

C.P.U. No. 947

FOURTEENTH REPORT

**COMMITTEE ON PUBLIC UNDERTAKINGS
(2011-2012)**

(FIFTEENTH LOK SABHA)

**NATIONAL HIGHWAYS AUTHORITY OF INDIA
[BASED ON C&AG AUDIT REPORT NO. PA 16 OF 2008 (PERFORMANCE AUDIT)]**

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

(Action taken by the Government on the recommendations contained in the First Report (15th Lok Sabha) on Public Private Partnership in Implementation of Road Projects by National Highways Authority of India in respect of Delhi - Gurgaon Project)



Presented to Lok Sabha on 27.04.2012

Laid in Rajya Sabha on 27.04.2012

**LOK SABHA SECRETARIAT
NEW DELHI**

April 2012 / Chaitra 1934(S)

CONTENTS

		Page
COMPOSITION OF THE COMMITTEE (2011-2012)		(iii)
INTRODUCTION		(v)
CHAPTER I	Report	1
CHAPTER II	Observations/Recommendations that have been accepted by the Government.	25
CHAPTER III	Observations/Recommendations which the Committee do not desire to pursue in view of the Government's replies.	34
CHAPTER IV	Observations/Recommendations in respect of which replies of the Government have not been accepted by the Committee and which require reiteration.	48
CHAPTER V	Observations/Recommendations in respect of which final replies of the Government are still awaited	57

APPENDICES

- I *Minutes of sitting of COPU
- II Analysis of the Action Taken by Government on the recommendations contained in the 1st Report of Committee on Public Undertakings (15th Lok Sabha) on National Highways Authority of India.

* Not enclosed

**COMPOSITION OF THE
COMMITTEE ON PUBLIC UNDERTAKINGS
(2011-2012)**

Chairman

Shri Jagdambika Pal

Members, Lok Sabha

2. Shri Hansraj G. Ahir
3. Shri Vijay Bahuguna
4. Shri Ramesh Bais
5. Shri Ambica Banerjee
6. Shri Shailendra Kumar
7. Smt. Ingrid Mcleod
8. Shri Vilas Baburao Muttemwar
9. Shri Baijayant Panda 'Jay'
10. Shri Adhalrao Shivajirao Patil
11. Shri Ponnam Prabhakar
12. Shri Nama Nageswara Rao
13. Shri Uday Singh
14. Dr. Prabha Kishor Taviad
15. Shri Bhisma Shankar alias Kushal Tiwari

Members, Rajya Sabha

16. Vacant *
17. Shri Pyarimohan Mohapatra
18. Shri Mukhtar Abbas Naqvi
19. Dr. Bharatkumar Raut
20. Vacant #
21. Vacant #
22. Shri N.K. Singh

Secretariat

- | | | |
|----|----------------------|----------------------|
| 1. | Shri S. Bal Shekar | Additional Secretary |
| 2. | Rajeev Sharma | Director |
| 3. | Shri Ajay Kumar Garg | Additional Director |

* Ceased to be a Member of the Committee consequent on his retirement from Rajya Sabha w.e.f. 27.1.2012.

Ceased to be Members of the Committee consequent on their retirement from Rajya Sabha w.e.f. 2.4.2012.

INTRODUCTION

I, the Chairman, Committee on Public Undertakings having been authorized by the Committee to submit the Report on their behalf, present this Fourteenth Report on Action Taken by the Government on the recommendations contained in the First Report of the Committee on Public Undertakings (Fifteenth Lok Sabha) on National Highways Authority of India - Public Private Partnership in implementation of Road Projects by National Highways Authority of India - Delhi-Gurgaon Sector [Based on Audit Report No. PA 16 of 2008 (Performance Audit) (Commercial) of C&AG of India].

2. The First Report of the Committee on Public Undertakings (2009-2010) was presented to Lok Sabha on 16.12.2009. Action Taken Replies of the Government to the recommendations contained in the Report were received on 23 August, 2011. The Committee on Public Undertakings considered and adopted this Report at their sitting held on 4th April, 2012. The Minutes of the sitting are given in Appendix – I.

