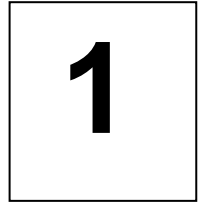


C.P.U. NO. 934



FIRST REPORT
COMMITTEE ON PUBLIC UNDERTAKINGS
(2009 - 2010)
(FIFTEENTH LOK SABHA)

**PUBLIC PRIVATE PARTNERSHIP IN IMPLEMENTATION OF ROAD PROJECTS BY
NATIONAL HIGHWAYS AUTHORITY OF INDIA IN RESPECT OF
DELHI - GURGAON PROJECT**

**MINISTRY OF SHIPPING, ROAD TRANSPORT AND HIGHWAYS
DEPARTMENT OF ROAD TRANSPORT**

[BASED ON C&AG REPORT NO. PA 16 OF 2008 (PERFORMANCE AUDIT)]



Presented to Lok Sabha on 16.12.2009

Laid in Rajya Sabha on 16.12.2009

LOK SABHA SECRETARIAT

NEW DELHI

CONTENTS

		Page
	Composition of the Committee (2009-10)	(iii)
	Introduction	(v)
	PART - I	
	REPORT	
	Overview	5
Chapter-I	Mode of Execution of the Project	7
Chapter-II	Delay in Execution of the Project	18
Chapter-III	Detailed Project Report	23
Chapter-IV	Fixation of Concession Period and Toll Collection	28
Chapter-V	Role of Independent Consultant	34
Chapter-VI	Project Financing and Escrow Accounts	35
Chapter-VII	Non-Appointment of Independent Auditors	37
Chapter-VIII	Faulty Issuance of Completion Certificate Pending Non-Execution of Punch List Items and Penalty Clause	39
Chapter-IX	Road Safety Audit	43
Chapter-X	Monitoring Role of Government	48
	PART - II	
	Recommendations/Observations of the Committee	51
ANNEXURES		
	Minutes of the sittings of the Committee	77

COMPOSITION OF THE COMMITTEE ON PUBLIC UNDERTAKINGS
(2009-2010)

Chairman

Shri V. Kishore Chandra S. Deo

Members, Lok Sabha

- | | |
|----|---|
| 2 | Shri K.C. Singh 'Baba' |
| 3 | Shri Ramesh Bais |
| 4 | Shri Hemanand Biswal |
| 5 | Shri Anant Kumar Hegde |
| 6 | Shri Sukhdev Singh Libra |
| 7 | Dr. Charan Das Mahant |
| 8 | Shri Baijayant Panda |
| 9 | Shri L. Rajagopal |
| 10 | Shri Nama Nageswara Rao |
| 11 | Chaudhary Lal Singh |
| 12 | Shri Ganesh Singh |
| 13 | Shri N. Dharam Singh |
| 14 | Shri Rajiv Ranjan Singh alias Lalan Singh |
| 15 | Shri Bhisma Shankar alias Kushal Tiwari |

Members, Rajya Sabha

- | | |
|----|------------------------------|
| 16 | Shri Birendra Prasad Baishya |
| 17 | Shri Bharatkumar Raut |
| 18 | Ms. Mabel Rebello |
| 19 | Dr. T. Subbarami Reddy |
| 20 | Shri Vijay Kumar Rupani |
| 21 | Shri Tapan Kumar Sen |
| 22 | Shri Amar Singh |

Secretariat

- | | | |
|---|------------------------------|---------------------|
| 1 | Shri J.P. Sharma | Joint Secretary |
| 2 | Shri Ajay Kumar Garg | Additional Director |
| 3 | Smt. K. Rangamani Narasimhan | Executive Officer |

INTRODUCTION

1. I, the Chairman, Committee on Public Undertakings having been authorized by the Committee to present the Report on their behalf, present this First Report on National Highways Authority of India.
2. The Committee's examination of the subject was based on the Audit Report No. PA 16 of 2008 (Performance Audit) Public Private Partnership in implementation of Road Projects by National Highways Authority of India--Delhi-Gurgaon Sector.
3. The Committee on Public Undertakings (2009-10) took evidence of the representatives of NHAI on 09.09.2009 and evidence of the representatives of the Ministry of Shipping, Road Transport and Highways, Department of Road Transport and Highways on 08.10.2009.
4. The Committee considered and adopted the Report at their sitting held on 9th December, 2009.
5. The Committee wish to express their thanks to the Ministry of Shipping, Road Transport and Highways, Department of Road Transport and Highways and National Highways Authority of India for placing before them the material and information they wanted in connection with examination of the subject. They also wish to thank in particular the representatives of the Ministry of Shipping, Road Transport and Highways, Department of Road Transport and Highways and National Highways Authority of India who gave evidence and placed their considered views before the Committee.
6. The Committee also place on record their appreciation for the assistance rendered by the officials of Comptroller & Auditor General of India. They would also like to place on record their sense of deep appreciation for the invaluable assistance rendered to them by the officials of the Lok Sabha Secretariat attached to the Committee.
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
9th December, 2009
18 Agrahayana, 1931 (S)**

**V. KISHORE CHANDRA S. DEO
Chairman
Committee on Public Undertakings**

PART – I

REPORT

OVERVIEW

The National Highways Authority of India (Authority) was constituted with a mandate to upgrade the existing two-lane roads into four/six-lane high density corridors under National Highways Development Programme (NHDP), in phases. In Phase-I, 6359 Km. of existing roads were to be upgraded by June 2004 at an estimated cost of Rs.30,300 crore. To leverage scarce budgetary resources, the Government opted for private sector participation in execution of the projects through Build, Operate and Transfer (BOT) mode. Accordingly, 17 projects were opened for private sector participation between March 1998 and April 2003. Although time and cost were key factors for successful implementation of NHDP, the Authority did not prepare a corporate or strategic plan to monitor the same. This coupled with delays in award of work and in acquisition of land, and issue of change of scope orders during execution led to delay in completion of the projects. The Authority could complete only five of the 17 BOT projects within the time schedule prescribed. The Authority did not have any written criteria on the basis of which to assign a particular project for execution under BOT-Toll or BOT-Annuity arrangement.

The Audit observations mentioned in this Performance Audit Report pertain to construction of roadways in Delhi-Gurgaon Sector. The main deficiencies pointed out by the Audit are as under:

Delhi-Gurgaon

- The completion of this project was delayed by 42 months beyond the scheduled completion date of June 2004 due to change in mode of execution from Special Purpose Vehicle to BOT-Toll, subsequent delay in award of concession and the delay in issuing change of scope orders valuing Rs.146.62 crore.
- The Detailed Project Report (DPR) of this project was deficient on many counts which resulted in execution of these items under change of scope orders for Rs.146.62 crore constituting 21 *per cent* of the project cost.
- The Authority did not have a system to compute the reasonable concession period. This resulted in fixation of a longer concession period of 20 years against a reasonable concession period of 14 years. During the extended concession period of six years, the Concessionaire would gain Rs.187.77 crore.
- The delay of 26 months in issuing orders for change of scope of work by the Authority delayed completion of the project.
- The condition of the road surface was good and no distresses were found. The combined thickness of wet mix macadam and granular sub-base layers did not comply with the specifications in three out of six pits test-checked.

The issues related with the above mentioned observations contained in the Audit Report have been dealt with in the succeeding chapters of the Report.

CHAPTER-I

MODE OF EXECUTION OF THE DELHI-GURGAON PROJECT

1.1 The National Highways Authority of India was constituted with a mandate to upgrade the existing two lane roads into four/six lane under National Highways Development Programme (NHDP), in phases. To leverage scarce budgetary resources, the Government opted for Private sector participation in execution of the projects through Build, operate and Transfer (BOT) mode. Accordingly 17 projects were opened for private sector participation between March, 1998 and April, 2003.

1.2 In case of Delhi-Gurgaon project executed under BOT-Toll mode, the Audit in Para 2.1.2 has made the following findings: -

- (i) That there were no internal guidelines or directions from the Government for determining the mode of execution of projects. Such guidelines were 1st issued in March, 2006.
- (ii) The Delhi-Gurgaon projects were originally proposed to be executed through EPC or SPV mode but subsequently opened for BOT-Toll mode.
- (iii) No comparative evaluation of the financial implications of executing the projects through BOT-Toll was undertaken.
- (iv) In Delhi-Gurgaon project initially no traffic study was done.

1.3 The details of the queries made by the Committee and the explanations given by NHAI/Ministry are detailed below:

(i) No Internal Guidelines for deciding Mode of Execution

The Audit in Para 2.1.2 of the Report have observed that there were no internal guidelines or directions from the Government for determining the mode of execution of the projects when NHDP Phase-I was started. Such guidelines were first issued in March 2006. While seeking in-principle approval for NHDP Phase-I from the Ministry of Shipping, Road Transport and Highways (Ministry), the Authority indicated the mode in which each road project was to be executed i.e. BOT-Toll or BOT-Annuity or EPC. Audit, however, observed that in all the 17 projects selected for PPP, the Authority did not assign any basis for proposing execution of a particular project under PPP arrangement. For instance, Delhi-Gurgaon project was originally proposed to be executed either through EPC or through SPV. This project was, however, subsequently opened for BOT-Toll.

1.4 During the evidence before the Committee on 9th September, 2009, attention of NHAI was drawn to the above-mentioned Audit observations and the NHAI were asked to give their comments. The Authority replied as under:

“Under PPP arrangement, there are two modes of execution used in NHAI, viz BOT (Toll) and BOT (Annuity). While in the former, the investor recoups their investment through toll collection during the operation period and in case of BOT (Annuity), the investors recoup their investment through a series of annuities paid by NHAI during the operation period. The criteria for award of any project under PPP mode is based on commercial viability of the project as established by the feasibility report/financial modeling. In BOT(Toll), as per current Central Government policy, up to a maximum of 40% equity grant can be given, if necessary, to improve the viability of the project to induce private investment.

1.5 Regarding the inordinate delay in issuance of internal guidelines which were issued only in March, 2006, the Ministry of Road Transport and Highways in their written reply submitted as under:

“CCEA in its meeting held on 12.12.2000 had approved undertaking of 40 sub projects for a length of 4659 km during 2000-2002 at a cost of Rs 30,300 crore. It was also mentioned that during 2001-2002 the contracts should be awarded to the extent possible on BOT/Annuity method due to inherent advantage in that system. It was envisaged that out of Rs 30,300 crore, fund to the tune of Rs 3592 crore shall be share of private sector in BOT/SPV projects. Similarly, while approving NHDP Phase-II in December 2003, some projects were identified for taking up on BOT Toll/Annuity. Subsequent to that all Phases i.e. Phase-III, Phase-IV, Phase-V, Phase-VI & Phase-VII have been approved to be taken upon BOT mode only. Internal guidelines were issued by the NHAI in March, 2006 based on the lesson learnt on the projects being implemented during the period March, 1998 to April, 2003. Government had issued guidelines in May 2006 that the all projects should be first tried on BOT Toll. If there is inadequate response, than the project could be taken on BOT Annuity with the approval of CCEA and if there is inadequate response to Annuity mode then the project could to taken up on EPC with the approval of CCEA.”

1.6 When asked as to why the guidelines were not framed before the award of the project, the Ministry submitted as under:

“While approving NHDP Programme in December 2000 and December 2003, some projects were identified to be taken up on BOT. It was also desired to take up more projects on BOT mode to the extent possible. Subsequently all works under NHDP Phase-III onwards were to be taken up on BOT Toll mode only.”

(ii) SPV mode to BOT mode

1.7 The Audit observed that there was a change in the execution of the Delhi-Gurgaon project from SPV mode to BOT mode. In this context, the Authority were asked to state the following: -

- (i) The reasons for changing the mode of execution from SPV mode to BOT mode.
- (ii) Whether any prior analysis was done in deciding the mode of execution.
- (iii) The financial implication, if any, had the project being executed in SPV mode etc.

1.8 In Reply, the NHAI stated as follows:-

“The project was initially approved for execution by NHAI through SPV from Km. 15.400 to Km. 36.630. In the SPV mode of execution, Government has to promote Special Purpose Vehicle (SPV) with equity participation from NHAI and the other partners to the SPV and through Debt, which will be raised from the financial institutions or bonds. However, at the time of approval it was envisaged to increase Private Sector Participation in road project. M/s. SBI Capital Markets Limited (A subsidiary of State Bank of India), the financial consultant advised that the project is unviable on BOT. However, because of successful award of Tada-Nellore and Neelamangla-Tumkur section of NH on BOT, financial consultant was advised to re-evaluate the financial viability of the project. M/s SBI Capital Markets Limited considered different scenarios using various capital structures with different mix of debt, equity and grant. The SBI Cap has suggested to include the project up to km 42.00 and to start from km. 14.300 instead of km. 15.400. NHAI, subsequently asked M/s SBI Capital Markets Limited to evaluate the financial viability of the project based on BOT basis by considering additional two aspects:

- (a) Taking into account the additional tolling rights up to km. 61 (where NHAI is setting up its toll plaza) beyond 8-lane project reach, the revenue of which will accrue to the Concessionaire.
- (b) Also the facility being an 8-lane Access Controlled Highway, a higher toll rate may be considered, as compared to normal 4-lane highway project.

However, by the change in mode of execution from SPV to BOT project, NHAI saved the Government investment in project and also received negative grant. In the EPC mode of execution the entire financial implication would have to be borne by the Government. In SPV mode of execution the Government has to borne partial financial implication depending upon the equity of the Government.”

1.9 When asked whether it was a policy decision to change the mode of execution, the CMD submitted as under:

“It is a policy decision. The Government has power to give me policy directives. In fact, it has no powers to direct me except on matters of policy. The Minister took a policy decision on moving from SPV mode where we were putting in equity and where our exposure to the project was much larger in financial terms, he wanted it to move to the BOT mode. The NHAI Act provides that the Government’s decision on what is or what is not a policy decision is final. He further stated that the Government has every right to interfere

because my funding comes from a cess. The Government has every right to say that the cess money which they are providing is spent in ways the Government lays down.”

1.10 As to the financial implications had the project been executed on SPV mode or BOT mode, the Authority submitted as under: -

“If the project had been executed under SPV mode, NHAI would not only have been required to invest in the project their equity, but also would have been required to take over the additional cost , risk and time overrun involved in the project. It may be mentioned that the cost of completion of project, as per the Chartered Accountant balance sheet of the Concessionaire is Rs 1170.26 crores, which had not been taken in to cognizance by NHAI, as additional cost on account of cost overrun which is now to be borne by the Concessionaire. Similar has been the position of the time overrun of 30 months. Further, mechanism of decision making in two different modes is not comparable. It is an accepted fact that decision making in BOT project is faster than the decision making in project having share of the Government due to various procedures and the delegation. As such, possibility of having worse position than the present position can also not be ruled out.”

1.11 On this issue when asked whether the approval of the Ministry was taken in changing the mode of execution from SPV to BOT-Toll mode and subsequent change of scope orders for Rs. 146.62 crore and the justification in the decision taken by the Minister of Road Transport and Highways to convert the SPV mode to BoT mode, the Ministry stated as under:

“The Financial Consultant, M/s SBI Capital Markets Limited has submitted various financial modules prior to the bidding process and during various discussions and presentations to the then Hon’ble Minister, RTH on 30.09.2001, it was decided that worst-case scenario may be considered for the project viability. Accordingly the toll rates for the worst-case scenario was finalized and included in the bidding document. The toll rates were recommended to give a reasonable return to the potential investors and generate sufficient bidding interest in the project. Therefore it was decided to implement the project on BOT (Toll) basis as suggested by M/s SBI Capital Markets Limited.

In view of the above, with the approval of Chairman, bids were invited for this project on BOT basis from Km 14.300 to km 42.000. The bids resulted into negative grant of Rs. 61.06 crore to the Government. The proposal to award the project to the successful bidder who had offered highest negative grant was put up to the 44th NHAI Board meeting held on 30.01.2002 and the project was approved by the authority. The Concession Agreement was signed on 18th April, 2002 and appointed date was 12th January, 2003, from which construction period of 30 months started. Therefore target date of completion of this project was 12th July, 2005 and not the June, 2004 as mentioned by Audit. The entire process

took some time resulting delay in award of the project. However, by the change in mode of execution from SPV to BOT project, NHAI saved the Government investment in project and also received negative grant. In the EPC mode of execution the entire financial implication would have to be borne by the Government. In SPV mode of execution the Government has to bear partial financial implication depending upon the equity of the Government.”

