor have the authorization to directly access such service/sub-contractual engagements. In view of the overall role of the Lead Bank including monitoring activities as per the CLA/ICA/Loan documents which may include evaluating/allowing service providers, etc. entail a higher fee component to the Lead Lender.

In the said projects, as per the certifications of the Chartered Accountant, the promoter infused the required equity contribution. Upon compliance of the said condition of the Common Loan Agreement (CLA), and as duly instructed by the Lead Lender through its Lending Confirmation Notice (LCN), the Consortium of Lenders including IIFCL released their share of disbursement.

Therefore as a member of the Consortium, duly in compliance with the provisions of SIFTI and its Credit Policy, IIFCL, and other lenders in the Consortium duly followed in line with the Lead Bank. Since IIFCL is not the Lead Bank in the instant cases and has duly followed the SIFTI, Lead Bank and Consortium of Lenders and in accordance with its Credit Policy, there are no lapses on part of any officials.”

44. Audit countered the aforesaid reply of IIFCL stating that the response of the Company does not include as to why bringing in equity was not made part of condition to sanction mobilization advance. Further, the Bank Guarantee (BG) clauses in agreements protect the financial interests of lenders. If industry practice was reviewed, NHAI is in the practice of including the above clauses on advance and Bank Guarantees in its Agreements. Inter Creditor Agreement required independent

assessment. Besides, this issue was never brought to the attention of the Lead Banks in any consortium meetings by IIFCL and provisions of the Agreements were not properly vetted by lenders to protect their financial interests.

G. Para 5.1.2.6 - Inadequacies in review of financial and physical progress

45. Audit observed that as per the directions issued by RBI in July 2015, the banks/ financial institutions should not entirely depend upon CA certificates and need to strengthen their own internal controls and the credit risk management system to enhance the quality of their loan portfolio. Audit examined the reports of Lender's Independent Engineer (LIE) on the progress of work which revealed there were wide differences between the financial progress vis-à-vis physical progress, indicating that the project funds were not utilised efficiently for the project work. Some of the instances which Audit mentioned in their report are as under:

- (a) In case of Bareilly Highways Projects Limited (BHPL), against revised project cost of Rs.2,601.89 crore, total funds (i.e., loan disbursement, equity contribution by promoter and grant of NHAI) provided to the Concessionaire till July 2017 was Rs.2,417.95 crore (93 *per cent*), whereas, as per LIE's monthly progress report of August 2017, the physical and financial progress of the project was only 73.50 *per cent* and 77 *per cent* respectively. However, without giving cognisance to the unutilised funds lying with the Concessionaire, the lenders' consortium in November & December 2017 made further disbursement of Rs.160 crore in two more instalments towards cost overrun including IIFCL's share of Rs.23.70 crore.
- (b) Similarly, in case of Haridwar Highways Projects Limited (HHPL), against revised project cost of Rs.1,645.25 crore, total funds provided to the Concessionaire till February 2018 were Rs.1,525.03 crore (92.69 *per cent*), whereas, as per LIE's monthly progress report of February 2018, the physical progress of the project was only 73.73 *per cent*. Reasons for slow progress of work despite availability of funds were not ascertained to take corrective action by the lenders including IIFCL.
- (c) In case of Concast Path Bameetha Satna Road Projects Private Limited (CPBSRPL), the audit observed gap of 27 *per cent* between financial progress and physical work, which reflects poor monitoring of lenders including IIFCL over work progress.

46. In these cases, IIFCL, in May 2020 submitted to Audit that the lenders had disbursed the amount as the project was more than 70 *per cent* complete and nearing PCOD. The Ministry also endorsed the views of the Management. However, Audit did not find the reply acceptable as disbursing the loan without verifying the progress against the previous disbursements for achieving PCOD was not prudent. IIFCL again in response to Audit's disagreement, clarified that, different methodologies are applied by different agencies such as LIE, IE for measurement of physical and financial progress. Therefore, there are two different set of statements which are normally not comparable. The Ministry endorsed the views of the Management. However, according to Audit, this clarification was still not acceptable as the difference was substantial and the same should have been reconciled from the concessionaire/ LIE.

H. Para 5.1.2.7 - Disbursement of loan without verifying utilisation of previous disbursal

47. As per the provisions of CLA, borrowers are required to certify while requesting for drawl of loan that *'the proceeds of the earlier draw down have been applied only to finance the estimated project cost and the proceeds of proposed drawdown shall be applied to meet this cost'*. Audit however observed that the borrower's had only submitted general statements in the notice, such as (i) proposed disbursement shall be applied only towards the estimated project cost; (ii) the proceeds would be used in accordance with the CLA. These certificates did not provide reasonable details of road stretches/ activities on which the proposed loan would be spent. Such details were also not given in the LIE's drawdown certificates enclosed with draw down notices and the LIEs generally certified that the proposed disbursement is reasonably and timely needed by the borrower to make payments for the project costs in accordance with the project completion schedule. Details such as road stretch/ activity where the fund would be used were essential in the drawl notice, for ensuring genuineness of the fund requirement from borrower and also for verifying the progress of work in real terms against the previous disbursements at the time of next disbursement. Audit observed that in the absence of such details, the prevailing internal control failed to provide due assurance on utilisation of the project fund. Audit noticed that loan of Rs. 563.32 crore was disbursed to Barasal Krishnagar Expressway Limited(BKEL) and

Rs. 619.26 crore was disbursed to SEW LSY Highway Limited (SLHL) against work done of Rs.656.58 crore. As such, there was excess disbursement of loan amounting to Rs.526 crore with respect to the work done and loans turned into NPA. IIFCL had written off its loan portion of Rs.210.24 crore as CAs were terminated by NHAI.