3. An analysis of the action taken by the Government on the recommendations contained in the First Report (2009-10) of the Committee is given in Appendix -II

**New Delhi:
4 April 2012
15 Chaitra 1934(S)**

**JAGDAMBIKA PAL
Chairman,
Committee on Public Undertakings.**

CHAPTER I

REPORT

This Report of the Committee deals with the action taken by the Government on the observations/recommendations contained in the First Report (Fifteenth Lok Sabha) of the Committee on Public Undertakings (2009-2010) on "Public Private Partnership in implementation of Road Projects by National Highways Authority of India - Delhi-Gurgaon Sector.

2. Action Taken notes have been received from Government in respect of all the observations/recommendations contained in the Report. These have been categorized as follows:

- | | | |
|-------|---|------------|
| (i) | Observations/Recommendations which have been accepted by the Government (Chapter II)
Sl. Nos. 1,5,6 and 7 | (Total 04) |
| (ii) | Observations/Recommendations which the Committee do not desire to pursue in view of the Government's replies (Chapter III)
Sl. Nos. 2,4 and 10 | (Total 03) |
| (iii) | Observations/Recommendations in respect of which replies of the Government have not been accepted by the Committee and which require reiteration (Chapter IV)
Sl. Nos. 8 and 9 | (Total 02) |
| (iv) | Observations/Recommendations in respect of which final replies of the Government are still awaited (Chapter V)
Sl. Nos. 3 and 11 | (Total 02) |

3. The Committee desire that final replies in respect of the observations/recommendations which have been categorized as interim replies by the Committee and response to the Committee's comments in Chapter I of this Report should be furnished to them expeditiously.

4. The Committee will now deal with the Action Taken by the Government on some of the recommendations in succeeding paragraphs.

Recommendation No. 3

Deficient Detailed Project Report

5. Commenting on the deficient Detailed Project Report for Delhi-Gurgaon Project, the Committee in their earlier Report had recommended as follows:

“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 meter to 5.5 meter, 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 meters 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 meters 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 in fact 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. meter for such areas, find by the plea of the Government that the height of the underpass was raised to 5.5 meter instead of 3.5 meter 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 meter 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.”

6. In their action taken reply, the Ministry of Road Transport and Highways stated as follows: -

“Preparation of Detailed Project Report (DPR) was assigned to M/s. RITES Ltd. in June, 1997 to assess the technical feasibility and financial viability to augment the capacity of Delhi-Gurgaon section of NH-8. DPR was completed in June, 2000 for section of NH-8 from km. 15.40 to km. 36.630. In order to make the project financially viable, six laning of road starting from km. 36.630 to km. 42.00 (already 4-laned) was also added during September, 2001. The reach from km. 13.70 (i.e. RTR) to km. 15.40 (Palam Junction) was also added. Final DPR was approved in October, 2001. In view of the rapid development which had taken place in Delhi and Haryana areas falling on the project highway, Delhi and Haryana administrative authorities suggested some improvements, which were considered essential. It may be stated in this connection that progress of Delhi-Gurgaon project has been reviewed in Ministry and also by Haryana Govt. Authorities at Chandigarh from time to time and the Authorities have been kept apprised of the progress as also issues / problems affecting the project. The issue of pedestrian over bridges in Haryana was raised only towards end of 2006, when few accidents occurred on this road. Prior to that, number of meetings was held with Haryana Govt. officials and they raised issues only of increasing length of viaducts, increasing vertical clearance of some underpasses, provision of flyover / underpass at Hero Honda Crossing and widening of service roads in Haryana portion.

From the old records available it transpired that High level Committee comprising of representative from various Departments like DUAC, HUDA, NCRPB, DDA, AAI, DVB, MTNL, GAIL, DJB, PWDs, was interacting with NHAI / RITES during preparation of DPR. However even after consultation certain changes in design was felt and were considered technically essential and

necessary for the project as per site requirements and requests of various departments. 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 still fall 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 M/s. RITES (A Govt. of India undertaking, Ministry of Railways) on this account. However in order to streamline the procedure NHA has issued a circular on 3rd March, 2008 that prior to finalization of DPRs, participation of state Authorities should be ensured in order to incorporate their views/comments in the project preparation.”