1.12 On the issue, the submission of the Secretary during evidence held on 8th October, 2009 were as under:-

“Implementation of the project through the Government owned SPV is very easy. That is nothing, but the Government money is given. They implement it. An SPV sometimes borrows money but that is also on Government account. We have several SPVs to implement projects on the ports, which are the port connectivity projects. They are implemented by the SPV, which is owned by the NHAI and the Port Trust. Performance of those SPVs and those projects is very poor excepting one or two, which have done reasonable okay. But there also, it is entirely the commitment of the NHAI, which means, the commitment of the Government. They have not raised any bank finance; they have not done anything substantial; there have been usual delays; and in some cases, the contracts have been terminated. I am just giving this background to enable the Committee to appreciate the difference between what is mentioned in the CAG Audit Para’s SPV and BOT. So, this is what the CAG kept mentioned keeping in mind the SPV.

Now, coming to the BOT, that is the first priority today. Even when this project was taken up, the Government was not very sure whether there would be a good response from the bidders for BOT toll projects. This project also was initially found to be not viable. I think that information has been made available. The SBI Capital conducted the survey. They gave three-four scenarios. With great difficulty, finally it was decided that let us try this BOT. This is one of the projects specifically mentioned in the Phase-I. It has also been raised as to what is the policy of the Government today and what was the policy that time. Today, of course, the policy is very clear. But that time also, the Government was very keen that we should award as many projects on BOT toll as could possibly be awarded within that 40 per cent VGF. The 40 per cent VGF was introduced as a policy much prior to the year 2000. I think, that was sometimes in 1997 when the Cabinet decided that yes the private sector should be involved for the development of the roads. They, they came out with a policy of providing VGF to the extent of 40 per cent. They tried to find out the projects, which could be viable. So, this project is one of the projects, which considered to be viable if bid out on the BOT toll with 40 per cent being the viability gap.”

(iii) No Traffic Study

1.13 The Audit in Para 2.1.2 has observed that in Delhi-Gurgaon project, initially the financial consultant did not find the possibility of executing the project on BOT-toll basis

viable. However, based on the Authority's direction of reworking the financial model based on increased toll charges, the viability was established but the financial consultant had still recommended preparation of revised cost estimates and traffic survey for a more realistic model. The Authority, however, decided to execute the project under BOT mode without undertaking any such activity. Under such uncertain conditions, it was imperative that some broad principles should have been laid down for deciding the mode of execution of Phase-I projects. In fact, as per the guidelines issued by the Ministry in March 2006, it has prioritized execution of projects through BOT-Toll over BOT-Annuity. Further, the Financial Consultant (SBI-Capital Market) appointed by the authority advised them to carry out a fresh study of the traffic volume before inviting bids for the project. However, the authority did not carry out any fresh study of traffic merely on the ground that a study for the same was done a year back.

1.14 On the above observation of the Audit, the Authority were asked to state whether any fresh study of traffic was taken as advised by the financial consultant and whether the scientific/logical traffic assessment would have resulted in any change of mode of execution, the Authority in their written reply submitted as under: -

"The Financial Consultant, M/s. SBI Caps had suggested to carry out fresh study of traffic volume. The traffic volume given to the SBI Caps pertains to the year 2000 which was only one year old. Taking note of the existing traffic volume and time elapsed it was not considered necessary to carry out fresh traffic counts. It may be mentioned that for project of this magnitude, one year old traffic data is considered quite recent and reasonable for traffic projections. Moreover the process of awarding of the project would have got further delayed.

Any financial analysis is supported by sensitivity analysis. In the sensitivity analysis, the viability of the project is tested against increase in the cost and/or decrease in the revenue. In the instant case, conscious decision was taken in the NHAI/Ministry to adopt the worst scenario. Worst scenario, envisaged that other roads providing connectivity between Delhi & Gurgaon will also be developed. When other facilities without toll were expected to be available, assumption that local traffic will not use this project highway is but natural. Traffic projections are always with certain assumption, which may vary, later on. It has also been the international practice. The method adopted in the instant case was quite logical and scientific.

Concession Agreement provides for sharing of revenue by NHAI once traffic exceeds the threshold level. This dispels the apprehension about windfall profit to the Concessionaire."

1.15 Regarding the mechanism available with the NHAI to assess the actual figure of the traffic crossing the expressway, during evidence of NHAI, the Chairman, NHAI submitted as under:-

"Sir, I would like to point out that this toll plaza has got an automatic boom barrier, that is, any vehicle, which is going through, it is captured on the computer

software whether he pays a toll or not. But the barrier has to go up and down. There is an automatic traffic counter. So, to that extent, if there is to be any deception or some underreporting, it has to be done at the computer level. But mechanically the traffic is counted. We also have a system by which I think, we have access to CCTV camera from our own headquarters, and we can keep watching what is going on there. That is one issue. Therefore, the scope for any underreporting, over reporting of traffic or fudging the figures is somewhat limited.

In cases, where we have large errors – we will not deny that such cases are there –we do take action. I have myself terminated the concessions. But typically we find that these are not in the cases of BOT projects. Those kinds of large errors or large concealments or deceptions have not occurred in these types of projects where there is automatic traffic counting. They have occurred in projects where we have not had any automatic systems and there are carbon paper receipts where the scope for deceptions has been much more, and those have been the projects where I have appointed some ex-military man or retired man.”

(iv). No Comparative Study of two modes

1.16 According to Audit in Para 2.1.2, no comparative evaluation of the financial implications of executing the projects being opened to PPP through BOT-Toll or BOT-Annuity was undertaken. However, NHAI in their written reply stated as under: -

“Regarding comparative study to ascertain the financial viability of two modes of execution, as brought out in background a project on BOT mode will always be viable when compared with SPV mode, therefore question of comparative study does not arise. BOT being the preferred mode of execution has also been adopted in this case. To sum-up, mode of execution was selected on the basis of financial viability after carrying out due-diligence and with extensive financial analysis with the help of financial experts like M/s SBI Caps. Moreover, due to successful award of earlier two BOT Projects it was decided to take up this project on BOT basis in order to minimize Govt. investment and risk in the project.”

1.17 During evidence of the representatives of NHAI, the Committee desired to know in details the reasons for change of mode from SPV to BOT-Toll, concept of SPV mode, reasons for not doing any prior analysis in deciding the mode of execution and a comparative analysis of the BOT-TOLL mode-vs-BOT Annuity mode in respect of Delhi-Gurgaon project. The NHAI in their subsequent post evidence reply, submitted as under:-

“With regard to the above clarification, specific attention is drawn to the presentation made by NHAI to the committee. In order to explain the point of view of NHAI, it is necessary to explain the background of evolution of BOT

mode including its derivatives for execution of Road projects in India. In this regard following submissions are made;

a) Earlier the road projects were being executed by the Government through the budgetary resources alone. This mode of execution is known as Engineering Procurement Contracts (EPC). As name suggests, in this mode of execution the responsibility of project preparation, financing, implementation and maintenance including Quality Control rests with the Government. For execution, works are awarded to the Contractor with whom Contract agreement is signed by NHAI. Contractor executes the works as per the provisions made in the Contract. Execution as per the specifications is assured by the Engineer (Supervision Consultant) who also prepares the bill and process for payment. Payments are made through the budgetary resources. Contract document generally have restriction on sub-contracting.

b) It was established in various studies that due to poor conditions of the roads, society is loosing heavily in terms of vehicle operating cost and time savings. However, funds required for improvement were huge and with the limited availability of resources through the budget route, it was not possible to take up this mammoth task.

c) In this background, concept of Build Operate and Transfer (BOT) was introduced for implementation of road project under the Public Private Partnership policy of the Government. In the BOT mode of execution, it is the responsibility of the Concessionaire to build the road, operate it, maintain it for a fixed period and recover expenditure involved in building, operating and maintaining including interest and profit by way of collection of toll, at pre determined toll rate fixed by the Government, from the vehicles using the project highway. Toll rates are updated based on Whole sale price index (WPI). On completion of the concession period, project highway is handed over back to the Government at no cost. Thus the risk of cost of construction, maintenance, operation and revenue generation is entirely, borne by the Concessionaire himself.

d) In the BOT mode, outcome of the project is defined in the scope of the project. Government's role is restricted to project preparation and pre-construction activities thereafter it is for the concessionaire to implement it. In brief, in BOT mode Government only indicates what to do? and How to do? is to be decided by the Concessionaire. Cost overrun and time overrun if any in BOT projects is the risk and responsibility of the Concessionaire, unless resulted due to any act of the Government. As such in BOT projects decision making is faster than compared with EPC/SPV mode of execution.

e) BOT system provides incentives to the concessionaires to ensure quality of construction in order to minimize O&M Expenses later since the concessionaire is also held responsible for maintenance during the concession period. This leads to use of a technology which reduces life cycle cost, timely completion, financing risk with concessionaire and reduce the cost of project maintenance.

Moreover to ensure that the concessionaire is duly adhering to the provisions of the concession Agreement, NHAH appoints an Independent Consultant to supervise the day to day activities.

f) There are other modes of BOT. Two such modes are SPV and BOT Annuity. In the BOT annuity mode Concessionaire builds the road, and maintain it for a fixed period. However instead of allowing him to collect the toll, Government pays fixed sum to the concessionaire every six month to make him recover his investments. Toll if any, collected would contributes to the revenue of the Government but in the event of shortfalls, the government shall be required to bear the risk/deficiency. In this mode the risk of revenue generation i.e. traffic is taken by the Government and concessionaire is assured of fixed returns. This mode of execution is adopted mainly in areas, where the development is necessary but the private investors are not having any interest to take up the traffic risk.

g) In the SPV i.e. Special Purpose Vehicle mode of execution Government forms a company as a fully owned subsidiary of NHAH as per the Company's Act 1956, puts its share in the form of equity and raises balance as debt. Thus in SPV mode Government takes the risk on account of expenditure as well as revenue. Further the entire responsibility for managing the SPV, raising debts, construction, maintenance etc falls on NHAH. It may be mentioned that this mode of execution was in vogue during the period when BOT projects were in nascent stage and norms and market response on big projects was not tested. i.e. when people were apprehensive of success of BOT projects. SPV gives confidence to the investors due to involvement of the Government at various stages of project. However, due to involvement of Government funding due to procedures and delegation, decision making is not as fast as in case of BOT (toll) projects. Because of involvement of the Government in taking over of the risk, this mode of execution is preferred only when BOT (toll) mode of execution is not feasible.

h) NHAH has been mandated to act on business principles. As per the present policy of the Government, to the extent possible the contract should be awarded on BOT(Toll). When project is not viable on BOT(toll), BOT(Annuity) system to be tried followed by EPC.

While changing the mode of execution from SPV to BOT mode, the Financial Consultant M/s SBI Capital developed the Financial Model considering different scenario and had made presentation to NHAH /Ministry. Initially the project viability on BOT was considered for the stretch from km. 15.4 to 36.63 but was found unviable. Further NHAH asked the Financial Consultant to re-evaluate the financial viability considering different scenarios using various capital structures with different mix of debt, equity and grant. Based on recommendation of Financial Consultant the project was considered from Km. 14.3 to Km 42 instead of earlier from Km. 15.4 to Km 36.63. NHAH further asked the Financial Consultant to evaluate the financial viability on BOT (Toll) basis by considering additional two aspects viz. additional tolling rights upto Km 61 and higher toll

rates for 8/6 lane Access Controlled Highway as compared to normal 4-lane highway project. M/s SBI Caps presented the different financial scenarios of the project. There were four financial scenarios depending upon the various considerations like four lanning of old NH-8, construction of Western Corridor etc. The worst scenario when all these surrounding happenings were proposed to take place was considered and it was decided that toll rates should be finalized on worst case scenario so that there is no ambiguity, legal confusion for the bidders at any later stage. Therefore, it is not correct to say that no comparative study was carried out to ascertain the financial viability of two modes. Regarding comparative study to ascertain the financial viability of two modes of execution, as brought out in background a project on BOT mode will always be viable when compared with SPV mode, therefore question of comparative study does not arise. BOT being the preferred mode of execution has also been adopted in this case. To sum-up, mode of execution was selected on the basis of financial viability after carrying out due-diligence and with extensive financial analysis with the help of financial experts like M/s SBI Caps. Moreover, due to successful award of earlier two BOT Projects it was decided to take up this project on BOT basis in order to minimize Govt. investment and risk in the project.

It is difficult to envisage the scenario at this point of time. It may however be mentioned that NHAI included a Clause on sharing of revenue once the traffic exceeds the threshold value. Thus NHAI is entitled for revenue without investing anything. This clause was to take care of increase in revenue for the concessionaire since then he was to share this increase with NHAI. The decision taken to implement with requisite safeguard appears to be the best decision in the prevailing environment. Since due care had been taken while drafting the concessionaire Agreement and fixing the toll rates so as to incorporate all the said eventualities. Further, if the project had been executed under SPV mode, NHAI would not only have been required to invest in the project their equity, but also would have been required to take over the additional cost , risk and time overrun involved in the project. It may be mentioned that the cost of completion of project, as per the Chartered Accountant balance sheet of the Concessionaire is Rs 1170.26 crores, which had not been taken in to cognizance by NHAI, as additional cost on account of cost overrun which is now to be borne by the Concessionaire. Similar has been the position of the time overrun of 30 months. Further, mechanism of decision making in two different modes is not comparable. It is an Concession Agreement provides for sharing of revenue by NHAI once traffic exceeds the threshold level. This dispels the apprehension about windfall profit to the concessionaire. accepted fact that decision making in BOT project is faster than the decision making in project having share of the Government due to various procedures and the delegation. As such, possibility of having worse position than the present position can also not be ruled out.

Concession Agreement provides for sharing of revenue by NHAI once traffic exceeds the threshold level. This dispels the apprehension about windfall profit to the concessionaire. “

1.18 As regards comparative analysis of BOT Toll mode vis-à-vis BOT Annuity mode, the Authority submitted as under:-

“In BOT Toll mode, the investment of Govt. is nil and the risk of costs, cost & time overrun, traffic projection etc. rest with the concessionaire. In the BOT Annuity mode, the risk of toll collection is passed on to the NHAI. The Project is considered for BOT (annuity), when it is established that the private investors would not be having any interest to take the risk of the project. As the financial consultant based on traffic density, concession period, construction cost and grant component recommended the project viability on BOT (Toll) basis, NHAI had not considered this project on BOT (Annuity).

As aforesaid, Concession Agreement duly provides for Clause related to sharing of revenue by NHAI. This Clause takes care off apprehension about windfall profit to the concessionaire.”

CHAPTER-II

DELAY IN EXECUTION

(i). Change of Mode

2.1 The Audit in para 2.4.2 of the Report have stated that the completion of this project was delayed by 42 months beyond the scheduled completion date of June 2004 due to change in mode of execution from Special Purpose Vehicle to BOT-Toll, subsequent delay in award of concession and the delay in issuing change of scope orders valuing Rs.146.62 crore. According to them, the Authority changed the mode of execution from SPV to BOT-Toll mode in May 2001 despite the fact that the target month for award of contract was March 2001. This led to a delay of 12 months in award of concession. Further failure to provide land to the Concessionaire in time and delay of 26 months in finalization of change of scope orders for Rs. 146.62 crore by the Authority contributed to delay in completion of the project.

In reply, the Authority in this regard stated as under: -

“The Financial Consultant, M/s SBI Capital Markets Limited has submitted various financial modules prior to the bidding process and during various discussions and presentations to the then Hon’ble Minister, RTH, it was decided that worst-case scenario may be considered for the project viability. Accordingly the toll rates for the worst-case scenario was finalized and included in the bidding document. The toll rates were recommended to give a reasonable return to the potential investors and generate sufficient bidding interest in the project. Therefore it was decided to implement the project on BOT (Toll) basis as suggested by M/s SBI Capital Markets Limited.

In view of the above, with the approval of Chairman, bids were invited for this project on BOT basis from Km 14.300 to km 42.000. The bids resulted into negative grant of Rs. 61.06 crore to the Government. The proposal to award the project to the successful bidder who had offered highest negative grant was put up to the 44th NHA Board meeting held on 30.01.2002 and the project was approved by the authority. The Concession Agreement was signed on 18th April, 2002 and appointed date was 12th January, 2003, from which construction period of 30 months started. The target date of completion of this project was 12th July, 2005. However, by the change in mode of execution from SPV to BOT project, NHA saved the Government investment in project and also received negative grant. In the EPC mode of execution the entire financial implication would have to be borne by the Government. In SPV mode of execution the Government has to borne partial financial implication depending upon the equity of the Government. As far as financial implication is concern, it is submitted that in BOT projects, the entire obligation lies with the Concessionaire including design, engineering, financing, procurement, construction, operation and maintenance of the project except the cost of making the site encumbrance free. Therefore, in BOT mode, the financial implication on part of the Govt. is bare

minimum in comparison to EPC, SPV model as such BOT(Toll) adopted in present case.”