48. In response to the aforesaid Audit observation, IIFCL in a written note stated that the funds were disbursed on reimbursement basis against LIE certified bills. At any point of time the project progresses on multiple chainage and as such ascertaining on what chain funds were utilised is not possible. The Ministry in June 2020 endorsed the views of the Management. According to Audit the reply indicates failure of lenders to effectively monitor the project expenditure as it could not ascertain on what chain funds were utilised.

49. When asked about the monitoring mechanism/system to monitor the utilization of funds released so as to effectively control further disbursement, IIFCL in a written note informed as under:

- Meaningful scrutiny of quarterly progress reports / operating statements / balance sheets of the borrowers: IIFCL has been diligently obtaining financial statement on Annual basis.
- Regular inspection of borrowers' assets charged to the lenders as security. Periodical scrutiny of borrowers' books of accounts and the 'no-lien' accounts maintained with other banks: In SPV mode of financing only one Escrow Account is opened and operated.
- Periodical visits to the assisted units: - IIFCL has been regularly conducting on-site visits of the project, and whenever this does not seem possible within the given time frame and site visit report of the Lead Bank or any other consortium lender is duly obtained for analysis.

50. Audit countered stating that the reply of the Ministry was not relevant as it does not address the query as to why the details like road stretches/activities on which further disbursement of loan would be spent, were not insisted upon by IIFCL from the concessionaire, before disbursement.

I. Para 5.1.2.8 - Inadequacy in site visits

51. Audit observed that the Lenders, in co-coordination with the Concessionaire, conduct site visits to monitor the progress of work. Such visits also support the lenders in verifying the work progress reported by LIE, CA and the Concessionaire. As per the Credit Policy of IIFCL of 2012 (revised in 2015), the site visit will be arranged by the lead bank or the borrower, and it was desirable for IIFCL to join the first visit before commencing any disbursement. Subsequently, IIFCL was to ensure atleast one visit in a year for each project. In this regard, Audit noticed the following:

(i) In four cases, (SMTL, BPMCPL, AETPL and YATL}, the lead banks had conducted the first site visit before first disbursement of loan. IIFCL, however, did not join the same. In case of AETPL, IIFCL attended only one site visit (February 2017) during the period 2016 to 2019.

(ii) In five cases (BKEL, HHPL, NJTBPL, PSTPL and SSRPL), the lenders had not made any site visit before making first disbursement. The first site visits were conducted with a lapse ranging from 2-18 months from the dates of first disbursement. Thus, it was evident that IIFCL did not consider the site visits as an important tool of monitoring the project, despite stipulation in their Credit Policy.

52. While noting the Audit observation for future compliance in cases of HHPL, YATL, AETPL, BKEL and PSTPL, IIFCL replied that in case of SMTL, BPMCPL, SSRPL and NJBTPL, it was not possible to attend few site visits due to paucity of manpower and office exigencies. The Ministry in June 2020 endorsed the views of the Management. Audit further stated that the reply of the Company is to be viewed against the fact that site visit was one of the elements instituted for effective monitoring of the project, for securing project viability and ensuring quality of loan assets. Hence, required resources should have been put in place in the larger interest of the organisation as well as the projects.

53. On the aforesaid issue, IIFCL clarified that as per the Company's Credit Policy of year 2015 and 2018, the latest inspection report of Lead Bank may be obtained, examined and kept in record. Accordingly, wherever site visit is not conducted by IIFCL, site visit report of Lead Bank or any other consortium lender is obtained for analysis.

III. OTHER FINDINGS OF AUDIT

(a) Sanction and disbursement of loan on the basis of unrealistic projections of traffic/ toll revenue

54. Audit observed that while availability of RoW is essential for completion/ operational viability of road projects, realistic projections of traffic and toll collection also have a bearing on the commercial/ financial viability of the projects. If the project is commercially/ financially unviable, the risk of the Concessionaire not being able to service the loan becomes high.

55. For instance, Audit noted that in case of SMTL (NPA), the report of the traffic consultant in November 2011, had ignored the impact of prevailing imposition of restrictions on illegal mining in State of Orissa on the toll revenue. However, in addendum traffic report of September 2012, considering the restriction on illegal mining, number of trucks was considered as 3,600 per day and number of other vehicles remained unchanged as presented in earlier traffic report.

56. In another instance, IDBI Bank (the lead lender), in November 2012, in its loan appraisal for projected traffic, however, increased the traffic flow exponentially to 29,154 (2 and 3 Axle) trucks with hypothetical assumptions that there would be future increase in demand of iron ore due to proposed Tata Steel plant in Duburi, improvement in the iron ore export by 2016 and improvement in condition of road which would further increase the traffic, etc. The project was completed in August 2017. LIE, on the basis of survey conducted in December 2017 over a period of seven days, reported actual average daily traffic of 1,069 (2 and 3 Axle). As the toll revenue was lower than anticipated, the Concessionaire failed to service the loan, leading to turning the IIFCL loan of Rs.278.66 crore into NPA on 31 December 2017. Later, the Concessionaire issued notice of termination on 27 March 2019 on the grounds of force-majeure clause.

57. IIFCL, while accepting the audit observation, replied in May 2020 that the project was found viable based on other factors viz. increase in demand of iron ore in the existing industries in the Kalinga Nagar area and proposed Tata Steel plant in Duburi,

improvement in the iron ore exports, expected development in cargo handling capacity in Paradip Port etc. IIFCL further added that they followed the lead bank appraisal/sanction as per SIFTI. In response, Audit stated that the reply of IIFCL is to be viewed against the fact that IIFCL is mandated to finance viable projects only under SIFTI and the toll revenue, projected and considered at the time of appraisal was not based on realistic traffic.