7. The vetting comments of the Office of C&AG on the aforesaid reply of the Government were as follows: -

As seen from the reply the task for preparation of DPR was assigned to M/s RITE in June 1997, which was approved in 2001. However, the work was executed during 2003-04 i.e. after delay of three years. The Committee took serious note of the deficiencies in the initial DPR, non-cognizance of the developments subsequently. It was, therefore, recommended by the Committee that:

- (a) 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 meter for underpass and
- (b) Authority is required to evolve clear procedures and identify the accountability to ensure that DPRs are prepared after extensive consultation with the State Government, as well as the requirement of the locals.

In reply, the Government stated that in order to streamline the procedure, NHA has issued a circular 9/2008 dated 3rd March 2008 that prior to finalization of DPRs, participation of State Authority should be ensured in to incorporate their views/comments at the project preparation stage itself. As per the above circular, the concerned Chief Engineer of National Highway Division of the State is required to be invited to participate in the discussions at the time of finalization of DPR, even prior to sending the said proposal to the Government. The concerned nodal officer of the State is to be invited for discussion.

It is however stated that NHAI did not meet out even the MoRTH specification in the Concession Agreement regarding the height of the underpass.

As regards the circular issued on 3rd March 2008, compliance thereto is also to be ensured to avoid lapses/deficiency in the projects.

Further, Government/Management have not replied on the recommendation of the committee regarding fixing of responsibility on DPR consultant.”

8. The reply of the Government on the vetting comments of Office of C&AG was as follows:-

“Show Cause Notice to M/s RITES by NHAI will be issued on taking deterrent action for the deficiencies in DPR and appropriate action will be taken after examining the reply of M/s. RITES to Show Cause Notice.”

9. The subsequent vetting comments of Office of C&AG on the reply of the Government were as follows: -

“The reply is interim, the desired action is still to be taken up by the Authority, further progress would be watched. In this regard a copy of show-cause notice issued if any to M/s RITES was called for from the management vide requisition dated 11th July, 2011. The same is yet to be received. Further, no reply in support of compliance to the circular issued for participation of State Authority prior to finalization of DPRs has been furnished. The same would be verified in Audit.”

10. The reply of the Government on the vetting comments of Office of C&AG was as follows:-

“NHAI has been directed to take into cognizance of C&AG observations/directions, and take appropriate action in this regard.”

Comments of the Committee

11. Taking note of the deficiencies observed in preparation of Detailed Project Report (DPR) for Delhi-Gurgaon Project which missed many critical items resulting in subsequent change in scope of work, the Committee had *inter-alia* recommended that responsibility must be fixed on the DPR consultant for their failure to take into account the Indian Road Congress specifications on the minimum vertical height for under passes. To the sheer astonishment of the

Committee, the Ministry in their initial action taken replies maintained that there was no deficiency on the part of DPR consultants M/s RITES. It is only after the vetting comments of the Audit, the Ministry altered its earlier stand and stated that show cause notice to the DPR consultants would be issued for the deficiencies observed in DPR and appropriate action would be taken after examining the reply to show cause notice. The Committee deprecate this attitude of the Ministry and they consider this reply as interim in nature. The Committee, therefore, desire that the matter to fix responsibility against DPR Consultants should be pursued in the right earnest in a time bound manner and they be apprised of the concrete action taken within three months from presentation of this Report.

Recommendation No. 6

Pre-Mature Issuance of Completion Certificate

12. The Committee in their First Report have recommended with regard to 'Pre-Mature Issuance of Completion Certificate' as follows:

“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 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.”

13. In their action taken reply, the Ministry of Road Transport and Highways have stated as follows: -

“There is no haste shown in giving the Provisional Completion Certificate. Provisional Completion certificate duly appended with Punch List (outstanding works) was issued by Independent Consultant (M/s RITES-Sheladia JV) on 23.1.2008. Toll collection is permitted after issue of Provisional Completion Certificate by the IC as per provisions of the concession Agreement. Since the Concessionaire did not complete the outstanding work within 120 days therefore penalty amounting to Rs. 60.42 lakhs as calculated by the Independent Consultant has been recovered from the Concessionaire for delay in completion of punch list items. The new Independent Consultant (IC) (M/s STUP Consultant) having satisfied himself that all outstanding works covered under punch list (excluding de-linked items) have been completed by the Concessionaire, issued final Completion certificate (COD) on 22nd August, 2009. As regards de-linked items the same is being examined by the Independent Consultant (IC) and appropriate decision will be taken in accordance with provisions of the Concession Agreement.”