2.2 On the issue of delay, the Secretary, Ministry of Road Transport and Highways during evidence before the Committee expressed his views as under:-

“The delay has been at two points. One is in award of the project. So, what the CAG perhaps has taken is what was to be done as per the details of the programme approved by the Government, namely, sometimes, 2000-01 that if you take the target, one may have the impression that projects should have been completed by 2003-04, and then it would not have happened what they have happened. But actually, what needs to be appreciated is that the Cabinet approved in general. Thereafter, the detail working and bidding take time. The bidding in this case took place sometimes in 2002, and the Concessionaire Agreement was signed on 18th April, 2002. So, that is the date from which one has to reckon the delay. That is how I look at it when it comes to the role of the concessionaire, NHAI in implementation of the project.

Though Government would have definitely wished them to be awarded as per the original plan, the project could be awarded only on 18.4.2002. Under the agreement, he was given six months time for financial closure. But he could not achieve the financial closure. As a result, the concessionaire agreement could be signed only after the appointed date, which is usually six months afterwards. That appointed date would have been 17.10.2002 and he would have got the COD in time after that. But what happened is that since financial closure was not achieved, there was a delay and the appointed date became 12.1.2003. Thereafter, the third delay, which has been mentioned and very rightly so, occurred because of which the COD was awarded only on 21.1.2008 and not on 12.7.2005 which was the scheduled date. Under the scheme of things, the concessionaire is given three years for completing the project including the period required for financial closure which is six months. But what happens is that in exceptional situations when there is delay in the financial closure, banks have to assess the viability. So, NHAI extended the date for financial closure and the appointed date got shifted by a few months and as per the agreement, they have collected the fine. They charge the concessionaire a fine and they collected that money. After this appointed date, normally he was required to complete it within two and a half years, but because of the scope change and other things, he has done it with a delay of about 30 months. As against 12.7.2005, the COD was given on 23.1.2008. This delay is attributable to change in scope and on account of the problems of the concessionaire which are internal to him.”

2.3 On being asked as to why the factors leading to the delay were not resolved by the NHAI prior to inviting bids, the NHAI in their written reply stated as under:-

“The delay caused is due to reasons which can not be resolved before inviting bids like delay in financial closure by the concessionaire, delay in signings of the state support Agreement , Additional Scope of Works i.e. value additions on the request of Delhi and Haryana Governments , Delay in transfer of additional land from various Govt. Departments like AAI, Army, Air Force, Haryana Tourism for additional scope of works which leads to delay in handling over of the encumbrance free site to the concessionaire.”

2.4 On the impact on public because of delay in execution of the project, the Secretary of the Ministry during evidence submitted as under: -

“The most important point from the Government’s point of view and from the NHAI point of view is what is the impact of this delay. I would submit that the impact of this delay is two-fold; firstly, the public convenience which was supposed to have been created has been postponed and secondly the Concessionaire, who would have started collecting the toll from 12.7.2005 had he completed the project on time, lost toll for about 30 months because of the delay. Unless EPC Contract where if you delay, it costs more to the Government in terms of escalation and things like that, here, he lost toll. We do not pay anything to him and his concession period, which in this case is 20 years, which would have been $20 - 3 = 17$ years for toll collection, got reduced by 30 months. Instead of 17 years, he got a period of $17 - 2.5$ years, that is, 14.5 years. His period of toll collection got reduced. But NHAI does not pay anything. Of course, at the cost of repetition I would say that he should have completed it on time and the public would have got the convenience. That is how I would like to put the thing in perspective as far as the policy goes.”

(ii). Change of Scope of Work

2.5 According to Chairman, NHAI Rs. 146 crores were spent due to change of scope of work/extra work. The NHAI were asked to state the nature of cause of work which led to increase in extra expenditure. In reply, NHAI stated as under:-

“Due to rapid development in the vicinity and overall economic growth of the area, the requirement of additional structures / facilities were demanded by the Delhi/Haryana Government during construction stage of the project. The changes made are in respect of RTR-Palam Flyover, IGI Ramp and increase in height of underpasses etc. The increase in scope of work leads to value addition to the project as demanded by various authorities post the award.”

As regards change of scope of work, the Ministry submitted as under: -

“Another major issue, which has been raised is about the change of scope. About Rs. 146 crore was given to the Concessionaire by the NHAI. Since the facilities,

which were added to the project had to be done outside the scope of the project, and they were considered essential to improve the usefulness of the project. So, this was decided that we would have those additional facilities.”

(iii). Delay in Acquisition of Land

2.6 According to Audit, failure to provide land to the Concessionaire in time and delay of 26 months in finalization of change of scope orders for Rs.146.62 crore by the Authority contributed to the delay in completion of the project. In this connection, in reply, NHAI stated as under:-

“The land acquisition activities are beyond control of NHAI. Further it is submitted that it is not only Land Acquisition but there are other factors also which influenced the completion like delay in financial closure, signing of state support agreement, shifting of utilities by various utilities owning agencies like High tension line by BSES Rajdhani Power Ltd., HVPNL etc. The cost of change of scope as projected by the Concessionaire has been brought down from Rs. 257.50 crore to Rs 146.62 crore in May, 2006 by undertaking several rounds of discussions. And since the work was already progressing as per instruction of NHAI vide letter dated 06.07.2005 therefore there was no delay in progress of work due to late finalization of cost of change of scope of works.”

2.7 According to Audit in para 2.4.3 of their report in respect of Delhi- Gurgaon, though the ownership of the land was not transferred, the Ministry of Defence and Airport Authority of India gave working permission to the Authority during July 2003 to April 2005 but the Concessionaire commenced the change of scope works only in July 2005 because of non-finalization of rates for change of scope items by the Authority.

2.8 When asked whether there has been any cost overrun due to the delayed execution of project, the Authority stated that:

“Most of the projects were completed with marginal time overrun and the delay in award of some projects was due to delayed DPR re-bidding problem in land acquisition etc. The land acquisition activities are beyond control of NHAI. Further it is submitted that it is not only Land Acquisition but there are other factors also which influenced the completion like delay in financial closure, signing of state support agreement, shifting of utilities by various utilities owning agencies like High tension line by BSES Rajdhani Power Ltd., HVPNL etc. The cost of change of scope as projected by the Concessionaire has been brought down from Rs. 257.50 crore to Rs 146.62 crore in May, 2006 by undertaking several rounds of discussions. And since the work was already progressing as per instruction of NHAI vide letter dated 06.07.2005 therefore there was no delay in progress of work due to late finalization of cost of change of scope of works.”

2.9 When asked whether it is a fact that service lanes are not completed due to land acquisition problems and if so, the remedies to deal with such a situation, the Authority stated that the service road is left incomplete due to non handing over of the land by the

Airport Authority of India. The matter is being pursued for handing over of the land so that service road would be completed. The Ministry also endorsed the above reply in this regard.

2.10 On the perception of the Committee that the delay of 42 months in the completion of the project may not be a loss to NHAI in financial terms but a loss to national development, the Ministry in their post evidence reply stated as under:-

“As the project was of public interest and also related with the development of nation thus all out efforts had been made for providing the best possible outcome in every respect and for the welfare of the state. The desired land was to be acquired from the public/government agencies etc. As the coordinates of the stretch are entirely in the urban area that too in Delhi and NCR, so even after making all out efforts as defined and enumerated in the National Highways Act 1956, it proved to be very time consuming activity to acquire the land from various private parties/individual/government agencies on time as conceived in the work programme.”

2.11 On this issue, the Comments of the Secretary, Ministry of Shipping Road Transport and Highways were as under:-

“About the loss or any delay, I mentioned myself, it means depriving the public of the convenience and it means development loss and all other losses; they are very, very huge losses. Only there may not be any direct financial outgo from the Government to the NHAI or the concessionaire, but the fact remains that delays cost the nation heavily. That goes without saying, and I definitely will be second to none in holding that view.”

CHAPTER-III

DETAILED PROJECT REPORT

Change of Scope

3.1 Audit in Para 2.2 of the Report have observed that preparation of accurate and realistic Detailed Project Reports (DPR) for any highway project is the foremost critical activity. The DPR of Delhi-Gurgaon project was deficient on many counts which resulted in execution of their items under change of scope orders for Rs. 146.62 crore. Delhi-Gurgaon projects had the following deficiencies:

3.2 In Delhi-Gurgaon project, DPR envisaged construction of eight-lane highway from Km. 14.3 to Km. 36.63 and thereafter six-lanes up to Km. 42 in Gurgaon. In the course of detailed designing and execution of the project, the Authority issued change of scope notices between April 2003 and May 2004 for certain additional works. Accordingly, IC finalized and issued to the Concessionaire (June 2006) the change of scope order valuing Rs.146.62 crore constituting 21 per cent of the project cost. The change in scope of work included change in the height of underpasses from 3.5 metre to 5.5 metre, construction of elevated stretch from Rao Tula Ram Marg to Palam and additional underpasses at two locations, critical items that should have been foreseen at the time of preparation of DPR itself. Further, no responsibility was fixed on the DPR consultant for their failure to take into account the Indian Road Congress (IRC) specifications on the minimum vertical height of 5.5 metre for underpasses.

3.3 In this regard, the comments of the Ministry/NHAI as contained in the Action Taken Note submitted by them to the C&AG are as under:-

'A feasibility report from km 15.4 to 36.630 was assigned to M/s RITES in June, 1997 to assess the technical feasibility and financial viability and feasibility report completed in June, 2000. The final feasibility report for the reach from km 14.300 to 42.00 was approved in October, 2001. In view of rapid development which had taken place in Delhi & Haryana areas falling on the project Highway, Delhi and Haryana administrative authorities insisted some improvements which were considered essential. The Change of Scope order was issued first in April, 2003 and second on 22.9.2003 to the Concessionaire after due deliberations at length in various meetings with officers of AAI, Haryana Government and Delhi Government. The project highway was inspected by the then Hon'ble Minister of Road Transport and Highways along with Secretary, RT&H on 29.11.2003 when it was directed to further optimize the design and provide some more value additions. Secretary, RTH directed CRRI to undertake a study and suggest optimization of Design and that was approved on 8.4.2004 by the then Hon. Minister of Road Transport and Highways and letter was issued on 29.4.2004. Proposal of change of scope costing Rs. 224.48 crore as assessed by the IC as against Concessionaire cost of Rs. 257.50 crore was put up in the 55th meeting of the Authority held on 15.7.2005 and approved cost of Rs. 224.48 crore. However, NHAI on 6.7.2005 already gave notice to the concessionaire to

proceed with the works under the COS, pending the final issue of cost. Further to ensure that no undue advantage is taken by the Concessionaire. NHAJ referred the matter to a third agency i.e. Engineer's India Ltd (EIL), a Public Sector Undertaking to ascertain the reasonableness of the cost. EIL in consultation with NHAJ brought down the cost to Rs. 218.51 crore as against Rs. 224.48 crore assessed by IC. In the mean time two civil works in Haryana and Delhi on NH-1 near Delhi awarded under North-South Corridor (NS-17 & NS-18). Keeping in view Clause 17.2(b)(ii) of the concession agreement the cost of Change of Scope of work was finalised by Independent Consultant to Rs. 244.01 crore adopting average rates of these two packages based on the similar items available in the adjoining packages awarded through the open tender. The increase in cost from Rs. 224.48 cr to Rs. 244.01 crore is due to further changes on account of provision of RE walls, noise barrier, service roads etc. However based on several round of discussions the proposal of change of scope works was reviewed by the IC and submitted estimated cost of Rs. 175.18 crores on 10.5.2006 deleting certain structures at Kapshera and Hero Honda Chowk and other items. The IC's recommendation was examined in NHAJ and modified to Rs. 155.25 crore (with net financial implication of Rs. 146.62 crore to NHAJ) after deleting noise barriers, contingencies and underpass at AWWA and landscaping. The relevant clause 17.2(b)(ii) may be referred to substantiate the above. However, since the element of Change of Scope of work is also an integral part of ongoing project, therefore it was practically not feasible to engage another agency as it may lead to contractual complications by putting two different agencies in the same structure for similar kind of activity as change of scope works were inter-related and inter-linked with main scope of works like increase in height/length of viaduct or width of the structures.

The cost as projected by the Concessionaire has been brought down from Rs. 257.50 crore to Rs. 146.62 crore in May, 2006 over a period of time by undertaking several round of discussion and since the work was already progressing as per instruction of NHAJ vide letter dated 6.7.2005 therefore there is no delay in progress of work due to late finalization of cost of COS works. However, it is clear from the above that entrustment of execution of change of scope work to the concessionaire is in accordance with the concession agreement Clause 17.1 therefore the above Para may please be dropped.

It is re-iterated that the height of underpass of 3.5m had been initially envisaged for crossing of light Vehicle only. However due to rapid development of the surrounding areas, the Haryana Government/HUDA has insisted upon to provide underpass of height 5.5m instead of 3.5m for facilitating crossing of heavy vehicle/fire tenders and other heavy vehicle due to lot of commercial and residential activities that took place on both side of the project road. It may be stated that the entire section of Delhi-Gurgaon project is not an urban area some portions were still falls under rural areas and underpass was initially planned for the rural areas as per IRC code. However due to subsequent rapid industrial/commercial development of the area due to proximity with the nearest town of Gurgaon and to facilitate crossing of heavy commercial vehicles the height of

under pass was to be increased due to demand of Government of Haryana as per actual requirement. As regard change of scope valuing Rs. 146.62 crores, the same is towards additional facilities made available on highway and may not linked to the negative grant.”

3.4 In the above context, when asked whether any study has been made about the actual traffic which has been moving on the Delhi-Gurgaon stretch vis-à-vis the estimated traffic and the reasons for variations, the Authority stated as under: -

“Yes. NHAI had engaged Chartered Accountant firm for 15 days traffic validation at Km 24 Toll Plaza and as per report the Traffic during the counting period from 26.8.2009 to 09.09.2008 was 1,60,500 PCU/day. The estimated traffic by RITES in the year 2008 was 1,85,587 PCU/day based on traffic growth rates as mentioned in above para. As regards to measures deployed by NHAI, there is a provision in concession agreement under Schedule ‘P’ for verification of the actual traffic on the project highway. The Concessionaire has procured the Automatic Traffic Count –cum-classifier system & Independent Consultant is in the process of carrying out the test for independent verification. The estimated traffic is based on certain assumptions like growth rate of vehicle and economy which may or may not realize in actual as per estimate.”

3.5 Elaborating the reasons for heavy local traffic on the expressway, the Chairman, NHAI stated:-

“It was felt that Gurgaon traffic will be averse to paying a toll; people will prefer to take the free road on which there is no toll, and these roads will be developed by the local authorities so that the Mehrauli-Gurgaon Road and the Old Gurgaon Road will also be developed so that the traffic would be distributed.

In fact, the regional scheme of things as it is there, is that the local traffic will take the toll free roads and they will not prefer to pay the toll. So, this is the basic concept to the project.”

Height of Underpasses

3.6 When asked why the Authority has not fixed any responsibility on the DPR Consultant for the deficiencies observed in the DPR including their failure to take into account the Indian Road Congress (IRC) specifications on the minimum vertical height of 5.5m for underpasses, the reply of the Authority was: -

“In view of rapid development, which had taken place in Delhi & Haryana areas falling on the project Highway, Delhi and Haryana administrative authorities insisted some improvements which were considered essential during execution , therefore Change of Scope orders were issued to the Concessionaire in accordance with the Concession Agreement. The height of underpass of 3.5m had been initially envisaged for crossing of light Vehicle only. However due to rapid development of the surrounding areas, the Haryana Govt/HUDA has insisted upon to provide underpass of height 5.5 m instead of 3.5 m for facilitating crossing of heavy vehicle/ fire tenders and other heavy vehicles due to

lot of commercial and residential activities that took place on both side of the project road. It may be stated that the entire section of Delhi-Gurgaon project is not an urban area, some portions were still falls under rural areas and underpass was initially planned for the rural areas as per IRC code. However due to subsequent rapid industrial/commercial development of the area due to proximity with the nearest town of Gurgaon and to facilitate crossing of heavy commercial vehicles, the height of under pass was to be increased. Therefore there is no deficiency on part of DPR consultant on this account.”