58. In this regard, when the Committee asked the Company about the steps taken to address this issue, MD, IIFCL during the course of evidence on 04.01.2022 deposed before the Committee as under:

“Another issue is regarding the over statement and aggressive traffic studies because of which the toll revenue also has suffered a lot and many projects have gone unviable because of that. In that area also, the traffic consultant evaluation, assessment and rating have a lot of limitations. The NHAI does this appointment, evaluation and assessment of traffic consultants. We feel that there should be a system of rating and the public information of such ratings given about each traffic consultants so that tomorrow if a lender wants to give a loan to a particular project, he will be able to see whether the traffic consultant is well rated or not. That information is not available today. So, that is another reform which we have been trying to profess with the NHAI. If you recommend that, it would find very good favour.”

(b) Non-cognisance of apparent risk while sanctioning a loan under Takeout finance

59. Audit observed that in case of Sion-Panvel Tollways Private Limited (SPTPL), the Concessioneing Authority (PWD, Government of Maharashtra) allowed toll collection from 01 January 2015 but exempted certain category of local vehicles from payment of toll, even though no such exemption was agreed in the CA. On 30 June 2015, PWD, further exempted light motor vehicles such as car, jeep etc., having capacity upto 12 passengers, from payment of toll. This affected the toll collection of SPTPL and consequently, the loan of IIFCL in the project amounting to Rs.160 crore turned NPA on 30 September 2016. SPTPL issued notice to the Concessioneing Authority on 28 November 2017 for termination of the CA and PWD has since taken over the project. As on January, 2020 the issue of the termination payment was under Arbitration.

60. Audit further noticed that IIFCL did not take cognisance of similar risk in another project MEPIPL in the same State (Maharashtra), wherein IIFCL in February 2016 sanctioned additional Take out Finance of Rs.269.90 crore for an operational project in Mumbai. Thus, the known risk of exempting the toll collection from certain category of vehicles arbitrarily by Government of Maharashtra was not given due cognisance in this Take out Finance. In this context, IIFCL replied that Toll notification issued by PWD, Government of Maharashtra is not applicable to MEP infrastructure Private Limited and MEPIPL is collecting the toll to service the debt obligation (interest plus Principal payment) to all the lenders. Hence, the risk to SPTPL is not applicable to MEPIPL. Therefore, the comparison between the two projects is not appropriate. The exemption of vehicles by PWD was a force majeure situation which could not be predicted. The Ministry endorsed views of the Management.

61. Audit noted that the reply of IIFCL is to be viewed against the fact that the toll exemption was given arbitrarily by Government of Maharashtra without an acceptable compensation to the Concessionaire leading to termination of contract by the Concessionaire. In the instant case, the said risk of Government of Maharashtra exempting certain categories of vehicles from toll collection and its fallouts were already experienced by IIFCL and therefore, the risk should have been considered and mitigated by IIFCL before sanction of the loan under takeout finance.

(c) Equity infusion and Shareholding Pattern

62. As per RBI directions prevailing in July 2009, the funding agencies should not depend entirely on the Certificates of Chartered Accountants (CA Certificate). Rather, they should strengthen their internal controls and the credit risk management system to enhance the quality of their loan portfolio. One of the measures suggested by RBI in this regard was the periodical scrutiny of borrowers' books of accounts and the 'no-lien' bank accounts. CLAs required that (i) the promoters shall bring upfront equity in Escrow Account, before the disbursement of loan, and (ii) Management of, and control over, the Concessionaire shall not change, without the prior written consent of the Lenders. The CAs also required that the Concessionaire shall not undertake or permit any change in

ownership, except with the prior approval of the Concessing Authority. Examination of selected cases in Audit revealed as under:

“In case of CPBSRPL, the CLA stipulated that the promoter would bring in equity contribution into an Escrow Account opened with Oriental Bank of Commerce, which was also the lead bank. The promoter made deposits in 16 tranches, each of Rs.0.50 crore, during 21 to 30 May 2015, as share application money, in a non-escrow bank account, opened with Allahabad Bank. The funds, so deposited in each tranche, were withdrawn on the same day. In the CA Certificates dated 06 January 2015 and 15 June 2015, attached with the Concessionaire’s drawdown notices, the total amount of above 16 tranches of deposit was treated as equity infusion of Rs. 08.00 crore in the project by the promoter. Considering any deposit made by the promoters in a non-escrow bank account as equity infusion was irregular.”

63. In this regard, IIFCL replied that as per SIFTI, monitoring is the primary responsibility of the lead bank. The Ministry endorsed the views of the Management. This clarification was not acceptable to Audit as IIFCL did not apply due diligence in line with RBI guidelines and the provisions of Inter Creditor Agreement which required independent decision making. Further, any deposit, made in a non-escrow account, cannot be treated as equity infusion in the project as certified by CA. As per annual accounts of 2013-14 of CPBSRPL, the shareholding of PATH, one of the two promoters in CPBSRPL, was reduced to 0.02 *per cent* whereas the shareholding of Concast Infrastructure Limited had gone up to 99.98 *per cent*, which remained so till 31 March 2016. Records of IIFCL did not indicate any approval for the change in shareholding pattern by the Concessionaire. Yet, IIFCL disbursed the loan despite the change in shareholding pattern, in contravention of the pre-disbursement condition stipulated in the CLA.

64. In response, IIFCL replied that in meetings held with the Concessing Authority, PATH agreed to actively participate in the project. However, PATH did not honour its commitment and the lenders have filed an application against PATH in NCLT. The Ministry, in June 2020, endorsed the views of the Management. Audit, however did not find the reply of IIFCL acceptable as records of the Company did not indicate that the lenders including IIFCL took any action against the Concessionaire during currency of the CA. Further, the financials of the Concessionaire showed that there was a change in shareholding pattern which was either overlooked or not given due consideration

which led to disbursement of the loan despite non-compliance to the pre-disbursement condition stipulated in the CLA.