14. The vetting comments of the Office of C&AG on the Reply of the Government were as follows: -

“The Authority replied that, since the Concessionaire did not complete the outstanding work within 120 days, penalty amounting to Rs. 60.42 lakh as calculated by the independent consultant has been recovered from the Concessionaire for delay in completion of Punch-List items, However, calculation details for penalty of Rs. 60.42 lakh will be scrutinized by audit in due course, to comment on the adequacy of penalty imposed on Concessionaire.

The issue of delinked items has not yet been settled till date, outcome of which may be expedited by the Authority.

Regarding punch list, what action has been taken on this issue of fixing responsibility.”

15. The reply of the Government on the vetting comments of Office of C&AG was as follows: -

“The action to settle the delinked items is being expedited. As regards fixing responsibility on the issue of punch list, since the punch list has been issued by IC in accordance with the provision of the Concession Agreement, NHAI is not contemplating to fix responsibility in this matter.”

16. The vetting comments of Office of C&AG on the Reply of the Government were as follows: -

“The issue of delinked items has not been settled till date, outcome of which may be expedited by the Authority. Regarding Punch-List no action has been taken on this issue of fixing responsibility as recommended by the committee. The detailed of penalty of Rs.60.42 lakh has been verified.”

17. The reply of the Government on the vetting comments of Office of C&AG was as follows: -

“NHAI has been directed to take note of C&AG observations/directions for suitable follow-up.”

Comments of the Committee

18. In their earlier Report, the Committee had expressed their strong reservations over the manner in which the completion certificate was issued by the Independent Consultant in the instant case. They had, accordingly, desired that the whole issue be revisited by NHAI and those found guilty be punished besides invoking penalty provisions on the Concessionaire for not completing the Punch List Items in time. From the action taken reply of the Government, the Committee find that while a penalty of Rs. 60.42 lakh had since been recovered from the Concessionaire for delay in completion of Punch List Items, the issue of settlement of items de-linked from Punch List has not yet been settled as the same is stated to be under examination of the Independent Consultant. While expressing their unhappiness over the delay in this matter, the Committee desire that concrete follow up action to settle the de-linked items should be expedited by the NHAI and they be apprised of the conclusive action taken in the matter.

Recommendation No. 8

Delay in Appointment of Independent Auditors

19. The Committee in their First Report have recommended with regard to ‘Delay in Appointment of Independent Auditors’ as follows:

“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.”

20. In their action taken reply, the Ministry of Road Transport and Highways have stated as follows: -

“There is no time frame given in the Concession Agreement for appointment of Additional Auditors. NHAI exercised its right after about 8 months from start of toll collection, which is a reasonable period to audit the Concessionaire account of toll revenue and other transaction details. There was no deliberate intention to delay the appointment of Additional Auditor. Moreover, Statutory Auditor is already in place to audit the accounts of the Concessionaire on continuous basis. The current policy in this regard is given in the Model Concession Agreement issued by the Planning Commission in April, 2009. The relevant Clause (Clause 33.2.3) is extracted below: -

33.2.3 Notwithstanding anything to the contrary contained in this Agreement, the Authority shall have the right, but not the obligation, to appoint at its cost from time to time and at anytime, another firm (the “Additional Auditors”) from the Panel of Chartered Accountants to audit and verify all those matters, expenses,

costs, realisations and things which the Statutory Auditors are required to do, undertake or certify pursuant to this Agreement.

The Concessionaire is being reminded from time to time by the Independent Consultant and Project Director the events of delay in receipt of information on Escrow Account statement.”

21. The vetting comments of the Office of C&AG on the Reply of the Government were as follows: -

“The Committee noted that the Authority has not followed the principles of good governance by not appointing the Independent Auditors.