3.7 When asked to state whether has any estimate been made to actually determine the return that has accrued to the operator? If so, are there any plans to make such arrangement in future and their own mechanism to assess the traffic actually using the toll road, the Authority in their Post Evidence reply submitted as under: -

“In BOT mode the project, internal rate of return and equity internal rate of return (EIRR) is considered while working out the financial viability of the project. In BOT mode all types of risk including traffic is to be borne by the Concessionaire and is decided before invitation of bids. There is no scope for change in decision after award of Concession as regard to actual revenue being less or more as compared to anticipated at the time of assessing the viability of the project. In case if actual traffic proved beneficial to the Concessionaire, there is no policy to buy back the project since there is no such provision in the Concession Agreement. Similarly when actual traffic is less, NHAI does not compensate the loss to the Concessionaire. Mechanism does exist to independently check the actual traffic using the highway. However as already stated earlier in the instant case there is provision related to sharing of revenue once the traffic exceeds the threshold value.”

3.8 On being asked about the reasons for not conducting a fresh traffic study as advised by the Financial Consultant, it was submitted in the written reply of NHAI that:-

“The Financial Consultant, M/s. SBI Caps had suggested to carry out fresh study of traffic volume. The traffic volume given to the SBI Caps pertains to the year 2000 which was only one year old. Taking note of the existing traffic volume and time elapsed it was not considered necessary to carry out fresh traffic counts. It may be mentioned that for project of this magnitude, one year old traffic data is considered quite recent and reasonable for traffic projections. Moreover the process of awarding of the project would have got further delayed.

Any financial analysis is supported by sensitivity analysis. In the sensitivity analysis, the viability of the project is tested against increase in the cost and/or decrease in the revenue. In the instant case, conscious decision was taken in the NHAI/Ministry to adopt the worst scenario. Worst scenario, envisaged that other roads providing connectivity between Delhi & Gurgaon will also be developed. When other facilities without toll were expected to be available, assumption that local traffic will not use this project highway is but natural. Traffic

projections are always with certain assumption, which may vary, later on. It has also been the international practice. The method adopted in the instant case was quite logical and scientific.

This statement is further supported by the comparison of the projected traffic with the actual traffic which is more or less similar and has been given in the earlier submission.”

CHAPTER-IV

FIXATION OF CONCESSION PERIOD AND TOLL COLLECTION

4.1 Audit in Para 2.3 of the Report had observed that the Authority, before calling for the bids in respect of BOT projects, fixed the concession period up to a maximum of 30 years. However, before fixing the concession period, the Authority had not systematically developed financial models to indicate the benchmark Internal Rate of Return (IRR) which would determine the optimum concession period within which the Concessionaire would recover the capital cost of the project and other project related expenditure besides earning a reasonable return. In the absence of such a system, Audit calculated the IRR of four BOT-Toll projects selected for audit based on discounted post tax cash inflows and outflows based on the projections made in the DPRs/concession agreements and found that the IRR of Delhi-Gurgaon projects was 24 per cent.

4.2 Based on the reasonable IRR, the concession period that should have been allowed to the Concessionaire for Delhi-Gurgaon projects worked out to 14 years, whereas a concession period of 20 years was fixed for this project. Consequently, based on the projected tariff collection and reasonable concession period, the Concessionaire would gain Rs.187.77 crore, (after discounting at a rate of 20 per cent) during the extended concession period. By uniformly fixing the concession period at 20 years for all the projects, the Authority has lost the opportunity of either collecting toll revenue by itself or allowing the road users to use the project road by paying lesser or no toll during the same period. In this regard, the Authority were asked to state the total cost of construction of the Delhi-Gurgaon Project and what has been the expected revenue likely to be generated during the period of 20 years based on the actual figure available till date taking into account the growth of traffic during the 20 years.

4.3 On the above mentioned Audit observation, the NHAI furnished their comments as under:-

The system of preparing financial model was in place. The Financial analysis of project was got done by M/s SBI Capital Markets Limited based on estimation of civil construction cost, traffic growth, toll income, Debt, Grant, Equity etc. The financial consultant M/s SBI Capital Market Ltd (A subsidiary of State Bank of India), on 15th May and 30th May 2001 recommended implementing the project on BOT basis considering 20 years concession period including construction period of 30 months. The concession period was fixed based on the recommendation of the financial consultant M/s SBI Capital Market Limited based on the financial viability of the project as the project was to float on BOT basis. NHAI Board made investment decision on the basis of these recommendations and bids were accordingly accepted. In financial modeling variables are traffic growth, civil construction cost, and VGF and concession period. All the other variables being held constant, an increase in concession period will result in reduced demand for VGF and vice versa. The revenue sharing concept was introduced in project to take care of excess revenue

generated if any by the concessionaire over and above the projections made. Accordingly the concessionaire of Project has to share equally with NHAI the revenue beyond level of 1, 30,000 PCUs /Day at any toll plaza. The relevant clause is placed as **Annexure-III**. It may be noted that under the revenue sharing clause the concessionaire shared and paid to NHAI about Rs. 4.0 crores in 2008-09. This share of NHAI is likely to increase every year depending upon Traffic and Toll rates to be revised every year w.e.f. 1st April based on Whole Sale Price Index (WPI). NHAI is not aware of the assumptions made by the Audit while indicating gain of Rs. 187.77 crore to the concessionaire. Therefore, NHAI have no comments to offer except that international bids were invited based on open and transparent procedure. However, it is further submitted that as on date the effective concession period is approx 15 years due to delay in achieving financial closure as well as delay in completion of work.

4.4 On being asked about the total cost of construction of Delhi-Gurgaon project and what revenue was likely to be generated during the 20 years concession period, the Authority in their written reply submitted as under:-

“The Total cost of the project is Rs. 710.25 crore including Change of scope of Rs. 155.25 crore at the cost of NHAI and partly shared by Haryana Govt.). The Total Project Cost as per Concession Agreement is Rs 555 crore. The detailed financial model was prepared by SBI Capital Markets Limited (A subsidiary of State Bank of India) based on major assumptions like concession period of 20 years including construction period of 30 months, EPC cost, equity IRR, Project IRR and Debt Service Coverage ratio (DSCR), Leakages of traffic, Toll rates etc. Therefore financially viable model was worked out to implement the project on BOT (Toll) so as to attract private investment in road sector. As regards to actual revenue likely to be generated during the 20 years based on actual traffic, NHAI has not undertaken any such study. However in the vicinity there are various developments/facilities are in progress/under considerations like DMRC line, Dwarka-Gurgaon connectivity or other developmental activity which may affect the volume of traffic in future and accordingly affect the revenue.”

4.5 When asked in how much time the Authority thinks that the Concessionaire would be able to recover the capital cost of the project and reasonable return. The Authority in their Post Evidence reply submitted as under: -

“BOT (Toll) model is not based on recovery of capital cost and reasonable return only as traffic and other risks have been taken by the bidder for a period of Concession. The Financial Consultant, M/s SBI Capital Markets Limited has submitted various financial modules prior to the bidding process and during various discussions and presentations to the then Hon’ble Minister, RTH, it was decided that worst-case scenario may be considered for the project viability. Accordingly the toll rates for the worst-case scenario was finalized and included in the bidding document. The toll rates were recommended to give a reasonable return to the potential investors and generate sufficient bidding interest in the project. Therefore concession period was decided based on the fact that the

investment as well as reasonable returns will be recovered by the Concessionaire within the period of his concession.”

4.6 When asked whether any legal or other mechanisms is now available with the Authority for either collecting toll revenue by itself for the excessive years awarded to Concessionaire or allowing the road users to use the project road by paying lesser or no toll during the same period. The Authority replied as under: -

“There is no provision available in Concession Agreement and also there is no Government policy in this regard. However it is to clarify that there is no excessive years awarded to the Concessionaire as the concession period was pre-determined based on recommended financial model by the financial consultant before inviting competitive bids. Beside there is a provision in the agreement for sharing revenue for traffic in excess of 1, 30,000 PCU/day at any Toll Plazas.”

4.7 On being asked about the financial model followed while pre-fixing the concession period of 20 years before inviting bids for the project, the NHAI in their post evidence written reply stated as under:

“Financing of project on Public-Private Partnership mode depends upon parameters which include cost of construction, maintenance & operation, traffic & toll rates, concession period and grant component. To provide a common platform to facilitate comparison of bids and to select the most suited bidder, after considering the recommendation of the consultant, all the parameters are fixed except one which the bidder is expected to quote. In the instant case except grant component, which was the bidding parameter, other parameters including concession period and toll rates were fixed prior to invitation of competitive bids on the basis of the recommendations of SBI caps.”

4.8 In view of the problems being faced by the road users in crossing the toll plaza due to huge traffic pile up everyday, the Authority was asked to state whether it has issued any advice to the Concessionaire or otherwise thought of any remedial steps to minimize the inconvenience to the road users. In reply, the Authority stated as under: -

“It may be clarified that the tag is an electronic device (OBU), introduced for the benefit of the road users. This device can be charged on advance payment to the Concessionaire. It facilitates deduction of toll amount on each crossing of toll plaza and thus opens the toll gate automatically. Thus it is a form of prepaid card which avoid manual payment and thus saves time. It is optional for the commuters to have the card and not compulsory. “

NHAI is aware of the fact that traffic queue take place during morning and evening peak hours at toll plaza at km 24. NHAI from time to time issued instructions through the Independent Consultant to the Concessionaire to undertake sufficient measures like deployment of Marshalls, channelization of

traffic to avoid long queues. However, Concessionaire in order to further improve the efficiency is planning to add more lanes at Toll plaza. Moreover it is submitted that the present processing rate in the Tag lanes as well as in cash lanes are much higher than stipulated in the Concession Agreement. There is no exemption/tag lane for certain privilege class of people. However dedicated Tag lanes exist for tag users. Tag lanes can be used by any person using motorized vehicle and having the Tag while crossing the toll gate. Further, it has been observed that non Tag holders are entering the Tag only lanes and creating congestion for Tag users despite proper signage at Toll plaza. Due to this the commuters are not opting for using TAG, which is a must for handling such large traffic volume during peak hours. The traffic indiscipline is also a major reason for congestion at Toll plazas. However, NHAI has taken up the matter with Commissioner of Police, Gurgaon to deploy Police Force in sufficient number to penalize the erring commuters at Toll Plaza despite installation of clear signages. As per concession Agreement/state support agreement, state Government has certain obligations for regulation of smooth flow of traffic on project highway. The matter of levying penalty on errant commuters has also been explored but there is no specific provision in the Concession Agreement / NHAI Act which empowers the Concessionaire/ NHAI to levy penalty.

The complaints have been received regarding misbehavior by the ticket collector/guards at the toll plaza. This has been viewed very seriously and Concessionaire has been strictly advised to instruct the guards to behave courteously. In certain occasion the Concessionaire has taken the action by way of terminating the services of these misbehaving guards.”

4.9 When asked why the independent auditor was not appointed earlier to ensure correctness of accounts maintained by the Concessionaire, the Authority stated as under: -

“It is to clarify that as per Concession agreement clause 28.4, NHAI shall have the right but not the obligation to appoint at its cost another firm of Chartered Accountants. However NHAI decided to audit and verify all matters which the Statutory Auditors of the Concessionaire are required to certify pursuant to Concession Agreement. M/s Arora & Chaudhary Associates audited the transactions of the Concessionaire for the year from 2002-03 to 2007-08 (six years) and submitted their report in March, 2009. The matter has been taken up with the Independent Consultant for comments by the Concessionaire. It may be seen that the work assigned to the auditor was to examine the account for the entire period.”

4.10 As per the information furnished in NHAI regarding huge amount of toll collection by the Concessionaire, it was noted that as per the Revenue Sharing Agreement, the revenue from toll collection after the threshold limit is to be shared. When asked how can it be ensured that Concessionaire has accounted for and remitted the authority's share accurately, the Authority stated as under: -

“The Independent Consultant regularly monitors the toll collection and checks the correctness of calculations done by the Concessionaire for the share of revenue of NHAI. Any shortfall observed is intimated to the Concessionaire for compliance. However the concession agreement allows the Independent consultant under Schedule ‘P’ of the Concession Agreement to undertake traffic sampling for the purpose of determination and / or verification of the actual traffic on the project highway. This shall be done through Automatic Traffic Count cum classifier. NHAI can also take independent sampling. NHAI has done one such sampling with the assistance of M/s Lodha and company an empanelled chartered Accountant firm by NHAI for traffic validation. Report of M/s Lodha and Company has been received and is under examination. Accordingly the concession agreement has sufficient provisions and processes to ensure that the Concessionaire has accounted for and remitted the authority’s share correctly.”

4.11 When asked whether any corrective action has been taken by the Concessionaire so that such irregularities do not recur in the future, the Authority stated as under: -

“The report has been sent to the Independent consultant for ensuring compliances by the Concessionaire and taking further necessary action in accordance with the Concession Agreement.”

4.12 When asked whether any video recordings are also maintained with regard to the traffic movement at the toll gates and for how long these records are preserved, the Authority stated as under: -

“The Concession Agreement provides for the retention period of traffic count (including video recording at toll gates) for each day, and record of daily toll collection at each toll plaza is to be maintained till hand-over to NHAI at termination of the Concession.”

4.13 When asked about the financial implications of the huge toll collection by the Concessionaire vis-à-vis the projected toll collection indicated in the DPR while awarding a concession period of 20 years, the NHAI stated as under:

“There is a provision in the concession agreement for equal sharing of toll revenue for vehicles in excess of 1, 30,000 PCU/day at any Toll Plaza. The fee to be shared is to be paid to NHAI by the Concessionaire on a monthly basis. However, at present the toll sharing is for Toll Plaza at Km 24 only (Delhi/Haryana border) where traffic is in excess of 1, 30,000 PCU/day. NHAI is sharing the toll revenue since beginning of toll collection i.e. January, 2008 for Toll Plaza at Km 24.”

4.14 On being asked about the future plan of NHAI for decongestion of the highway due to increase in traffic, the Authority stated:-

“NHAH at present do not have any plan to decongest the highway. However, need may arise in future to develop alternate highway / roads due to growing demand of increased traffic between Delhi and Gurgaon.”

CHAPTER-V

ROLE OF INDEPENDENT CONSULTANT

5.1 According to para 3.2 of Audit Report, the Authority was required to appoint an Independent Consultant prior to the commencement of work by the Concessionaire to supervise the work executed by the Concessionaire; ensure compliance with quality specifications and time schedules; approve any proposals for change of scope and issue completion certificates.

5.2 In this regard, the Authority were asked to state whether they remained fully satisfied with the performance of Independent Consultant in performance of the tasks assigned to him or some kind of advise/penalty etc. were ever necessitated. In reply, the NHAJ stated as under: -

“The Independent Consultant had discharged his obligation in accordance with the provisions of the Consultancy Agreement and up to the satisfaction of NHAJ.”

5.3 When asked as to who is responsible for monitoring whether all the structures and the Highways which have been constructed are meeting all the safety requirements and whether any defects have ever been pointed out, alongwith outstanding defects if any to be corrected, the NHAJ/Ministry stated as under: -

“The Independent Consultant appointed by the NHAJ in consultation with the Concessionaire is responsible for undertaking and performing the duties, work, services and activities of the Concessionaire during design, engineering, procurement, construction, operation and maintenance of the project highway. Independent Consultant is responsible for ensuring that the construction work is accomplished in accordance with the technical specifications and issue completion certificate after checking the results of prescribed tests.”

CHAPTER-VI

PROJECT FINANCING AND ESCROW ACCOUNTS

6.1 According to Audit, the Authority should have an effective monitoring mechanism to ensure that the funds released for a particular project have actually been utilised for that project. This is achieved through the operation of escrow account by the Concessionaire. Further, as per the concession agreements for BOT-Toll projects, the Concessionaires were required to open an escrow account (EA) with a bank and all receipts and payments in respect of the project were to be routed through this account. The Concessionaires were required to forward monthly EA report within five days of the end of each month to the Authority. The terms and conditions of operation of the EA also required the bank to forward a copy of the account each to the Concessionaire, the Authority and the lenders. The Audit has pointed out that in the case of Delhi-Gurgaon project, copies of Escrow Accounts were neither forwarded by the Concessionaire nor did the Authority demand the same.