PART - II

OBSERVATIONS / RECOMMENDATIONS OF THE COMMITTEE

A. OVERVIEW

1. India Infrastructure Finance Company Limited (IIFCL) is a public sector financial institution established in January 2006 that is wholly owned by the Government of India. The Company is mandated and governed by the Central Government approved Scheme more commonly known as “SIFTI”. As per SIFTI, IIFCL is mandated to provide long term financial assistance to viable infrastructure projects that broadly include transportation, energy, water, sanitation, communication and social & commercial infrastructure. The present Audit Para no. 5.1 of C&AG Report no. 18 of 2020 selected and examined by the Committee relates to review of loans to road projects given by IIFCL during the period 2016-17 to 2018-19. After examination of the CAG para, the views of the Committee are in consonance with the findings of the Audit which primarily relates to (i) not carrying out due diligence on project before signing of Common Lending Agreement (CLA), (ii) non compliance to the conditions set in the CLAs before disbursement of loan, (iii) not incorporating suitable pre-disbursement clauses in the CLA to protect IIFCL’s interest, (iv) lenders not giving due cognisance to the risks of Right of Way (RoW) availability, (v) weak monitoring of project progress due to inadequacies in internal control systems established by lenders, (vi) financing of cost overrun without seeking approval from Concessions Authority, (vii) need for tripartite agreements between Concessions Authority (NHAI), Concessionaire (developer) and Lender/ IIFCL/ Banks. Evidently, these deficiencies have resulted in NPAs and write offs to a tune of Rs. 2488.27 crore in 24 road projects financed by IIFCL mostly under Build Operate and Transfer (BOT) contract model on lines of Public Private Partnership (PPP).

2. The Committee have been informed that since inception of SIFTI in 2006, the Scheme has so far been revised ten times. These revisions were effected

based on the experience of IIFCL in the dynamics of the evolving infrastructure financing environment. Consequently, the lacunas in BOT model have been addressed with the introduction of Hybrid Annuity Model (HAM) in 2016. The Committee without delving much into the present status of the projects financed by IIFCL, have rather attempted to address a larger issue in identifying the inadequacies and shortcomings attached to the model itself that resulted in huge NPAs. The Committee in their report have stressed the need for (a) tripartite agreement, (b) inclusion of pre-disbursement clauses in Common Lending Agreements (CLA), (c) outsourcing of termination payments to insurance company, (d) restricting concessionaire from allowing any advance other than mobilisation advance, (e) need for providing rating to traffic consultants, (f) emphasised the importance of site visits, (g) institute measures to address NPAs and monitoring the utilization of funds. The observations of the Committee are elaborated in subsequent paragraphs. The Committee hope that, with the suggested improvements in the system, the risk involved in lending and borrowings in road infrastructure projects will be greatly minimised.

B. NEED FOR TRIPARTITE AGREEMENT

3 The Committee note that IIFCL provides loans to road projects being executed under Public-Private Partnership (PPP) model, based on Concession Agreement (CA) signed between a Concessionaire (the developer) and a Concessions Authority viz. National Highways Authority of India (NHAI)/State Government Agencies. At present, the lender i.e. IIFCL/ Bank is not a party to the concession agreement. So, the agreement between the Concessionaire and the Concessions Authority happens to be a kind of bipartite process where lenders have to go for separate approvals with the Concessions Authorities. As such, the lenders interest remains unprotected. Since Lenders/ IIFCL/ Banks are key stakeholders in any road project, the Committee is of the view that their interest needs to be protected. The Committee feel the need for instituting a system of tripartite agreement between Concessionaire, Concessions Authority and lenders/ IIFCL/ Banks. Such tripartite agreements are already prevalent in many

progressive countries to protect the interest of lenders. The Committee desire the Government to make the necessary provision in SIFTI.

C. INCLUSION OF PRE-DISBURSEMENT CLAUSES IN COMMON LENDING AGREEMENT (CLA)

4. The Committee note that loan was sanctioned by IIFCL without mitigating the risk of non-availability of atleast 80% Right of Way (RoW) of the project on the Appointed Date before disbursement of first loan installment which was one of the main reason for three loans amounting to Rs. 674.35 crore turning into NPA. IIFCL submitted to the Committee that NHAI was declaring Appointed Date without complying with agreed terms of providing RoW at the right stages. In many cases NHAI neither made the balance RoW available within six months of Appointed Date nor descoped the RoW which resulted in erosion of viability of the road projects. The Committee realise that as per SIFTI, IIFCL is to finance viable projects only and without the unencumbered RoW for construction of road, the viability of the project cannot be established and that in itself is a risk. As such, IIFCL was required to safeguard its interest by ensuring inclusion of suitable pre-disbursement clauses in the Common Lending Agreement(CLA) on pre-availability of RoW and its compliance to mitigate the risk, which was not done by IIFCL. The Committee do not agree to the contention of IIFCL that as per SIFTI, it was supposed to follow the appraisal carried out by the lead bank because Inter Creditor Agreements (ICAs) had a 'no reliance' clause which provided that the lenders had to undertake their own assessment. Besides, as per SIFTI, IIFCL borrowings are guaranteed by the Government of India and hence it was imperative on the part of IIFCL to undertake risk assessment comprehensively and enforce suitable conditions in contract/ agreements. However, IIFCL failed to include pre-disbursement conditions in CLA. In this backdrop, the Committee desire that, in future, IIFCL should include loan disbursement conditions in sanction letter/ Common Lending Agreements (CLA) on availability of RoW to cover the risks flowing out of restrictive clauses like termination payments, conditions in concession agreements or stricter conditions to safeguard its financial interest.