The Management replied that there was no deliberate intention to delay the appointment of Additional Auditors (Independent Auditors). It is also stated that the current polity in this regard is given in the Model Concession Agreement issued by the Planning Commission in April 2009. The relevant Clause (33.2.3) is extracted below:-

33.2.3 Notwithstanding anything to the contrary contained in this Agreement, the Authority shall have the right, but not the obligation, to appoint at its cost from time to time and at anytime, another firm (the “Additional Auditors”) from the panel of Chartered Accountants to audit and verify all those matters, expenses, costs, realizations and things which the Statutory Auditors are required to do, undertake or certify pursuant to this Agreement.

The reply is not satisfactory. The Authority should have exercised its right which would have helped to safeguard its own interests.”

22. The reply of the Government on the vetting comments of Office of C&AG was as follows: -

“NHAI is appointing the Additional Auditors whenever any issue arises in BOT(Toll) Projects. NHAI may be permitted to continue with this policy viz to appoint the Additional Auditors as and when any issue arises.”

23. The vetting comments of Office of C&AG on the Reply of the Government were as follows: -

“Action/reply of management is not in line with the recommendation of the committee. Further the reply is also silent about the action taken against the Concessionaire for inaccuracy of records, as desired by the Committee.”

24. The reply of the Government on the vetting comments of Office of C&AG was as follows: -

“NHAI has been directed to take note of C&AG observations/directions.”

Comments of the Committee

25. In the light of the fact that the report of the Independent Auditors appointed subsequently by NHAI for Delhi-Gurgaon Project had revealed inaccuracies in the financial records of the Concessionaire, the Committee had made a specific suggestion that appointment of Independent Auditors should be made a mandatory provision in the internal working manual of NHAI so as to avoid any scope of lopsidedness in the accuracy of records maintained by the Concessionaire. To the utter dismay of the Committee, the Ministry, in its action taken replies, has once again tried to maintain its earlier position that the Authority has the right but not the obligation to appoint Independent Auditors. The Ministry has this time, however, taken shelter behind the current policy enshrined in the model concession agreement issued by the Planning Commission in April 2009, which is almost over seven months before presentation of the relevant Report by the Committee. The Committee are in no doubt that the Ministry could not comprehend the essence of their recommendation otherwise it would not have pleaded in its action taken replies at this stage that NHAI may be permitted to continue with its policy of appointing the Additional Auditors whenever any issue arises in BOT (Toll) Projects. The Committee need hardly emphasise that the present policy of appointing Additional or Independent Auditors only when the need arises is not in the best financial interests of Government as had already been borne out by the findings of the Independent Auditor appointed in case of Delhi-Gurgaon project. The Committee, therefore, reiterate their earlier recommendation that appointment of Independent Auditors should be made a mandatory provision in the internal working manual of NHAI so as to ensure accuracy of the financial records maintained by the Concessionaire.

The Committee had also taken note of the observations made by the Independent Auditors that the differences amounting to Rs. 2.16 crore in the financial records and the software generated report had raised a question mark on the accuracy of traffic report and the aspect of revenue sharing. They had, accordingly, desired that this matter be properly inquired into and necessary action taken against the Concessionaire in case some irregularity was detected and penalty imposed accordingly. The Committee are, however, anguished to find that the Ministry's reply is inexplicably silent on this aspect. While expressing their displeasure over this apparent inaction on their specific recommendation, the Committee strongly reiterate that an inquiry in the matter should be promptly conducted and they be apprised of the concrete action taken thereon including realization of penalty, if any, imposed on the Concessionaire for inaccuracy in financial records noticed by the Independent Auditors.

Recommendation No. 9

Failure to Conduct any Road Safety Audit

26. The Committee in their First Report have recommended with regard to 'Failure to Conduct any Road Safety Audit' as follows:

"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 recommends 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.”