6.2 On the above audit observation, the comments of NHAI as furnished by them to the Audit in their Action Taken Note were as under:-

“It is admitted that the equity was not routed through the Escrow account. The matter was discussed at that point of time and it was informed by the Concessionaire that the Escrow account was established after expiry of almost more than one and half year after signing of the agreement. Since the project was awarded on the basis of negative grant, no payment from NHAI was involved for original scope of work, therefore interest of NHAI does seem to be hampered because of above deficiencies. However, Concessionaire has already been directed to maintain Escrow account in accordance with Concession Agreement throughout the concession period. Matter is again being pursued appropriately in accordance with the Concession agreement. The audited accounts has also been submitted by the Concessionaire vide their letter no. JDSC/1.03/2007/628 dated 26.10.2007. NHAI has appointed additional auditor and got the account of the concessionaire audited for last six years.

It may be submitted that at the initial stages of implementation of the BOT projects, the Escrow accounts were not maintained by the concessionaire as per concession agreement as also pointed out by Audit. However, in subsequent projects operation of Escrow Account in line with the concession agreement is being strictly enforced.”

6.3 In this context, the Authority were asked to state their opinion on the importance of maintaining an escrow account since as per the concession agreements for BoT-Toll Projects, the Concessionaires were required to open an escrow Account with a bank and all receipts and payments in respect of the project were to be routed through this account and further to state (i) whether the Concessionaire is maintaining an Escrow Account with the bank; (ii) if so, whether the Concessionaire is forwarding monthly EA Report within 5 days of end of each month to the Authority as per the terms &

conditions; (iii) the circumstances under which the Authority did not insist upon the copies of EAs from the Concessionaire and whether any responsibility has been fixed on anyone for their failure in this regard; (iv) whether the Authorities have ever come across a situation where the Concessionaire has not followed the system; and if so, what action has been taken by the Authority against the Concessionaire?

In reply, the NHAI stated as under:

“Escrow Account is required to be opened and maintained by the Concessionaire through which all inflows and outflows of the cash on account of capital and revenue receipts and expenditure shall be routed in accordance with the provision of the Concession Agreement.

As per the concession agreement, the Concessionaire is maintaining escrow Account with a bank. Further, as per the terms & conditions of the agreement Concessionaire is suppose to forward monthly EA Report within 5 days of end of each month to the Authority. Initially i.e. during the construction phase, the Concessionaire was irregular in submission of the EA report. The authority had taken up the matter with the Concessionaire time and again in writings as well as during progress review meetings and thereafter the copies of the statement of the Escrow Account were being received regularly. This error was got rectified much prior to the start of collection of toll process.”

6.4 On being asked as to whether the Authority has since been undertaken any steps to strengthen the monitoring mechanism, the NHAI in their written reply stated:-

“In BOT projects, there is a provision in the concession agreement to appoint Statutory Auditors, a firm of Chartered Accountants by the Concessionaire out of list of firm sent by NHAI. In order to strengthen the monitoring mechanism for project financing, there is also a provision in the Concession Agreement to appoint Additional Auditors at the cost of NHAI to audit and verify all those matters, expense, costs, realizations and things which the Statutory Auditors of the Concessionaire, are required to do, undertake or certify pursuant to the concession agreement.”

CHAPTER-VII

NON-APPOINTMENT OF INDEPENDENT AUDITORS

7.1 As per clause 28.4 of the concession agreement, the Authority had the right but not the obligation to appoint at its cost another firm of Chartered Accountants (independent auditor) to audit and verify all those matters, expense, costs, realizations and other assurances which the statutory auditors of the Concessionaire, are required to do, undertake or certify. However, in respect of none of the projects covered in this review, did the Authority appoint independent auditors. Though the appointment of such independent auditors was not mandatory, it had become desirable in the case of the Satara-Kagal project to safeguard the Authority's financial interests.

7.2 As per information provided by Audit, the Authority appointed a firm of Chartered Accountants on 5 August, 2008 to audit the transactions of the Concessionaire for Delhi-Gurgaon project for the period from 2002-03 to 2007-08. The independent auditor submitted Report for the year 2007-08 on 18 March, 2009. The Report contains following comments:

7.3 The independent auditory observed differences on the basis of amount entered in the financial records and that of software generated reports both in cash collection as well as OBU collection. There was excess in financial books by Rs. 2.16 crore in 'Cash Collection' as compared to 'software generated reports'. Further in respect of On Board Unit users, deficit in booking books was Rs. 66.35 lakh.

7.4 In view of above, the auditor has observed that 'in this regard the question on the accuracy of traffic report also arises, due to which it was not possible to comment upon as to whether the revenue sharing was done properly or not.'

7.5 According to Authority it would exercise the option of appointing independent auditors on need or case-to-case basis.

7.6 During the evidence of NHAI, it was pointed out that there have been an inordinate delay in the appointment of independent auditors.

7.7 When asked as to why the Authority did not appoint any firm of Chartered Accountants as Independent Auditor to audit and verify the project finance, the Authority stated that NHAI has appointed additional auditor and got the account of the Concessionaire audited for last six years. The report has been received on 18th March, 2009 and is under examination.

7.8 When asked whether the Authority has since undertaken any steps to strengthen the monitoring mechanism for project financing, the reply of the Authority was as under:

"In BOT projects, there is a provision in the concession agreement to appoint Statutory Auditors, a firm of Chartered Accountants by the Concessionaire out of list of firm sent by NHAI. In order to strengthen the monitoring mechanism for

project financing, there is also a provision in the Concession Agreement to appoint Additional Auditors at the cost of NHAI to audit and verify all those matters, expense, costs, realizations and things which the Statutory Auditors of the Concessionaire, are required to do, undertake or certify pursuant to the concession agreement.”

CHAPTER-VIII

ISSUANCE OF COMPLETION CERTIFICATE PENDING NON-EXECUTION OF PUNCH LIST ITEMS AND PENALTY CLAUSE

8.1 As per the Audit observations contained in Chapter III of the Audit Report, the Authority also appoints Independent Consultant (IC) to supervise the work executed by the Concessionaire; ensure compliance with quality specifications and time schedules; approve any proposals for change of scope and issue completion certificates. The concession agreements stipulate that the Concessionaire could commence work on an appointed date being the date on which the financial closure was achieved and commence commercial operations on obtaining a completion or provisional completion certificate from the IC. After the issue of provisional completion certificate, a punch-list of items was required to be prepared which includes certain minor items of work to be completed even though the road was opened to traffic. The Concessionaire was bound to complete the punchlist items within a stipulated period and obtain final completion certificate. Further, as per the terms of agreement in respect of Delhi-Gurgaon project, the Concessionaire was required to construct road facility according to the approved designs in conformity with Government specifications. As per the reports of IC (November 2006), 87 quality related and 19 traffic and safety/environmental related Non-Conformity Reports (NCRs) were pending for want of remedial action by the Concessionaire. The Concessionaire's quality team was not fully functional and was found under-staffed (November 2006). Even after 38 months of commencement of construction, the Concessionaire had not appointed a qualified/experienced team leader to ensure operational efficiency in the execution of project.

8.2 The Authority stated that the rectifiable NCRs pending as on the date of provisional completion certificate (January 2008) have been included in the punch-list items which have to be complied with within 120 days as per the concession agreement. But the fact remained that these NCRs were pending since November 2006 indicating deficient performance by the Concessionaire.

8.3 From the chronology of events furnished by the NHAI, it was noticed that the provisional Completion Certificate was issued by the Independent Consultant on 23rd January, 2008 subject to the completion of punch-list items attached therewith with the stipulation of their completion with 120 days. Further, the final Completion Certificate was issued to the Concessionaire on 22nd April, 2009.

8.4 The comments of NHAI on the above Audit observation as contained in their Action Taken Note furnished to C&AG are as under: -

“It is submitted that against 106 pending Non Conformity Reports (NCR), 37 NCRs have been closed and there is 69 outstanding as intimated by IC. Remaining NCRs are being complied as there is a mechanism envisaged in the Concession Agreement to deal with such NCRs. The rectifiable NCR's related to quality is included in Punch list issued with provision completion certificate on

23.1.2008 which has to be complied within 120 days as per Concession agreement. In case the same is not complied the same will be dealt as per Agreement. As regards, to non-rectifiable NCR's, Concessionaire has given an undertaking that they will be fully responsible for the quality of work and they undertake to repair/reconstruct any defects at their own risk and cost during entire concession period and financial penalty, if any, imposed by NHAI on the recommendation of IC, will be paid by them. As regards audit observation relating to deficient performance by the Concessionaire, it is stated that all pending rectifiable NCRs have already been complied with by the Concessionaire."

8.5 In the above context, the information on the following points were elicited from NHAI:-

- i) To explain in detail the punch-listed items.
- ii) Whether any list of items were pending with the Concessionaire? If so, what were they and by when were they likely to be completed? What is the latest position?
- iii) Whether any action has been taken either to get the items completed or to recover the penalty from the Concessionaire as per the provisions of the Concession Agreement?

In this regard, the Authority stated as under:

“(i) The punch-list appended with Provisional Completion Certificate issued by Independent consultant (M/s RITES-SHELADIA (JV) on 23.1.2008 is enclosed herewith as **Annexure II**. (Appended as Annexure I to the Report)

(ii) There are certain items like cement paint on structures, landscaping in increased area between RTR-Palam junction which was disputed by the Concessionaire on the pretext of not covered under original Scope of Work. This was referred to a Committee who recommended de-linking such items from the punch list for further examination by the Independent Consultant. The items are being examined by the Independent Consultant for Change of Scope of Work. However, due to forthcoming Commonwealth Games 2010 the Concessionaire has been instructed to carry out landscaping between RTR – Palam junction by January, 2010 pending examination of claim of Change of Scope.

iii) The issue of penalty due to delay in completion of Punch-list item beyond limit as specified in the Concession agreement is being examined by the Independent Consultant and necessary recovery would be ensured by NHAI.”

8.6 During evidence of NHAI, it was stated that there is no system to charge the actual loss and that a maximum limit of penalty imposable to a contract amounts to Rs.

2 lakhs for every week of delay. When asked to state as to how this maximum limit has been arrived at since this seems to be a very meager amount, the Authority stated as under:-

“The maximum limit for non-completion of punch-list items is Rs. 2 lac per week as mentioned in Concession Agreement. Penalty is towards delay in completion of the work and no way relieves the Concessionaire for actually completing the work. Therefore penalty is not kept to the level to recover the entire amount rather it is a deterrent for the Concessionaire.”

8.7 During evidence of NHAI, clarification was sought on the issuance of completion certification before completion of punch list items. In this regard, the CMD, NHAI and Member (Project) submitted as under:

“The penalties are being worked out. the provisional certificate was issued by M/s. RITES and Shelagia Consultant on 23rd January, 2008. As per the contract, the independent consultant is authorised to issue a provisional completion certificate if the project highway is legally safe and reliably placed for commercial operation. So, the then consultant M/s. RITES & Sheladia had issued a provisional completion certificate on 23/01/2008. Thereafter, it listed out all the non-conformities that were required to be completed, and these were to be completed within a specific time as per the contract.

The concessionaire came up with a claim that some of the non-conformities are not in the project scope of work, and that they are falling as an additional scope of work. He had also taken up some of the NCRs, and completed them also. The matter was referred by IC to NHAI, and NHAI had engaged a Committee of three Chief General Managers. They have worked out as to what is as per the original contract and what is not as per the original contract. So, whatever was there in the original contract was left in the punch list, and the remaining items were taken away from the punch list.

The clarifications of the CGM Committee were informed to the concessionaire or rather to the independent consultant. It was said that you please work out the revised punch list based on the CGM Committee recommendation, and ensure that all these NCRs are completed before issue of the final COD. It is the IC, which has to carry out these things. So, he had issued the final COD on 22 August 2009 based on the compliance of the concessionaire.

As regards penalty, the Chairman has said that we have already asked the independent consultant to work out as to what penalty is leviable, and we are going to take that amount from the concessionaire.”

8.8 On being asked about the mechanism available with the NHAI to ensure that prior to issuance of the Completion Certificate, all the items in the Punch List had been

complied with by the Concessionaire, the Authority in their written reply submitted as under:-

“It may be noted that in terms of the concession agreement, it is the Independent Consultant who decided as to whether the concessionaire has duly complied with all the provisions or not prior to issuance of completion certificate. Thus after due verification that concessionaire has completed the punch list; the independent consultant had issued the completion certificate. Only items in para 14(ii) above, where change of scope is to be examined were pending.”

8.9 During evidence of the representatives of Ministry, on the issue of completion of Punch-List items within a fixed time frame, the Secretary, Ministry of Road Transport & Highways submitted:-

“What we will do is that we will review the project thoroughly and we will fix the time limit for each of the pending things. We will report back to the Committee.”

CHAPTER-IX

ROAD SAFETY AUDIT

9.1 According to audit, the Central Road Research Institute carried out a road safety audit for the Delhi-Gurgaon project for June, 2008 and the CRR I had observed that no road safety was carried out earlier at the planning stage or at the Detailed Project Report (DPR) stage. This is due to not appropriately addressing the issues relevant for non-motorising transport users. In the absence of adequate number of foot over bridges, the needs of the pedestrians have been largely ignored resulting in number of deaths since February, 2007. In this regard, the Authority were asked to explain the following queries: -

- (i). The number of recommendations given by the CRR I on various issues which have been accepted by the Authority and the recommendations which have not been accepted and the reasons for not accepting the same;
- (ii). The number of deficiencies in respect of which the Concessionaire was required to take action as per concession agreement but failed to do so and the action taken against the Concessionaire;
- (iii). The mechanism available with Authority to monitor that Concessionaire takes remedial action in response to recommendations of CRR I;
- (iv). The number of deficiencies that have been removed in response to recommendations of CRR I by the Concessionaire/Authority and the number of recommendations where action is still pending as on date;
- (v). The steps taken by the Authority to get the safety audit done before construction stage on ongoing projects as well as ensuing projects;
- (vi). Whether pedestrian crossings had been constructed at places where these are actually needed;
- (vii). Whether solar power blinkers as also Impact Energy Absorption Device which serve the purpose of shock absorbers, have been installed at the entry and exit points? Whether it is proposed to install the same and by when this work is likely to be completed?
- (viii). There are no service lanes at certain stretches of the highway which are necessary to have the same on both sides of the road to take care of the pedestrians, two-wheelers and three-wheelers? What steps have been taken to prevent water-logging and maintenance of the service lanes? Was this the fault of DPR or otherwise?
- (ix). Whether the Concessionaire has got permanent electricity connection for lighting the highway at night? If not, whether proper back-up system is there to take care

of the situation? Are there provisions for safety of night time commuters on the highways, such as patrolling of the vehicles to avoid road side threats, provision of ambulance in case of emergency etc.

- (x). Whether any land-scaping has been done which apart from distressing the drivers may take care of pollution emitted by the increasing number of vehicles?

In reply, the NHAI stated as under: -

“i) to iv) The audit report submitted by CRRI has been sent to the Concessionaire for compliance. The Independent consultant has also been directed to ensure compliance of the various issues raised by CRRI in its report.

To further enhance/reinforce the safety measures, the NHAI has undertaken the various measures like construction of five more foot over bridges in Haryana portion since the same were not the obligations of the Concessionaire under the Concession agreement. Out of the five Foot Over Bridges, two FOBs have been completed and operational between Udyog vihar and IFFCO Chowk and work on one FOB is in progress and for balance two, Land Acquisition is being done. All the above 5 FOBs are proposed to be provided with Escalators. Besides above, the two meter high fencing in central verge has also been erected and almost completed throughout the stretch to curb the crossover movement of the pedestrians. NHAI has also engaged a consultant for providing 5 vehicular underpasses between Rajiv Chowk and end of project. The consultant has submitted the Feasibility Report which is being examined. In addition to above there is also a provision of Construction of underpass and partial clover leaf at Hero Honda Chowk for which Consultant has submitted the Preliminary Project Report. The Comments of Haryana Govt. is awaited on Draft report.

vi) NHAI had taken up safety audit of projects at following stages;

- a) Project preparation stage
- b) Implementation stage
- c) Commissioning stage

vii) &viii) As brought out in para v) above, four Pedestrian Crossings by way of foot-over-bridge and four pedestrian underpass have been constructed based on demand by the local authorities like Air Force and District Administration of Gurgaon. The additional three foot-over bridges and proposed five vehicular underpass is also as per the local demand by the public/ District Administration.

ix) The solar power blinkers have been installed and the impact energy absorption devices have been installed at 2 locations which are considered as Accident Prone.