D. OUTSOURCING OF TERMINATION PAYMENTS TO INSURANCE COMPANY

5. SIFTI provides that if a Concession Agreement is terminated by Concessions Authority (NHAI) for concessionaire's (Contractor) default, a termination payment equivalent to 90 % of debt dues would be payable by the Concessions Authority to the Concessionaire, provided that the project is issued the Certificate of Provisional Commercial Operation Date (PCOD) by the Concessions Authority after completion of at least 75% work of the project thereby permitting the Concessionaire to collect toll revenue from operations of the project pending completion. The Committee, however, find it disheartening to note that although the Ministry has issued a Circular in 2019 that termination payments will be available for stalled projects, the Circular has not been implemented so far due to which many stalled projects have suffered. Also, for revenue shortfall suffering projects, there is a clause in the CA which provides that NHAI can give loan for such revenue shortfalls; but this clause has also not been invoked so far. Consequently, IIFCL is facing problems in recoveries as most of the termination payments are not forthcoming or inordinately delayed by NHAI. For instance, in case of SPTPL, notice was issued to NHAI on 28 November 2017 for termination of CA, but as on January 2020 the termination payment was still under arbitration. Further, in case of SMTL and IVRCL Indore Gujarat Tollways Limited which are one of the top Non Performing Accounts of IIFCL, the termination payments were yet to be released. The Committee feel that the whole arrangement involves conflicts of interest with edge as the power of termination and the power to compensate are with the same Authority, NHAI being the Concessions Authority as well as a termination payment giver. In order to ensure that stalled projects do not suffer and termination of CAs are more judicious & transparent and termination payments are not unnecessarily delayed, the Committee desire that termination payments be outsourced to an Insurance Company with NHAI as a subscriber to the insurance premium for such termination payments. In case of any eventuality, insurance company can issue the termination payments on time and Lenders/ Banking sector or the financial institutions are saved of the inordinate delay.

E. RESTRICTING CONCESSIONAIRE FROM ALLOWING ANY ADVANCE OTHER THAN MOBILISATION ADVANCE

6. The Committee are surprised to note that IIFCL did not vet the Engineering Procurement Construction (EPC) contracts although it had every right to do so and did not ensure that the terms of EPC contract was fair, transparent and not unduly favourable to the promoter companies. Besides, the concessionaires were allowed to extend mobilisation advances to their promoter companies without adequate provisions of Bank Guarantees/ en-cashable security and there was no independent evaluation / monitoring of the project done as per agreed terms / milestones to safeguard its own interest by IIFCL. The Committee are not in agreement with the rationale put-forth by IIFCL that in PPP infrastructure projects, the contractual/ concessioning obligations of the primary lenders are with the borrower at SPV level and not with the sub-contractors/ service providers being engaged by the borrower which includes EPC contractor who is a sub-contractor of the SPV.

7. The Committee are of the view that Bank Guarantee (BG) clauses in agreements protect the financial interests of lenders and as an industry practice, NHAI is in the practice of including the above clauses on advance and BGs in its agreements and ICA. Ironically, these issues were never brought to the attention of the Lead Banks in any consortium meetings by IIFCL and provisions of the Agreements were not properly vetted by lenders to protect their financial interests. The Committee, therefore, desire that a mechanism may be developed to restrict the Concessionaire from allowing any advance, other than mobilization advance, to the EPC contractor, that too backed by sufficient en-cashable security, in the possession of the lenders and such advances should be recovered in a time bound manner.

F. NEED FOR PROVIDING RATING TO TRAFFIC CONSULTANTS

8. The Committee note that in road financing, the lenders i.e. IIFCL and Banks have negligible physical security against the loan dues as the main assets of the project viz. land, road and other structures thereon constructed by the concessionaire are owned by the Concessions Authority (mainly NHAI). The loan is serviced primarily from toll revenue generated from operations of commercially viable road projects completed under BOT model. Hence if toll revenue does not start or yield the requisite revenue, the loan becomes unserviceable and Non Performing Asset (NPA). Needless to say that availability of Right of Way (RoW), realistic projections of traffic and toll collection have crucial bearing on the commercial/ financial viability of the road projects. Undoubtedly, if the project is commercially/ financially unviable, the risk of the Concessionaire/ borrower not being able to service the loan becomes high. The severity of the risk involved can be validated from the fact that as on 31 March 2019, the Gross NPA in road sector projects financed by IIFCL was to a tune of Rs. 5,187 crore which was 37.25% of the total outstanding amount.

9. The Committee find that overstatement, aggressive traffic studies, unrealistic traffic evaluations and revenue projections by traffic consultants are the main reasons due to which toll revenue in many road projects have suffered severely. Mostly, the revenue forecasts are provided by the Ministry of Road Transport & Highways and NHAI does the appointment, evaluation and assessment of the traffic consultants. Considering the gravity of risk involved in calculating the viability of road projects on the basis of evaluation & projections made by traffic consultants, the Committee feel an urgent need for a system of rating of the traffic consultants on realistic and pragmatic parameters and that such ratings are disclosed in public domain. The system will bring-in more reliability, credibility and prudence in work and traffic/ revenue projections made by the traffic consultants. At the same time, the system will also immensely help the lenders, concessionaires and borrowers to calculate the risk before taking-up or financing any road project. The Committee, therefore desire the Government

to devise ways and means for rating of Traffic Consultants and make available the information in public domain.