27 In their action taken reply, the Ministry of Road Transport and Highways have stated as follows: -

“1. A Detailed Project Report (DPR) study was assigned to M/s. RITES Ltd. in June, 1997 to assess the technical feasibility and financial viability to augment the capacity of Delhi-Gurgaon section of NH-8. DPR was completed in June, 2000 for section of NH-8 from km. 15.40 to km. 36.630. In order to make the project financially viable, six laning of road starting from km. 36.630 to km. 42.00 (already 4-laned) was also added during September, 2001. The reach from km. 13.70 (i.e. RTR) to km. 15.40 (Palam Junction) was also added. Final DPR was approved in October, 2001.

2. The project was awarded to M/s. Jaypee-DSC Ventures Ltd. in April, 2002 for Development to 8/6 lane access controlled highway from Km 14.300 to Km 42.00 on BOT (Toll) basis. The Independent Consultant was M/s RITES-Sheladia (JV) for this project since start of construction up to 31.12.2008. As per original scope of works, there was provision for providing two nos. of pedestrian / cattle crossings at locations to be decided by NHAI. After discussion with Haryana Govt. officials in 2004, this facility was decided to be provided at Anaz Mandi and Kherki Daula (between Rajiv Chowk and km. 42.00). These have since been completed.

3. In view of the rapid development which had taken place in Delhi and Haryana areas falling on the project highway, Delhi and Haryana administrative authorities suggested some improvements, which were considered essential. The matter of change of scope was discussed at length in various meetings held with officers of the Airport Authority of India, Haryana Govt. and Delhi Govt. First change of scope notice was issued on 10th April, 2003 and second on 22nd September, 2003.

4. The project highway was inspected by the then Hon'ble Minister of Road Transport & Highways along with the Secretary (RT&H) on 29th November, 2003, when it was directed to further optimize the design and provide some

more value additions. Accordingly, Secretary (RT&H) directed Central Road Research Institute (CRRI) to undertake a study and suggest optimization in project design. Based on the CRRI study, following two main decisions was taken:-

- (i) Clubbing of Palam and RTR intersections to provide an elevated section for about 1.1 km. length from km. 14.30 to km. 15.40.
- (ii) Flyover across NH-8 at Hero Honda Chowk (Which was subsequently deleted).

The change of scope / value additions was approved by the then Secretary (RT&H) and Hon'ble Minister of Road Transport & Highways on 8th April, 2004.

5. The change of scope necessitated transfer of land of Ministry of Defence and Airport Authority of India. Thus till confirmation of land transfer was received, change of scope could not be finalized. Finally on 1st April, 2005, it was decided in the meeting of Committee of Secretaries (COS) that Ministry of Defence and AAI should give permissive possession of required land to NHAI.

6. Proposal of change of scope costing Rs. 224.48 crore as assessed by the Independent Consultant was put up in the 55th meeting of the Authority held on 15th July, 2005. This proposal also included additional two nos. Pedestrian Foot Over Bridges and one no. Pedestrian Underpass at Kendriya School (all in Delhi). These were provided on the request of Army Authorities and were agreed during discussion in connection with transfer of land from Ministry of Defence to NHAI. Out of this, the Pedestrian / Cycle Foot Over Bridge at Shankar Vihar as also the pedestrian underpass at Kendriya School near RTR Junction have already been opened for use by the public.

7. As regards the second Pedestrian Foot Over Bridge near Subroto Park even though the proposal was approved in July, 2006, Air Force Authorities did not allow construction to be taken up and were insisting for providing a flyover at this location. This continued upto as late as in November, 2007. The matter was sorted out in December, 2007 and they allowed the construction of the Foot over Bridge in front of Subroto Park Gate. This work has been completed. In addition to above there is another Pedestrian underpass near Toll plaza at Km 24 constructed by the Concessionaire. Thus total four Pedestrian sub way and two FOB's have been constructed by the Concessionaire.

8. In February / March, 2007, the Independent Consultant (M/s RITES-Sheladia (JV) submitted a proposal to NHAI for additional safety works on this project. During the 63rd meeting of the Authority held on 30th March, 2007, it was informed that after opening to traffic 8 out of 9 flyovers, the stretch between Palam Junction and Rajiv Chowk has become hindrance free providing smooth flow conditions for the traffic. This has also increased the average speed of

travel on the highway. Due to pedestrians' crossings, the Expressway at random instead of crossing the road at designated places namely viaduct openings of the flyover, there have been some accidents in recent past. Under the circumstances, certain additional works mainly for safety of traffic / pedestrians' were felt necessary. It was, therefore, proposed to provide 5 more Foot Over Bridges at a cost of about Rs. 13 crores. The proposal was approved by the Authority. It was also approved to get this work executed through open competitive bidding.