- x) Service lanes have been provided wherever land is available. In certain stretches land has not been made available by the Airport Authority of India therefore service road could not be provided. The matter has been taken up with Airport Authority and after hand-over of the land the balance service road will be got completed. It is to mention that even in the stretches where service road are in full length on both sides, two/three wheelers are not using the service roads despite signage installed at all such locations. Traffic Police, Delhi and Gurgaon have also conducted checking and challan the two/three wheelers using the main carriageway. Traffic indiscipline like entering the Tag lane by cash users, High speed driving, entry of two/three wheelers etc. is the source of concern for smooth operation of project highway for which the police and state authorities have been requested for imposing penalties/fines on the traffic violators.

The water logging on the service road near Hero Honda Chowk is due to blockage of natural drains (Khandsa drain) restricting free flow of water. Further the water logging is because of pumping sewage by the local villagers into the storm water drain constructed between main carriageway and service road , which overflows near Hero Honda Chowk. The matter has been taken up with Govt. of Haryana for clearing blockage of natural drains but the matter is still to be resolved at their level. The Concessionaire has provided sufficient number of sludge pumps to clear the same.

- xi) The Concessionaire has permanent electricity connection. However, the Concessionaire has also installed DG Sets as a power back-up system at his own cost. The Concessionaire as a part of emergency response protocol (ERP) has provided patrolling vehicles, Ambulances round the clock for the safety of the commuters.
- xii) The landscaping has been done as per the provision of the concession agreement which also take care of pollution. Concessionaire has also been instructed to carry out landscaping between RTR – Palam junction by January, 2010 pending examination of claim of Change of Scope.”

9.2 When asked whether NHAI has analysed the reasons which have been the cause for accidents on the Highways and if so, the findings thereof indicating year-wise percentage of occurrences since inception of each highway constructed under the aegis of NHAI, the Authority in their written reply submitted as under:

“NHAH has analysed the reasons which has been the cause of accidents on National Highways which are over speeding, exponential vehicle growth, no lane discipline – mixed traffic, no proper data collection and analysis, Wrong side Movement (contra flow), unauthorized median openings, parking, drunken driving, dangerous Public Transport (obsolete vehicles, overcrowding, wrong

parking), untrained driver, fatigue of driver, lack of inter-departmental coordination. The accident data on monthly basis is being collected from the month of May, 2009 onwards. Therefore year wise percentage of accident occurrence since inception of each highway constructed under the aegis of NHAI is not available. However, the data on accidents is being compiled by the Transport Research Division under the Ministry of Road Transport & Highways.”

9.3 In this regard, the Ministry were asked about the remedial measures if any being taken by the Government either by direct intervention or by way of directions to NHAI in respect of the above-mentioned Road-safety Audit carried out by the CRRI as this issue of grave importance affects the lives of the innocent pedestrians. Further, in view of the problems being faced by the road users in crossing the toll plaza due to huge traffic pile up everyday, whether the Government has issued any direction or advise to the NHAI to rectify the situation or has simply preferred to wash off its hands of the issue. In this regard, the Ministry endorsed the above reply of the NHAI.

During the evidence of Ministry, the Secretary submitted that:

“The safety related issues have been considered while designing the project. At the same time, what is to be appreciated is that this was one of the very first projects and everybody lacked experience. So, I would submit before the Committee that NHAI deserves that much of the margin. When it came to safety related issue, the Governments of Haryana and Delhi raised certain issues after implementation of the project commenced and those things had to be built in. Even after COD had been granted certain safety related issues have been raised because quite a few deaths on the road occurred because people ignorantly or because of their own thinking crossed the road, which is not expected to be done. It is an expressway, access controlled, nobody should enter the road and nobody should cross the road. That has been one of the main reasons for the accidents, besides other reasons. Now the NHAI has fenced the road throughout. With the result, I am told the rate of accidents has considerably come down.”

9.4 When asked has the Concessionaire provided patrolling vehicles and Ambulances on the Highways in terms of its obligations under the Concessionaire Agreement, the reply of the NHAI is as follows: -

“The Concessionaire as part of his obligations set forth in Emergency Response Protocol (ERP) has provided patrolling vehicles and Ambulances on the project highway.”

9.5 When asked whether in order to ensure proper safety and policing on Highways, the Government is contemplating National Highway Policy on the pattern of Railway Protection Force, the Ministry stated as under: -

“There is no proposal at present to provide the National Highway Policing on the pattern of Railway Protection Force. However, in completed highway sections provision exists for highway patrolling and ambulances by Concessionaire under

O&M contract so that accident victims could be provided first aid and taken to hospitals.”

9.6 On being asked about the provision in the concession agreement to fix responsibility of Concessionaire with respect of providing Pedestrian Crossing/Underpasses/Subways and whether the Concessionaire have complied with its obligations also stating the reasons for delay in providing sufficient number of Pedestrian Crossing/Underpasses/ Subways, the reply of the Ministry was as under: -

“The Concessionaire was responsible for construction of two pedestrian/cattle underpasses as per provisions of concession agreement, which have been provided by him as part of original scope of works. Further 2 nos of cycle cum foot over bridges at Subroto Park and Shankar Vihar and Pedestrian cum cycle subway at Kendriya Vidhyalaya 3 were provided as part of change of scope. However, due to increased average speed of travel on the highway certain additional works mainly for safety of traffic/pedestrian were felt necessary. It was, therefore, decided to provide 5 more foot over bridges on the stretch. Subsequently based on request of Delhi police one foot over bridge at Dhaula kuan has been added. Bids were invited for construction of six foot over bridges in June, 2007 and only one bid was received, therefore being single bid, it was decided to go for rebidding. Second time bidding resulted in to non responsive bids and therefore bids were again re invited third time on January, 2008 and this time also it resulted in to single bid with very high rates, therefore it was decided to hand over the work of Construction of five foot over bridges in Haryana portion to Haryana PWD as deposit work in February, 2008. Out of these two numbers have been completed and one number is in progress. Balance two numbers involved land acquisition which is being pursued. Further, NHAI has planned to provide 5 vehicular underpasses between Rajiv Chowk and Kherki Daula, for which the DPR is in progress.”

CHAPTER-X

MONITORING ROLE OF GOVERNMENT

10.1 The Audit Report has pointed out many deficiencies in the project such as delay in completion of project by 42 months beyond the scheduled completion date of June 2004 due to change in mode of execution from Special Purpose Vehicle to BOT-Toll, subsequent delay in award of concession and the delay in issuing change of scope orders; deficiency in the Detailed Project Report resulting in execution of these items under change of scope orders for Rs.146.62 crore; non-availability of a system to compute the reasonable concession period resulting in fixation of the longer concession period of 20 years against a reasonable concession period of 14 years; delay of 26 months in issuing orders for change of scope of work leading to delayed completion of the project; non-compliance of specifications regarding thickness of road surface etc. In this connection, the Ministry were asked to state as to what kind of monitoring role the Government has assigned to itself in ensuring that its role and experiences in the execution of Roadways ambitious NHDP programme is implemented efficiently without ignoring the sound business principles and prudent commercial practices.

10.2 In reply, the Secretary of the Ministry during evidence before the Committee stated as under:

“The NHAI has been created under an Act of Parliament and the Act gives it very high level of autonomy. In fact, the Act says that the Government can issue direction only in respect of policy related issues and by and large the implementation has been left to the NHAI. Particularly, around that time, when this particular project in question was conceived and implemented, even the powers of the Government like those, which relate to financial scrutiny, I am sure the Committee, is aware that we have the EFC, PIBs and CCA. All these were also to a large extent were delegated to the Committee. As you are kindly aware, this project was taken up as part of the Phase-I of NHDP sometime in the year 2000. That time, the Government was very keen about the Golden Quadrilateral, which was identified after elaborate exercise involving the Prime Minister and the Committee headed by the then Deputy-Chairman, Planning Commission. After the kind of detailed exercise, the Phase-I the NHDP was approved by the Cabinet Committee on Economic Affairs. As part of that, certain projects were identified for implementation as BOT projects. So, this is the background.”

xxx

xxx

xxx

xxx

As far as the Government is concerned, there is a proper monitoring system. Monitoring in Government is done primarily by the NHAI Board which has three sitting Secretaries to the Government. The Cabinet decided to empower the NHAI with the Board of PIB, EFC and all these high powered bodies within the Government. They also decided that three serving Secretaries will sit on the Board. Normally, in public sector undertakings, Secretaries are not

on the Board. It is normally Joint Secretaries and Additional Secretaries. But it is a Cabinet order that three Secretaries, namely, the Expenditure Secretary, the Planning Secretary and myself, will sit on the Board and will exercise all checks and will see that the Government's interests are properly protected and there is proper monitoring, there is proper appraisal and proper review. That is what is expected of the Board. Besides, of course, there is the Chairman who is also a Secretary level officer. We get monthly report from the NHAI in respect of each of the project in a detailed format and that report is given in addition to the Ministry, to the Planning Commission also because I think perhaps the Department of Programme Implementation monitors all the projects costing above Rs.100 crore. With this format the Government regularly monitors. Within the Ministry we have a Project Implementation Cell headed by the Chief Engineer Shri Patankar and the DG is responsible for monitoring. In any case, I take at least two to three meetings on an average and review all the aspects of NHAI programmes. Besides, the Minister also reviews. That way, there is a well laid down mechanism for monitoring in the Government. In spite of this, we regret that delays take place and there is particularly delay in the award of projects which is now happening.

xxx

xxx

xxx

xxx

“.....that Government has power, as I mentioned, to give directions on policy issues. Generally, what it meant to be that excepting involving in day to day affairs and involving questions of bidding, tendering process and things like that, everything else which has particularly implications on the social obligations of the Government and convenience of the public, Government has inherent right to give direction. After all, NHAI is a creation of law, and is accountable to the Parliament through the Government. So, Government is fully accountable to Parliament and when it comes to questions of, say, public importance, we definitely have a right to intervene and we have a right to give a direction. I think that should clarify, as far as the Government's powers and other things are concerned.

The Act very clearly says that NHAI accounts, annual report and everything else will be laid on the Table of the House through the Government. So, it goes without saying that though the Government's role is limited to policy direction, but policy direction includes anything which has implications for the public, excepting their day to day or individual case, we of course cannot interfere, but in other things, we have every right, and we do. In that, definitely, monitoring of the projects and making NHAI accountable to complete them on time is definitely one of the areas where Government is seriously concerned and we are addressing that problem to the best of our ability.”

10.3 During evidence of the Ministry, certain clarifications were sought with regard to the extent of intervention of Government in the road projects and as to where a line can be drawn between policy matters to be decided by the Government vis-à-vis the matters which govern the day-to-day administration concerning NHAI in the context of

implementation of NHDP projects in general and Delhi-Gurgaon project in particular. In this regard, the Ministry in their written reply stated as under:

“The National Highways Authority of India (NHAI) has been constituted under Parliament Act known as NHAI Act, 1988. As per this Act the NHAI is responsible for the development, maintenance and management of National Highways and for matters connected therewith. Investment decisions on all the projects as also other policy issues including day-to-day administration etc. are considered and approved by NHAI Board which has as its part time Members, Secretary (Planning Commission), Secretary (Expenditure), Secretary (Road Transport and Highways) and Director General (Road Development) and Special Secretary. Further NHAI brings out on monthly basis report bringing out progress of all projects under implementation. The status of works is also reviewed by Secretary (Road Transport & Highways), Hon’ble Minister of State and Hon’ble Minister of Road Transport & Highways on a regular basis to ensure the proper and timely execution of various projects. The progress of the various schemes/works is also monitored by the Planning Commission, Ministry of Programme Implementation and Cabinet Secretariat from time to time.”

PART – II**OBSERVATIONS / RECOMMENDATIONS OF THE COMMITTEE****SI. No. 1**

At the very outset the Committee would wish to state that even though the matter under consideration is with regard to examination of the C&AG's Audit Report No. PA 16 of 2008 (Performance Audit) regarding Public Private Partnership in implementation of Road Projects by NHAI in respect of Delhi Gurgaon Sector, certain other crucial factors which are inextricably intertwined with issues under examination came to fore. Going by the spirit of the remit of the Committee *per se*, the Committee proceeded to examine issues that arose with a holistic perspective.

Before proceeding further the Committee are constrained to comment upon an aspect of conduct of Chairman, NHAI during his evidence before the Committee. During his deposition, while referring to certain basic concepts of BOT mode, which he covered in his presentation he remarked "*perhaps, (they) are too novel or the hon'ble members have not been able to grasp them....*"

The tone and tenor as also the very contents of these remarks tend to question the caliber and comprehension capabilities of the members which in turn could be construed as casting reflections on the members of the Committee. In this context, the Committee also find it worthwhile to mention that Chairman during his deposition also *inter alia* remarked "in the audit report I sensed the C&AG himself is not perhaps familiar or completely familiar with the way the BOT projects works". These remarks too could be construed as casting reflections on officers of a constitutional body. The Chairman, NHAI should certainly have been conscious of the basic norms of etiquette and discretion which a witness

appearing before a Parliamentary Committee should bear in mind. Evidently, the CMD unmindful of the said norms exceeded his brief. The Committee take objection to his indiscretion and condescending attitude.

Absence of Guidelines for Determining the Mode of Execution (Sl. No. 2)

The Committee note that there were no internal guidelines or directions from Government for determining the mode of execution of project when NHDP Phase-I was started in the year 2000. Such guidelines were issued only in March 2006. In this regard, the Committee note that initially, the mode of execution of Delhi-Gurgaon project was through Special Purpose Vehicle (SPV) mode but was subsequently changed to BOT-Toll mode despite the fact that the Financial Consultant did not initially find the BOT-Toll mode as viable.

The Government's position is that the change of mode was done to increase the private sector participation in the road projects so as to leverage the scarce budgetary resources. In SPV mode the Government has to bear the cost of the project and by shifting to BOT mode the Government has saved its investments besides receiving an amount of Rs. 61 crore from the Concessionaire as negative grant. In BOT-mode the procedural delays as well as the risks of cost over-run are also avoided as the entire obligation lies with the Concessionaire. Therefore in BOT-mode the financial implication on Government is bare-minimum as compared to EPC and SPV model.

The Committee are constrained to observe that fixing of one mode then switching over to the other mode, absence of any comparative study of BOT-Toll vis-à-vis BOT-Annuity, not doing any fresh traffic assessment inspite of a recommendation to this effect by the financial consultant, absence of any internal guidelines for determining the mode of execution, apparent delays caused on account of deficient DPR etc. gives an indication that there has been a deliberate certain kind of indecisiveness which has clouded the entire process.

The Committee note that in the BOT-Toll mode, the Concessionaire builds the road, maintains it for a fixed period and also collects the toll during that period. In the BOT-Annuity mode, the only difference is that the Government collects the toll and the Concessionaire is paid fixed sums every six months to make him recover his investments. The Committee while observing that no comparative study of BOT-Toll vis-à-vis BOT Annuity mode was carried out by the NHAI, find it inconceivable as to how a high traffic density stretch like Delhi-Gurgaon could not have been opted for execution on BOT-Annuity mode was not opted despite the fact that on this mode the toll collection is of the order of Rs.208 crore just in 20 months of the opening of the project for toll.

The Committee find the argument put forth by the Government/NHAI that BOT-Toll mode is preferable to BOT-Annuity mode as in the latter the risk of toll collection is passed on to NHAI as unconvincing. In this regard, the Committee find it pertinent to drive home the point that as a welfare state, Government has a social responsibility to provide good roads to its citizens. Even taking into consideration the fact that the Government opted for private sector participation to leverage its budgetary resources, it can not be justified that the Government is not prepared to take a minimal risk of a lower toll collection if BOT Annuity mode was opted for Delhi-Gurgaon project. The whole scenario gives an impression that the Government was more interested in fulfilling the commercial interest of the Concessionaire instead of serving the public interest. The Committee on a fair analysis of the arguments put forth by the Government for switching over in favour of BOT-Toll mode are of the view that had the Government carried out a comparative study of the toll and annuity mode, the unjustified enrichment of the

Concessionaire by way of large toll collection and change of scope of work could have been well avoided. Further, in BOT-Toll mode, the NHAI has managed to evade its accountability on various lacunae brought out in the C&AG Report as it has left everything related to the execution of the project entirely in the hands of the Independent Consultant and the Concessionaire. The plea of the Government that performance of projects implemented by NHAI on SPV mode has been very poor clearly tantamounts to admission of the inefficiencies of the Government machinery.