G. IMPORTANCE OF SITE VISITS

10. The Committee note that lenders, in coordination with the Concessionaire conduct site visits to monitor the progress of work. Such site visits support the lenders in verifying the work progress reported by Lenders Independent Engineers (LIE), Concessioneing Authority and the Concessionaire. As per the Credit Policy of IIFCL of 2012 (revised in 2015), the site visits will be arranged by the lead bank or the borrower and it was desirable for IIFCL to join the first visit before commencing any disbursement. Subsequently, IIFCL was to ensure atleast one visit in a year for each project. The Committee, however, observe that in four cases viz. SMTL, BPMCPL, AETPL and YATL, although the first site visit were conducted by the lead bank before first disbursement, IIFCL did not join the visit. Further, in five other cases viz. BKEL, HHPL, NJPL, PSTPL and SSRPL, the lenders did not make any site visit before making first disbursement. The first site visit in these cases were conducted after a lapse of 2 to 18 months from the date of first disbursement. The Committee take a serious note of the casual response given by IIFCL that the site visits could not be conducted due to paucity of manpower and office exigencies and that as per the revised Company's Credit Policy of 2016 and 2018, the latest inspection report of lead bank can be obtained, examined and kept in record. The Committee is of the view that site visits are one of the key elements instituted for effective monitoring of the project for securing project viability and ensuring quality of loan assets and hence required resources should have been put in place in larger interest of IIFCL as well as to ensure the viability of projects. IIFCL should not solely depend on the report of Lead Bank or any other consortium lender, but rather, should evolve a suitable mechanism for regular monitoring of the projects that they finance.

H. NEW MEASURES INSTITUTED TO ADDRESS NPAs AND MONITORING THE UTILIZATION OF FUNDS

11. The Committee have been informed that IIFCL has instituted several measures to address NPAs and monitoring the utilization of funds. The Company has put in place a Board approved Management Policy which lays out the Directives and Guidelines for time-bound resolution of NPA by taking proactive actions towards close monitoring, constant follow-up and evolving suitable modes for early resolution/ recovery of dues in line with the prescribed norm/ guidelines of RBI and other applicable statutory/ regulatory authorities or directions from the Central Government. IIFCL has set up a specialized Recovery and NPA Management Department and has strengthened this department with officers with specialized skills in recovery and NPA Management. The capacities were further strengthened with external experts including and independent High Level Advisory Committee which is chaired by retired Hon'ble Judge of the Madras High Court and two former Executive (whole-time) Director of Public Sector Banks and Financial Institutions.

12. Similarly, to monitor the utilization of funds for further disbursement, IIFCL informed that it has taken several measures such as (a) meaningful scrutiny of progress reports, balance sheets of borrowers, (b) regular inspection of borrower's assets, books of accounts including 'no-lien' accounts maintained with other banks, (c) conducting regular on-site visit of the projects, etc.

13. The Committee appreciate the measures taken by IIFCL and hope that these initiatives will keep NPAs under check and also help IIFCL in discharging its role as a pioneer lender in financing infrastructure projects. The Committee understand that although these initiatives have been taken post audit findings, nevertheless, these measures will go a long way in improving and strengthening the functioning of IIFCL.

New Delhi;
6 March, 2023
15 Phalgun , 1944(S)

SANTOSH KUMAR GANGWAR
Chairperson
Committee on Public Undertakings

APPENDIX I
COMMITTEE ON PUBLIC UNDERTAKINGS
(2021-2022)

MINUTES OF THE THIRTEENTH SITTING OF THE COMMITTEE

The Committee sat on Wednesday, the 8th December, 2021 from 1500 hrs. to 1555 hrs. in Committee Room 'C', Ground Floor, Parliament House Annexe (PHA), New Delhi.

PRESENT

Shri Santosh Kumar Gangwar - Chairperson

MEMBERS

Lok Sabha

2. Shri Lavu Sri Krishna Devarayalu
3. Dr. Heena Vijaykumar Gavit
4. Smt. Poonamben Hematbhai Maadam
5. Shri Janardan Mishra
6. Shri Sushil Kumar Singh
7. Shri Uday Pratap Singh
8. Shri Ramdas Chandrabhanji Tadas

Rajya Sabha

9. Shri K.C. Ramamurthy
10. Shri M. Shanmugam

SECRETARIAT

1. Shri R.C. Tiwari - Additional Secretary
2. Shri Srinivasulu Gunda - Director
3. Shri G.C. Prasad - Additional Director

REPRESENTATIVES OF OFFICE OF COMPTROLLER AND AUDITOR GENERAL

1. Shri Raj Ganesh Viswanathan - Dy. Comptroller & Auditor General (Commercial, Coordination & Local Bodies) and Chairman, Audit Board
2. Dr. Kavita Prasad - Director General (Commercial)-I
3. Shri Shailendra Vikram Singh - Principal Director (Parliamentary Committees)
4. Ms. Vidhu Sood - Principal Director of Audit (I & CA)

2. At the outset, Chairperson welcomed the representatives of O/o C&AG and drew their attention to Direction 55(1) of the 'Directions by the Speaker' regarding confidentiality of evidence before the Parliamentary Committees. The representatives of the O/o C&AG briefed the Committee on Para No. 5.1 of Compliance Audit Report No. 18 of 2020 titled 'Review of Loans to Road Projects' relating to India Infrastructure Finance Company Limited (IIFCL) thereby highlighting the fact that IIFCL provides loans to road projects being executed under Public-Private Partnership (PPP) and that it has 44% Road Sector Loan Projects in its portfolio of which 37.25% have turned NPAs. It was also brought to the notice of the Committee that even after 6 months since the tabling of Audit Report in Parliament in February, 2021, not even a single Action Taken Note has been submitted by the Ministry of Finance (Department of Financial Services). Thereafter, the representative of C&AG made a Power Point Presentation on the subject explaining each aspect in detail.

3. Major issues that were covered in the presentation were related to due diligence not done before signing the loan agreement, negligible physical security against the loan dues in road projects, main assets of the project i.e. land, road and other structures thereon constructed by the Concessionaire (borrower) are owned by the Concessions Authority (mainly NHAI), loans becoming NPA due to toll revenue not yielding the requisite revenue, not ensuring availability of necessary clearances/approvals, adjustment/funding of overdue Interest during Construction, sanction of loan for cost overrun without obtaining approval from Concessions Authority, disbursement of loan

without verifying utilisation of previous disbursal, inadequate site visits, unrealistic projection of traffic/toll revenue etc.