9. Subsequently, based on request of Delhi Police for a pedestrian overbridge at Dhaula Kuan, an estimate and RFP for construction of six FOBs was approved by the Competent Authority on 31.05.2007. Bids for six FOBs were invited on 06.06.2007 to be received on 02.07.2007. At the request of some bidders, the date was extended to 09.07.2007. However, only one bid was received, therefore, as per procedure outlined in NHAI's Works Manual, it was decided to go for rebidding.

10. In order to ensure better participation of contractors, the work was split into three packages of 2 FOBs each and bids invited on 12.09.2007 to be received on 05.10.2007. The proposals received were evaluated by the Evaluation Committee which recommended some relaxation in RFP as regards condition of having done similar works in last 7 years (one contractor had done similar work in 2000-01 i.e. older than 7 years) to have at least two responsive bidders for each package (otherwise only one contractor was found responsive in all three packages). The matter was referred by the Competent Authority to Finance Division which did not favor relaxation and suggested quick re-bidding.

11. Bids were invited for third time on 16.01.2008 and received on 06.02.2008. This time the single bid has been received and found that the rates quoted by the bidders are abnormally high therefore it was decided to cancel the bidding process. During meeting taken by the Secretary, RTH on 26.2.2008 it was decided to entrust this work to Haryana Govt as a deposit work. The following 5 nos. FOBs in Haryana portion have been approved at an estimated cost of Rs. 13.20 Crore:-

- | | | |
|-------|------------|---|
| (i) | km.26.000 | between Udyog Vihar and IFFCO Junction |
| (ii) | km.26+915 | between South City and IFFCO Junction |
| (iii) | km.34+320 | near Rajiv Chowk |
| (iv) | km. 36+710 | near Khandsa Village (new location instead of 37+030) |
| (v) | km.38+780 | near Narsinghpur Village |

Out of above two FOB at sl. No. (i) and (ii) has already been completed and third is in progress. For two FOB, Land Acquisition is being done.

12. As regards median fencing, it is to mention that erection of un-climbable median fencing all along Delhi-Gurgaon Access Controlled Highway was not envisaged in the scope of the work of the Project Highway. Neither the same were advised in the DPR of the Project Highway by the RITES. M/s. RITES-Sheladia (JV) in year 2007 submitted proposal for additional safety measures. In this connection, a meeting was convened by Chairman, NHAI on 5.3.2007 and additional works were agreed for implementation which includes, median fencing, service road on RHS and five FOB. NHAI vide letter dated 22.10.2007 directed the Concessionaire to provide median fencing in about 22.0 Km length of road (un-climbable) between Km 14.300 to 42.000 in accordance with para 4.13 (Traffic Safety Measures) of Concession Agreement. IC Vide letter dated 26.10.2007 intimated that median fencing is not part of Concession Agreement, therefore it is not his obligation.

The matter was examined in NHAI and matter put up to NHAI board. In a meeting of the authority held on 25.3.2008, the proposal for erecting median fencing at the cost of NHAI was approved. NHAI invited tenders and in first call only single bid was received therefore as per NHAI policy, bids were invited second time in June, 2008. The work was awarded on 23.9.2008 and presently work is completed.

13. Further, in addition to above NHAI has also engaged a consultant for providing 5 vehicular underpasses between Rajiv Chowk and end of project. Final Feasibility report has been submitted on 25.9.2009. Draft DPR submitted for only three feasible underpasses/ overpass. 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 Draft PPR on 15.4.2009. However, recently Government of Haryana requested the NHAI to explore possibility of Elevated NH-8 between Rajiv Chowk and Kherki Daula instead of piecemeal improvement as above. The NHAI has submitted the Detailed Report showing three scenario based on techno-economic study to the Ministry on 16th March, 2010 for decision.