The Committee, therefore, find that there are serious lacunae in the present policy of the Government which provides that all the projects should first be considered for BOT-Toll failing which on BOT-Annuity failing which SPV or EPC mode. The Committee therefore recommend that the Government need to review their guidelines so that the mode of execution should be based on case-to-case basis instead of a common guideline for all projects and the Authority be invariably made accountable in respect of project related deficiencies irrespective of the mode of execution.

Deficient Detailed Project Report (Sl. No. 3)

The Committee note that the Detailed Project Report (DPR) for Delhi-Gurgaon project prepared by M/s RITES and finally approved in October 2001, suffered from many deficiencies as many critical items which should have been foreseen at the time of preparation of DPR were omitted. This resulted in execution of these items under change of scope of works orders for Rs.146.62 crore constituting 21 per cent of the total project cost. The change of scope of work included change in the height of underpasses from 3.5 metre to 5.5 metre, construction of an elevated stretch from Rao Tula Ram Marg to Palam and additional underpasses at two locations etc. The Committee further note that the DPR did not make any provisions for sufficient number of pedestrian crossings by way of overhead foot bridges or underpasses at appropriate places.

The NHAI has tried to justify the above-mentioned deficiencies in the DPR by stating that the areas around the project highway located in Delhi-Haryana had witnessed rapid development and change of scope orders were issued to accommodate the requests of Delhi and Haryana Governments. Further, underpass height of 3.5 metres was initially envisaged for crossing of light vehicles only. However, due to rapid development of the surroundings, the Haryana Government insisted for provision of 5.5 metres underpass height to facilitate movement of heavy vehicles /fire tenders as lot of commercial and residential activities had taken place subsequently. According to the Ministry the project highway was inspected by the then Hon'ble Minister of Road Transport and Highways in November, 2003 and it was directed to further optimize the

design with some more value additions. Accordingly change of scope orders of Rs.146.62 crore were issued.

The Committee find the justification furnished by the Ministry as nothing but lame excuses. The Committee observe that the pace of growth in the area did not pick up suddenly between April 2003 and May 2004 as claimed by the government/ NHAI but was known even before the award of the project. This is well evident in the traffic assessment report submitted by M/s RITES during the year 2000. The Ministry has infact submitted that the actual traffic volume at present is less than what was projected by RITES. This negates the claim of the government of sudden rapid developments in the areas around the expressway. Lamentably these deficiencies have cost the exchequer a whopping sum of Rs.146 crore that had to be paid by the Government, thus nullifying the factor of negative grant of Rs.61 crore received from the Concessionaire. The Committee while observing that the entire area around the project lies in an urban stretch and International Road Congress (IRC) specifications clearly stipulates height of underpasses as 5.5. metre for such areas, find by the plea of the Government that the height of the underpass was raised to 5.5 metre instead of 3.5 metre only on the insistence of Haryana government for facilitating crossing of heavy vehicles/fire tenders to be simply untenable and incomprehensible. This only reflects the lack of professional competence on the part of NHAI in handling the project and points to a defective system of assessment prevailing in the organization.

The Committee appreciate that the fact that the Governments of Haryana and Delhi have highlighted the major deficiencies in the DPR which NHAI had

missed in the DPR ignoring the exponential growth of Gurgaon and the existence of an international airport in the close proximity. In the opinion of the Committee, the serious deficiencies in the DPR camouflaged in the name of change of scope of work at the insistence of the Delhi and Haryana Governments. The Committee therefore recommend that responsibility must be fixed on the DPR consultant for their failure to take into account the Indian Road Congress (IRC) specifications on the minimum vertical height of 5.5 metre for underpasses. The Committee further recommend that Authority should evolve procedures and stipulate accountabilities to ensure that DPRs should be prepared after extensive consultation with the State Government concerned as well as taking into consideration the needs of the locals.

Improper Fixation of Concession Period (Sl. No. 4)

The Committee note that according to Audit, the NHAI had not systematically developed financial models to indicate the benchmark Internal Rate of Return (IRR) which would determine the optimum concession period within which the Concessionaire would recover the capital cost of the project and other project related expenditure besides earning a reasonable return. Based on traffic projections in the DPR of Delhi-Gurgaon project and discounted post tax cash inflows and outflows, Audit found that the IRR of this project worked out as 24 per cent. Assuming reasonable IRR of 20 per cent, the concession period that should have been allowed to this project worked out to be 14 years whereas a concession period of 20 years has been allowed. A logical fall out of this scenario would be that the Concessionaire of this project would gain Rs.187.77 crore (after discounting at a rate of 20 per cent) during the extended concession period.

The NHAI has taken the stand that the Financial Consultants M/s SBI Capital Market Ltd recommended implementing the project on BOT basis considering 20 years concession period. It has further been stated that care was taken to include revenue sharing clause in the agreement which stipulates that the Concessionaire has to share equally with NHAI the revenue beyond level of 1,30,000 PCUs per day.

The Committee are not convinced with the reply of the Authority. Firstly, the NHAI did not conduct any fresh traffic study as advised by the financial consultant before inviting bids for the project. Secondly, though this project was expected to be a very high traffic density corridor, but strangely the toll rates were fixed on the basis of worst-case scenario situation in the bidding document

on the pretext of generating sufficient bidding interest in the project. The Committee feel that by inviting bids based on worst case scenario situation, the NHAI had lost the opportunity of getting a higher negative grant from the bidders.

The Committee further note that the total project cost as per the concession agreement is Rs.555 crores and the concessionaire has already collected a toll revenue of Rs. 208 crores in 20 months since commencement of the toll collection from January, 2008. Taking note that NHAI did not undertake any study to assess the actual revenue likely to be generated during the entire concession period i.e. upto the year 2023 and the expected traffic growth in the coming years, the Committee are convinced that no home work was done by the Authority to assess the correctness of the 20 years concession period worked out by the Financial Consultant, which indicates nothing but deliberate oversight on the part of NHAI. On the issue of revenue sharing agreement which requires the Concessionaire to share equally with NHAI the toll collection beyond a threshold limit, the Committee are constrained to note that such agreement gives no respite to the commuters but only promotes the commercial interest of the NHAI and Concessionaire. Now, after the signing of the concession agreement, the Authority has no means to reduce the concession period. In this way, the authority has lost the opportunity of either collecting toll revenue by itself for the remaining years or allowing the road users to use the project road by paying lesser or no toll during that excess period. The Committee, therefore, squarely put the blame on the NHAI for its failure to protect the interest of the hapless commuters.

There is no gainsaying the fact that very idea behind conceptualizing Delhi-Gurgaon expressway was to ensure speedy and effective means of commuting between Delhi-Gurgaon-Delhi. In this context, Committee find it pertinent to observe that the avoidable confusion and chaos at Toll Plazas and undue traffic holdups there, tend to negate the very purpose for which the expressway was constructed. Under these circumstances one can't help but rueing that commuters did not get adequate facilities in terms of speedy and hasslefree commuting commensurate with the humongous expenditure incurred on the expressway.

The Committee strongly recommend that the Government should find some ways and means for provision of some relief to the hapless commuters either by sharing the toll or making it toll free once the Concessionaire has recovered his investment. The Committee also deprecate the methodology followed by the NHAI and strongly recommend that suitable guidelines/criteria be evolved for computing the concession period based on sound financial evaluations.

The Committee further recommend that NHAI should have a mechanism to monitor the toll plazas with a view to obviate putting the users to unnecessary harassment by way of illegal and unscrupulous methods of toll collection. The Committee understand that the Monthly Tags issued by the Concessionaire are required to be renewed in a manner which is disadvantageous to the tag users. The Committee, therefore, strongly recommend that these tags should be converted into smart cards forthwith on the pattern of the cards issued by the DMRC which can be renewed after exhausting of the charged amount.

Delay in Execution of Project (Sl. No. 5)

The Committee note that the completion of the Delhi-Gurgaon project was delayed by 42 months beyond the scheduled completion date of June 2004 due to reasons like failure to provide land to the concessionaire in time, change in mode of execution from Special Purpose Vehicle to BOT-Toll, subsequent delay in award of work to the Concessionaire and the delay of 26 months in finalization of change of scope orders valuing Rs.146.62 crore.

Regarding delay caused due to change of scope of works, the Committee feel that all those issues which came up subsequently on the insistence of Delhi & Haryana Government necessitating the issuance of change of scope of work orders should have been and could very well have been foreseen during the planning and preparation of Detailed Project Report.

The Committee are conscious of the fact that throughout the country, the land acquisition is one of the major bottlenecks owing to factors like lack of land records, resistance from farmers and non-cooperation from State Governments, etc. which come in the way of timely completion of all types of projects and feel that this issue needs to be addressed properly and some effective mechanism has to be evolved involving the representatives of State Governments and other concerned functionaries.

Pre-Mature Issuance of Completion Certificate (Sl. No. 6)

The Committee note that Independent Consultant, appointed by the NHAI for supervision of work executed by the Concessionaire, were responsible for issue of the completion and provisional completion certificates to the Concessionaire who can commence commercial operations only thereafter. As per the prescribe procedure, after issue of the provisional completion certificate, a punch-list of items is prepared by the Independent Consultant which generally includes certain minor items of works to be completed and the final completion certificate can be issued only after execution of the Punch-List items. In the case of Delhi Gurgaon Project, the Committee note that the provisional completion certificate was issued on 23rd January, 2008, the date of start of commercial operations (Toll collection) was 25th January, 2008 and the final completion certificate was issued on 22nd August, 2009. The audit has pointed out that a number of rectifiable Non Conformity Reports (NCRs) included as Punch-List items in the provisional completion certificate which were required to be completed by the Concessionaire within 120 days, remained in pendency which is indicative of a deficient performance by the Concessionaire.

The Committee note from the information furnished to them that the Independent Consultant for the Project M/s RITES – SHELADIA (JV) attached a list of 24 Punch-List items with the provisional certificate issued by them with the stipulation that the said Punch-List items shall be completed by the Concessionaire within 120 days of the date of issue of the provisional certificate of completion i.e. by 24th May, 2008. According to the NHAI the Concessionaire had disputed certain items on the pretext of non coverage under the original

scope of work and the issue was referred to a Committee of CGM which had recommend delinking such items from Punch-List for further examination by Independent Consultant and the same are presently being examined by him. Besides this, the issue of imposing penalty due to delay in completion of Punch List items is being examined by NHAI. Regarding issuance of Completion of Certificate pending the Punch-List items, the NHAI has simply washed off its hands of all its responsibilities by submitting that it was the Independent Consultant who was to decide as to whether the Concessionaire has duly complied with all the provisions or not pertaining to issuance the of final Completion Certificate.

The Committee are not happy at all with the way the whole matter relating to issue of completion certificate has been handled. In fact, the Committee gather an impression that undue haste has been shown in giving the completion certificate to the Concessionaire. This is evident from the fact that after issuance of provisional certificate in January, 2008 with the stipulated time period of 120 days for completion of pending Punch-List items i.e. by May, 2008 the same have not yet been fully completed as on October, 2009. Apparently, after start of Toll collection, the whole pressure lifted off the Concessionaire. He has managed to get away with his obligation by giving an undertaking that he would be fully responsible for any bad quality of work mentioned in the NCRs and to repair / reconstruct the same at its risks and cost during the entire concession period. The Committee do not find such kind of undertaking by the Concessionaire as an appropriate substitute for the prescribed norms of the work as per the concession agreement. The justification that Completion Certificate was issued

not by the NHAI but by the Independent Consultant clearly indicates that the Authority has shirked off its responsibilities by leaving everything of this project of national importance into the hands of Independent Consultant. Even the issue of levy of penalty @ Rs. 2 lac per week for delayed completion of work has also been left for the Independent Consultant to examine and decide.

The Committee express their strong reservations over the manner in which the Completion Certificate was issued by the Independent Consultant without completing / exhausting the items of works contained in the Punch-List. On the other hand, the Independent Consultant has issued the Completion Certificate after merely taking an undertaking from the Concessionaire for completion of the same. Taking a strong exception, the Committee are of the firm view that the whole issue of Completion Certificate may be revisited by NHAI and those found guilty should be punished and penalty provisions be invoked on the Concessionaire for not completing the Punch-List items in time. The Committee further feel that NHAI needs to categorically explain this blatant lapse which came to passé.

Non Compliance of Escrow Account Norms (Sl. No. 7)

The Committee note that according to the audit report, the Authority should have an effective monitoring mechanism for ensuring that the funds released for a particular project have actually been utilized for that project. This is achieved through operation of Escrow Account (EA) by the Concessionaire who is to forward monthly EA report within five days of the end of each month to the Authority. The Committee are, however, constrained to note that in the case of Delhi-Gurgaon project, the copies of the EAs were neither forwarded by the Concessionaire nor the Authority demanded the same. The Authority while admitting the lapse on their part has submitted that it had directed the Concessionaire of Delhi-Gurgaon project to maintain EA in line with the concession agreement.

Taking a serious note of the lapse on the part of NHAI in respect of the core issue of monitoring of the project funding and its utilization through the EA statements which is an important instrument of monitoring timely flow of funds from different sources and their utilisation for the project activities, the Committee recommend that the Authority must ensure that agreement clauses relating to opening and periodical submission of escrow account are complied with in all future projects.

Delay in Appointment of Independent Auditors (Sl. No. 8)

The Committee note that as per the concession agreement, the Authority had the right but not the obligation to appoint at its cost another firm of chartered accountants as Independent Auditors to audit and verify all those matters, expense, costs, realizations and other assurances which the auditors of the Concessionaire were required to do. The Committee are, however, constrained to note that this right was not timely exercised by the Authority.

In this regard, the Committee note that the Independent Auditors appointed subsequently by NHAI on 5th August, 2008 to audit the transactions of the Concessionaire from the years 2002 to 2008 in their report submitted in March, 2009 had observed differences in the amounts to the tune of Rs. 2.16 crore in the financial records and the software generated reports both in cash collection as well as OBU collection. According to Independent Auditors, this has raised a question mark on the accuracy of the traffic report and whether the revenue sharing had been done properly or not.

The Committee take a serious note of the failure on the part of the NHAI for not having exercised its right of appointing Independent Auditors in time though it was in its own interest. Though it was not mandatory on the part of the NHAI, the Committee feel that the principles of good governance have not been followed in this case. The Authority has not given any reasons for delayed appointment of Independent Auditors but had taken the stand that it was not mandatory on their part.

The Committee feel that the report of the Independent Auditors revealing inaccuracy in the financial records of the Concessionaire suggest that

appointment of Independent Auditors should be made a mandatory provision in the internal working manual of the NHAI so as to avoid any scope of lopsidedness in the accuracy of the records maintained by the concessionaire. The Committee further desire that this matter may be properly inquired into and all necessary action may be taken against the Concessionaire in case some mischief is detected and penalty may be imposed accordingly.

Failure to Conduct any Road Safety Audit (Sl. No. 9)

The Committee note from a report submitted by the Central Road Research Institute (CRRI) in the Year 2008 that no road safety audit was carried out in respect of Delhi-Gurgaon project either at the planning stage or at the Detailed Project Reports stage. This has resulted in complete neglect of the interests of non motorized traffic and pedestrians. This is evident as only four sub ways (Eight Km to Twelve Km apart) and only two foot over-bridges have been provided on the entire corridor which are quite inadequate by any standard besides being user unfriendly. This has caused a number of avoidable fatal accidents and deaths on the express-way since February, 2007.

The Authority has failed to give any specific reason as to why the interests of the pedestrians were not taken into account during the planning stage. Regarding the remedial measures which the Authority proposed to take, the Authority submitted that the CRRI Report on Road Safety has been sent to the Concessionaire for compliance with instructions to Independent Consultant for submitting compliance Report. Further, the NHAI has now undertaken construction of five more Foot-Over Bridges at its own expense as the same were not provided under agreement with the concessionaires. From the compliance Report dated 22nd September, 2009 submitted by the Independent Consultant in respect of the CRRI Safety Audit Report, the Committee note that on many aspects like provision for Road warning signs where High Tension Power Lines are crossing the Express- Way, removal of trees on the medians, removal of rings over drainage covers, deployment of marshals to direct buses to stop at designated bus stops, absence of service roads due to non acquisition of land,

removal of encroachments on service roads, maintenance of height of Metallic Beam Crash Barriers (MBCBs), training and deployment of marshals at the entry points for restricting the entry of two wheelers, provisions for road marking at the entry and exits points etc. the action is yet to be taken by the Concessionaire.