4. Thereafter, Chairperson and Members raised queries on various aspects and sought clarification on organisational set up of IIFCL, ensuring compliance to the conditions in the loan agreement, methods to mitigate the risks associated with the loans disbursed, fixing accountability, projects not functioning properly and the loans disbursed on the projects becoming NPAs. The representatives of the O/o C&AG responded to the queries raised by the Members and it was decided that representatives of IIFCL may be called to further clarify on the subject.

5. Chairperson then asked the representatives of O/o C&AG to brief the Committee on other Audit Para (Para No. 5.2 of the same Audit Report) selected for examination by the Committee during its current term.

(The Committee then adjourned.)

/-----/

APPENDIX II
COMMITTEE ON PUBLIC UNDERTAKINGS
(2021-2022)

MINUTES OF THE TWENTIETH SITTING OF THE COMMITTEE

The Committee sat on Tuesday, the 4th January, 2022 from 1500 hrs. to 1655 hrs. in Committee Room. 'C', Ground Floor, Parliament House Annexe (PHA), New Delhi.

PRESENT

Shri Santosh Kumar Gangwar - Chairperson

Lok Sabha

2. Shri Lavu Sri Krishna Devarayalu
3. Dr. Heena Vijaykumar Gavit
4. Shri Chandra Prakash Joshi
5. Shri Arjunlal Meena
6. Shri Janardan Mishra
7. Shri Nama Nageswara Rao
8. Shri Arvind Kumar Sharma
9. Shri Ravneet Singh Bittu
10. Shri Uday Pratap Singh
11. Shri Ramdas Chandrabhanji Tadas

Rajya Sabha

12. Shri Birendra Prasad Baishya
13. Shri Anil Desai
14. Shri Syed Nasir Hussain

SECRETARIAT

1. Shri R.C. Tiwari - Additional Secretary
2. Shri Srinivasulu Gunda - Director
3. Shri G.C. Prasad - Additional Director

REPRESENTATIVES OF OFFICE OF COMPTROLLER AND AUDITOR GENERAL

1. Shri Raj Ganesh Viswanathan - Dy. Comptroller & Auditor General (Commercial, Coordination & Local Bodies) and Chairman, Audit Board
2. Dr. Kavita Prasad - Director General (Commercial)-I
3. Shri Shailendra Vikram Singh - Principal Director (Parliamentary Committees)
4. Ms. Vidhu Sood - Principal Director of Audit (I & CA)

REPRESENTATIVES OF IIFCL

1. Shri P.R. Jaishankar - Managing Director
2. Shri Pawan K. Kumar - Dy. Managing Director

2. The Chairperson welcomed the Members and the officers of C&AG at the sitting convened to take evidence of representatives of India Infrastructure Finance Company Limited (IIFCL) and explained the agenda of the sittings. The representatives of O/o CAG then made a brief presentation on the important issues pertaining to Para 5.1 of their Compliance Audit Report No. 18 of 2020 titled 'Review of Loans to Road Projects' relating to IIFCL. They pointed out some functional lapses on the part of the IIFCL like failure to ensure availability of Right of Way to the Concessionaire, not ensuring availability of necessary clearance/approvals, adjustment of overdue Interest during construction, sanction of loan for cost overruns without obtaining approval from the Concessioning Authority, disbursement of loan without verifying utilization of previous disbursement, inadequate site visits, unrealistic traffic projections etc.

(The representatives of IIFCL were then called in.)

3. The Chairperson welcomed the representatives of IIFCL and drew their attention to Direction 55(1) of the 'Directions by the Speaker' regarding confidentiality of evidence before the Parliamentary Committees. Thereafter, the representatives of the IIFCL made a presentation to the Committee on the subject therein highlighting the fact that IIFCL provides loans to road projects being executed under Public-Private Partnership (PPP). The issues touched upon, *inter-alia*, involved background, inception and

evolution of IIFCL, IIFCL not mandated to lend solo but only in a consortium, mandate of IIFCL to fund only 20 per cent of the project cost, constraints like land acquisition, environment clearances and other statutory clearances, time cost overruns in projects, reforms brought in by the Kelkar Committee, introduction of Insolvency and Bankruptcy Code and Bharatmala Project, IIFCL's contribution to the national Infrastructure pipeline and national assets monetisation pipeline etc.

4. The Members then raised various issues pertaining to Audit findings in the functioning of IIFCL vis-à-vis loan sanctioned without ensuring at least 80 per cent Right of Way, pre-disbursement conditions not quantified, Common lending Agreement stipulations not met, issues relating to termination payment like NHAI being the Concessing Authority as well as termination payment giver and outsourcing of termination payments to an Insurance Company, consideration of a tripartite agreement among the Concessionaires, Concessing Authorities and Lenders; IIFCL side stepping responsibility by putting the onus of the responsibility to other players like NHAI and Lead Bank, formation of high level Committee to reduce NPAs, NPA of the Company in terms of percentage to the total loan book, rating agency for traffic consultations etc.

5. The representatives of the IIFCL clarified issues on which information was readily available with them. In respect of some points for which information was not readily available, the Chairperson desired that written replies may be furnished to the Committee Secretariat within 10 days.

(The witnesses then withdrew.)

(A copy of the verbatim proceedings has been kept separately)

/-----/

APPENDIX III
COMMITTEE ON PUBLIC UNDERTAKINGS
(2021-2022)

MINUTES OF THE TWENTY-FIRST SITTING OF THE COMMITTEE

The Committee sat on Wednesday, the 12th January, 2022 from 1110 hrs. to 1235 hrs. in Committee Room. 'C', Ground Floor, Parliament House Annexe (PHA), New Delhi.

PRESENT

Shri Santosh Kumar Gangwar - Chairperson

MEMBERS

Lok Sabha

2. Dr. Heena Vijaykumar Gavit
3. Shri Arjunlal Meena
4. Shri Janardan Mishra
5. Shri Nama Nageswara Rao
6. Shri Arvind Kumar Sharma

Rajya Sabha

7. Shri Syed Nasir Hussain

SECRETARIAT

1. Shri R.C. Tiwari - Additional Secretary
2. Shri Srinivasulu Gunda - Director
3. Smt. Mriganka Achal - Deputy Secretary

REPRESENTATIVES OF OFFICE OF COMPTROLLER AND AUDITOR GENERAL

1. Dr. Kavita Prasad - Director General (Commercial)-I
2. Ms. Ritika Bhatia - Director General (Commercial)-I
3. Shri Shailendra Vikram Singh - Principal Director (Parliamentary Committees)

REPRESENTATIVES OF DEPARTMENT OF FINANCIAL SERVICES, M/o FINANCE

1. Shri Amit Agrawal - Additional Secretary
2. Shri Lalit Kumar Chandel - Economic Advisor
3. Smt. Anindita Sinharay - Director

2. The Chairperson welcomed the Members and the officers of C&AG at the sitting convened to take evidence of representatives of Department of Financial Services (DFS) and explained the agenda of the sitting. The representatives of O/o CAG then made a brief presentation on the important issues pertaining to Para 5.1 of their Compliance Audit Report No. 18 of 2020 titled 'Review of Loans to Road Projects' relating to IIFCL. They pointed out some functional lapses on the part of the IIFCL like failure to ensure availability of Right of Way to the Concessionaire, not ensuring availability of necessary clearance/approvals, adjustment of overdue Interest during construction, sanction of loan for cost overruns without obtaining approval from the Concessioneing Authority, disbursement of loan without verifying utilization of previous disbursal, inadequate site visits, unrealistic traffic projections etc.

(The representatives of DFS were then called in.)

3. The Chairperson welcomed the representatives of DFS and drew their attention to Direction 55(1) of the 'Directions by the Speaker' regarding confidentiality of evidence before the Parliamentary Committees. Thereafter, the representatives of the DFS made a presentation to the Committee on the subject therein highlighting major issues related to due diligence not done before signing the loan agreement, negligible physical security against the loan dues in road projects, main assets of the project i.e. land, road and other structures thereon constructed by the Concessionaire (borrower) being owned by the Concessioneing Authority (mainly NHAI), revenue risk connected with the

collection of toll revenue in BOT projects, issues of the Concessionaires regarding statutory clearances etc.

4. Thereafter, Chairperson and Members raised queries on various aspects and sought clarification on drawbacks of the BOT Model and the coming of Hybrid Annuity Model in 2017, dispute resolution system, arbitration issues, problems associated with following the lead bank blindly, how to arrest the issue of piling up of NPAs, role of private banks in financing Infrastructure projects, the basis on which projects are selected for financing etc. The representatives of the DFS clarified issues on which information was readily available with them. In respect of some points for which information was not readily available, the Chairperson desired that written replies may be furnished to the Committee Secretariat within 10 days.

(The witnesses then withdrew.)

(A copy of the verbatim proceedings has been kept separately)

/-----/

APPENDIX IV

COMMITTEE ON PUBLIC UNDERTAKINGS (2022-23)

MINUTES OF THE TWENTY- SEVENTH SITTING OF THE COMMITTEE

The Committee sat on Thursday, the 23rd February, 2023 from 1100 hrs. to 1235 hrs. in Committee Room '2', Ground Floor, Extension to Parliament House Annexe (EPHA), New Delhi.

PRESENT

Shri Santosh Kumar Gangwar - Chairperson

MEMBERS

Lok Sabha

2. Shri Ravneet Singh Bittu
3. Shri Sushil Kumar Singh

Rajya Sabha

4. Shri Anil Desai
5. Shri Syed Nasir Hussain
6. Dr. Anil Jain
7. Shri Prakash Javadekar
8. Dr. Amar Patnaik

SECRETARIAT

- | | | | |
|----|---------------------|---|---------------------|
| 1. | Shri Chander Mohan | - | Joint Secretary |
| 2. | Shri Santosh Kumar | - | Director |
| 3. | Shri G.C. Dobhal | - | Additional Director |
| 4. | Smt. Mriganka Achal | - | Deputy Secretary |

**REPRESENTATIVES OF DEPARTMENT OF FINANCIAL SERVICES,
MINISTRY OF FINANCE**

1. Shri Suchindra Misra - Additional Secretary
2. Shri Bhushan Kumar Sinha - Joint Secretary
3. Shri Kartikeya Misra - Director

2. At the outset, the Chairperson welcomed the Members of the Committee and apprised them about the agenda for the sitting. The Committee then considered and adopted the Draft Report on “Audit Para No. 5.1 of C&AG Report No. 18 of 2020 regarding Review of Loans to Road Projects relating to India Infrastructure Finance Company Limited” without any change/modification. The Committee authorized the Chairperson to finalize the report on the basis of factual verification by the C&AG and concerned Ministry/Department and thereafter, presenting the same during the current session of Parliament. The Committee Secretariat, then, made a power point presentation on important issues related to examination of the subject.

(The witnesses were, then, called in)

- | | | | |
|----|------|------|------|
| 3. | **** | **** | **** |
| 4. | **** | **** | **** |
| 5. | **** | **** | **** |
| 6. | **** | **** | **** |

The Committee, then, adjourned

(A copy of the verbatim proceedings has been kept for record)

/-----/