The Committee feel that all such important issues should have been taken into account when DPR was prepared for the Project. Noting the land use pattern of heavy industrial areas and commercial establishments all along the Express-Way and heavy pedestrian traffic generated, a fact well known in advance, the Committee feel that no justification is justified enough that can explain this blatant act of ignorance on the part of the Authority. As a result, no provision could be made in the concessionaire agreement for Foot-Over Bridges and Sub-Ways. Its two fold impact is that on one hand so many people have lost their lives, on the other, the Authority has now to spend from its own pocket for construction of the same.

The Committee express their profound anguish over the scant regard that has been given to human life and strongly deprecate the act of NHAI in completely ignoring the safety of pedestrians in designing the expressway ignoring the local needs of the people living on both the sides of the highway. As a result of this ignorance or rather indifference, subways, foot overbridges and pedestrian crossings were not conceptualized. Considering the fact that the highway cuts a large city like Gurgaon in two parts, the Committee find it hard to fathom as to why RITES, the design consultant for the project could not foresee this basic need of the people. The Committee hold NHAI as well as the Ministry accountable for this mess which could have been avoided. The Committee

strongly urge that the adequate number of foot overbridges and subway be constructed taking into considerations the local needs of the people living on both the sides of the highway no matter at what cost and within strict time limits to be mentioned by NHAI. The Committee wish to emphasise categorically that no venture, whatever be its utility or commercial viability, should ever compromise with human safety. Why are roads, for that matter expressways, are conceptualized and eventually constructed? Certainly for provision of better and safer commuting means/facilities to the denizens of a State. If such infrastructural facilities tend to become instruments of death, where would be the creditability of the State or the concerned authority? It is simply appalling to say the least, that more than 100 lives were lost on this expressway in a relatively short period, primarily due to inadequate safety norms; and lamentably utter callousness on the part of the concerned authorities. The Committee strongly feel that there has been a criminal negligence in this regard. Under these circumstances, the very efficacy of the concerned Concessionaire in particular and NHAI in general become questionable. We cannot bring back to life the helpless victims who perished in the accidents. However, their deaths should not go in vain. Painful it might be the Committee would like to take it as a wake up call.

In view of the foregoing the Committee strongly recommend that accountability must be fixed on the concerned officials responsible for lapses which apparently have placed human lives at grave danger and strict punitive action be taken against the guilty.

The Committee also find it pertinent to recommend that it is perhaps hightime that Government gives serious consideration for setting up Highway Police Force for monitoring and safeguarding all National Highways.

Inadequate Road Facilities (Sl. No. 10)

The Committee note that though the Delhi-Gurgaon expressway had started functioning since January, 2008, it is still lacking many basic facilities like parking space, telephone booths, toilets, exit points, refreshment rooms, fuel stations, etc. which are expected to be there as apart of road side civic amenities. Further, the discipline enforcing agencies deployed on the expressway are inadequate. As a result, two wheelers, three wheelers which are not supposed to be on the expressway are entering it resulting in many fatal accidents and other kind of inconveniences. Though claimed by the Concessionaire that marshals have been deployed, the same are barely visible. The service roads are waterlogged and congested due to unauthorized parking of vehicles and encroachments. There is no proper maintenance of service roads. In fact, one portion of the service road from Palam to Rajokari, a stretch of about 6 kms is yet to be built for want of land acquisition. This is causing a lot of inconvenience to the road users. Though the NHAI has claimed that Concessionaire had provided patrolling vehicles and ambulances on the highway, the same are conspicuous by their absence. The fact that should not lost sight of is that patrolling vehicles and ambulances are essential for safety of commuters and absence or inadequacy of same are indicative of callousness.

The Committee, therefore, recommend that all these issues must be taken up by NHAI with the Concessionaire for being attended to urgently. The Committee further recommend that the Ministry may take up the issue of land acquisition with the Ministry of Civil Aviation as well as AAI so that the remaining service road on this section can be built without any further loss of time.

Monitoring Role of the Ministry and NHAI (Sl. No. 11)

The Committee note that the Delhi-Gurgaon project suffered from many deficiencies right from beginning. First of all, the project was initially planned to be executed on SPV mode but at the last moment, its mode of execution was changed to BOT-Toll mode. Thereafter, the Financial Consultant submitted that it was unviable on BOT mode but at the insistence of NHAI, made revised assessment for viability on BOT-Toll mode. Thereafter, though a recommendation was made by the Financial Consultant for conducting a fresh traffic study, the same was not undertaken by the Authority. Thereafter, the change of scope of works was to be introduced in the project due to many deficiencies in the Detailed Project Report (DPR). All these factors led to an inordinate delay in the completion of the project. Subsequently, completion certificate was issued to the Concessionaire without completion of all the Punch-List items. There was delay on the part of the Authority in appointment of Independent Auditors to cross check the data furnished by the Concessionaire the eventual, chaos at toll plazas due to huge traffic congestion, absence of any road safety audit either at planning or DPR stage. In such a scenario the Committee are appalled to note that in response to a query raised by the Committee about the future plans of NHAI to decongest the increase in traffic, the reply given by Authority is “NHAI at present do not have any plan to decongest the highway”. Further, a section of service road is yet to be constructed due to non-acquisition of land from AAI. Both the NHAI as well as the Ministry have failed to give any convincing reply to the Committee as to why this land could not be acquired so far or what efforts are being made to acquire the same. No

explanation has been given as to why no provisions were made in the DPR for adequate number of pedestrian crossings/foot over bridges on the expressway and who is to be held responsible for the number of deaths witnessed on the expressway because of inadequate safety infrastructure. The Committee gather an impression that all aspects of monitoring and supervision of the works were left in the hands of the Independent Consultants. The Committee feel that all these issues tend to question the very effectiveness of monitoring role of the NHAI as well as its administrative Ministry.

The NHAI has washed off its hands of its responsibilities by submitting that monitoring and supervision is the responsibility of the Independent Consultants. Thereafter, the Government has washed off its hands by submitting that it is for the NHAI to enforce the provisions of the concession agreement and has to give directions only if something is brought to their notice. Keeping in view the fact that three Government Secretaries are on the Board of NHAI and the Ministry also conduct frequent meetings to ascertain the progress of NHDP, the Committee wonder as to how all the shortcomings observed in the Delhi-Gurgaon project escaped the notice of the Ministry.

The admitted position of the Government is that NHAI is a creation of law and is accountable to Parliament through the Government and the Government has inherent right to issue directions to NHAI on matters of public importance. The Committee however feel that the Government has failed to exercise this right as it has preferred to remain a mute spectator on all those issues mentioned above. Though the Committee would not like the autonomy granted to NHAI under the Act may be infringed in any manner, the buck should stop somewhere!

Needless to state the Committee would expect the Government to be alive to the issues involving public utility services including the road safety aspects. It was the bounden duty of the Government to issue appropriate directions to NHAI for taking the necessary corrective measures from time to time.

The Committee, therefore, strongly recommend that the Government as well as NHAI may undertake a thorough review of the Delhi-Gurgaon project and analyze the reasons for the shortcomings and deficiencies observed therein to strengthen the supervision mechanism. The results of the said analysis may be utilized in all the ongoing and future projects to avoid recurrence of such lapses in the future.

At this juncture the Committee cannot contain themselves from commenting that it is imperative that above recommendations be heeded for the safety of all the prospective road users on the roads/expressways being handled or proposed to be handled by NHAI.

In the light of all the irregularities/deficiencies pointed out by the C&AG and observed by the Committee in their foregoing conclusions, the Committee recommend that the whole issue needs to be investigated by an independent investigating agency and action taken thereon may be appraised.

New Delhi
9th December, 2009
18 Agrahayana, 1931 (S)

V. KISHORE CHANDRA S. DEO
Chairman
Committee on Public Undertakings

**MINUTES OF THE 2nd SITTING OF THE COMMITTEE ON
PUBLIC UNDERTAKINGS (2009-10) HELD ON 9TH SEPTEMBER 2009**

The Committee sat from 1100 hrs to 1410 hrs.

PRESENT

Chairman

Shri V. Kishore Chandra S. Deo

Members, Lok Sabha

- | | |
|----|---|
| 2 | Shri K.C. Singh 'Baba' |
| 3 | Shri Ramesh Bais |
| 4 | Shri Hemanand Biswal |
| 5 | Shri Anant Kumar Hegde |
| 6 | Shri Sukhdev Singh Libra |
| 7 | Dr. Charan Das Mahant |
| 8 | Shri Nama Nageswara Rao |
| 9 | Chaudhary Lal Singh |
| 10 | Shri Ganesh Singh |
| 11 | Shri N. Dharam Singh |
| 12 | Shri Bhisma Shankar alias Kushal Tiwari |

Members, Rajya Sabha

- | | |
|----|------------------------------|
| 13 | Shri Birendra Prasad Baishya |
| 14 | Shri Bharatkumar Raut |
| 15 | Ms. Mabel Rebello |
| 16 | Shri Tapan Kumar Sen |

Secretariat

- | | | |
|----|-------------------------|---------------------|
| 1. | Shri J.P. Sharma | Joint Secretary |
| 2. | Shri Rajeev Sharma | Director |
| 3. | Shri Ravindra Garimella | Additional Director |
| 4. | Shri Ajay Kumar | Additional Director |
| 5. | Shri Paolientlal Haokip | Under Secretary |

Office of the Comptroller & Auditor General of India

- | | | |
|----|----------------------|--|
| 1. | Shri A.N. Chatterjee | Dy. C&AG (Comm.) & Chairman, Audit Board |
| 2. | Shri P.K. Mishra | Principal Director |

Officials of National Highways Authority Of India

1. Shri Brijeshwar Singh Chairman
2. Shri S.I. Patel Member (Project)
3. Shri R.K. Pandey Chief General Manager (Technical)

2. At the outset, the Chairman drew the attention of the Members to Rule 255 of the Rules of Procedure and Conduct of Business in Lok Sabha regarding a Member taking objection to the inclusion of some other Member in a Committee on the ground that the Member has a personal, pecuniary or direct interest in any matter to be considered by the Committee. The Chairman requested the Members that if such is the case with any Member, he may not participate in the Committee deliberations so as to avoid any such situation. The Chairman also drew the attention of the Members to Direction 52A of the Directions by Speaker regarding personal, pecuniary or direct interest in any matter to be considered by the Committee matters and Directions 97 and 97 A regarding Association of Members with Committees appointed by Government and requested the members to fill in the Proforma circulated to them earlier by the Committee Secretariat at the earliest.

3. The Chairman Audit Board (Deputy C&AG) briefed the Committee on the Audit Report No. PA 16 of 2008 (Performance Audit) Public Private Partnership in Implementation of Road Projects by National Highways Authority of India--Delhi-Gurgaon Sector.

4. Thereafter, the Chairman welcomed the representatives of National Highways Authority of India (NHAI) and drew their attention to direction 58 of the Directions by the Speaker relating to evidence before the Parliamentary Committees. The representatives of NHAI made a brief power point presentation on the subject. The Members raised queries on various aspects pertaining to the subject and the explanations/clarifications on the same were given by the representatives of NHAI. Information on some of the points raised by the Committee was not readily available with the representatives of NHAI. They were therefore asked to furnish the same to the Committee Secretariat at the earliest possible.

5. At the end, the Chairman thanked the representatives of NHAI for providing all the information on the subject matter as desired by the Committee.

6. The witnesses then withdrew.

7. The Committee then adjourned.

8. A copy of the verbatim proceedings has been kept on record separately.

**MINUTES OF THE 4th SITTING OF THE COMMITTEE ON
PUBLIC UNDERTAKINGS (2009-10) HELD ON 8TH OCTOBER 2009**

The Committee sat from 1045 hrs to 1230 hrs.

PRESENT

Chairman

Shri V. Kishore Chandra S. Deo

Members, Lok Sabha

- | | |
|----|---|
| 2 | Shri K.C. Singh 'Baba' |
| 3 | Shri Ramesh Bais |
| 4 | Shri Hemanand Biswal |
| 5 | Shri Anant Kumar Hedge |
| 6 | Shri Sukhdev Singh Libra |
| 7 | Dr. Charan Das Mahant |
| 8 | Shri Baijayant Panda |
| 9 | Shri N. Dharam Singh |
| 10 | Shri Rajiv Ranjan Singh alias Lalan Singh |
| 11 | Shri Bhisma Shankar alias Kushal Tiwari |

Members, Rajya Sabha

- | | |
|----|-------------------------|
| 12 | Shri Bharatkumar Raut |
| 13 | Ms. Mabel Rebello |
| 14 | Dr. T. Subbarami Reddy |
| 15 | Shri Vijay Kumar Rupani |
| 16 | Shri Tapan Kumar Sen |

Secretariat

- | | | |
|----|-------------------------|---------------------|
| 1. | Shri J.P. Sharma | Joint Secretary |
| 2. | Shri Rajeev Sharma | Director |
| 3. | Shri Ravindra Garimella | Additional Director |
| 4. | Shri Ajay Kumar | Additional Director |
| 5. | Shri Paolienlal Haokip | Under Secretary |

Office of the Comptroller & Auditor General of India

- | | | |
|----|----------------------|--|
| 1. | Shri Sunil Verma | Dy. C&AG (Comm.) & Chairman, Audit Board |
| 2. | Shri K.P. Sasidharan | Director General(Commercial) |
| 3. | Shri P.K. Mishra | Principal Director |
| 4. | Shri Birendra Kumar | Principal Director and Ex-officio MAB-I |

Representatives of Ministry of Shipping, Road Transport and Highways

- | | | |
|----|-----------------------|------------------|
| 1. | Shri Brahm Dutt | Secretary (RT&H) |
| 2. | Shri Nirmaljeet Singh | DG (RD) & SS |
| 3. | Shri P.K. Tripathi | JS (H) |
| 4. | Shri S.K. Dash | JS (T&A) |
| 5. | Shri V.L. Patankar | CE(PIC) |

2. At the outset, the Chairman welcomed the representatives of Ministry of Shipping, Road Transport and Highways and also drew their attention to direction 58 of the Directions by the Speaker relating to evidence before the Parliamentary Committees. Then, the Members raised queries on various aspects pertaining to the subject and the explanations/clarifications on the same were given by the representatives of Ministry. Information on some of the points raised by the Committee was not readily available with the representatives of Ministry. The Committee directed them to furnish the same to the Secretariat within two weeks time.

3. The Chairman then thanked the representatives of Ministry for providing all the information on the subject matter as desired by the Committee.

4. *Verbatim record of evidence was kept.*

5. *The witnesses then withdrew.*

**MINUTES OF THE 9th SITTING OF THE COMMITTEE ON
PUBLIC UNDERTAKINGS (2009-10) HELD ON 9TH DECEMBER 2009**

The Committee sat from 1500 hrs to 1545 hrs.

PRESENT

Chairman

Shri V. Kishore Chandra S. Deo

Members, Lok Sabha

- | | |
|---|---|
| 2 | Shri K.C. Singh 'Baba' |
| 3 | Shri Ramesh Bais |
| 4 | Shri Sukhdev Singh Libra |
| 5 | Shri L. Rajagopal |
| 6 | Chaudhary Lal Singh |
| 7 | Shri Rajiv Ranjan Singh alias Lalan Singh |

Members, Rajya Sabha

- | | |
|---|-----------------------|
| 8 | Shri Bharatkumar Raut |
|---|-----------------------|

Secretariat

- | | | |
|----|-------------------------|---------------------|
| 1. | Shri J.P. Sharma | Joint Secretary |
| 2. | Shri Rajeev Sharma | Director |
| 3. | Shri Ravindra Garimella | Additional Director |
| 4. | Shri Ajay Kumar | Additional Director |
| 5. | Shri Paolienlal Haokip | Under Secretary |

Office of the Comptroller & Auditor General of India

- | | | |
|----|-----------------------|---|
| 1. | Shri K.P. Sashidharan | Director General (Commercial) & Member Audit Board |
| 2. | Shri Y.N. Thakre | Principal Director (Commercial) & Member Security Audit Board |

2. The Committee considered and adopted the Draft Report based on Audit Report No. PA 16 of 2008 (Performance Audit) - Public Private Partnership in implementation of Road Projects by National Highways Authority of India in respect of Delhi Gurgaon Project with some modifications.

3. The Committee then authorized the Chairman to finalize the Report for presentation.

The Committee then adjourned.