14. It may be stated in this connection that progress of Delhi-Gurgaon project has been reviewed in Ministry and also by Haryana Govt. Authorities at Chandigarh from time to time and the Authorities have been kept apprised of the progress as also issues / problems affecting the project. The issue of pedestrian over bridges in Haryana was raised only towards end of 2006, when few accidents occurred on this road. Prior to that, number of meetings was held with Haryana Govt. officials and they raised issues only of increasing length of viaducts, increasing vertical clearance of some underpasses, provision of flyover / underpass at Hero Honda Crossing and widening of service roads in Haryana portion.

15. As regards setting up of Highway Police Force for monitoring and safeguarding all National Highways, there is no such proposal under consideration by the Government.

28. The vetting comments of the Office of C&AG on the Reply of the Government were as follows: -

“The Committee’s concern is over not carrying out any safety Audit and inadequacies of sub-way/foot-over bridges at the planning as well as DPR stage causing neglect of the interests of pedestrians resulting in fatal accidents. The reply details developments at later dates. Further, it also does not specify the required action to be taken by Concessionaire after the Compliance Report of September 2009.

The Committee also desired to fix the accountability on concerned officials responsible for lapses, which have placed human lives at danger and take strict punitive action against them. Action taken on this aspect have not been replied. The Government has also not considered Committee’s recommendation of setting up of a Highway Police Force for monitoring and safeguarding all NHs, without assigning any reasons. Since Government has taken no action, Audit has no remark to offer.”

29. The reply of the Government on the vetting comments of Office of C&AG was as follows: -

“Very few projects of this nature have been built in the country so far under such complex situations. The coordination of several authorities is involved in construction, operation and maintenance of Delhi-Gurgaon Highway. The improvements to the safety provisions is a continuous process towards achieving safer/forgiving roads by overcoming the constraints like vehicle condition/population, road user behaviour, education level of truck drivers, etc. NHAI/Government is making sincere efforts to make roads safer. The Manual of Standards & Specifications for construction of highways have been published by IRC. As regards the compliance report of Sept., 2009, the Concessionaire has attended to all the observations related to safety pointed out by the safety auditors. In connection with setting up of a Highway Police force, it is submitted that creation of National Road Safety Management Board as per Sundar Committee recommendation is under consideration of the Government.”

30. The vetting comments of Office of C&AG on the reply of the Government were as follows: -

“Though the reply states in general that sincere efforts are being made for road safety, but it is silent about the specific action taken as per recommendation of committee for fixing accountability on the concerned officials responsible for lapses which had placed human life in danger. However the Safety Audit

Report along with the action taken thereon was not provided to Audit. As regarding setting up of Highway Police Force for monitoring and safeguarding all national highways, management submitted that creation of National road Safety Management as per Sundar Committee recommendations is under consideration by the Government, the same needs to expedite by the Authority.”

31. The reply of the Government on the vetting comments of Office of C&AG was as follows: -

“NHAI has been directed to take into cognizance of C&AG observations/directions.”

Comments of the Committee

32. Expressing their deep concern that no road safety audit was carried out in respect of Delhi-Gurgaon Project both at planning and detailed project report stages which resulted in complete neglect of the interests of non-motorized traffic and safety of pedestrians, the Committee had, *inter-alia*, recommended that accountability must be fixed on the officials responsible for lapses which apparently placed human lives at danger. While giving elaborate details of the various steps taken subsequently to address the safety issues, the Ministry’s reply is conspicuously silent about the action taken to fix accountability on officials responsible for lapses at the initial stages. The Committee are not inclined to accept the averments made by the Ministry that very few projects of this nature have been built in the country so far under such complex situations and they feel convinced that the Ministry is trying to make an effort to paper over the glaring failures of officials entrusted with the task of execution of Delhi-Gurgaon Project. The Committee, therefore, reiterate their recommendation for fixing accountability and strict punitive action against the guilty and desire that conclusive action should be finalized in a time bound manner without any further delay. The Committee expect the Ministry to draw suitable lessons from this project so that such lapses should not recur in future.

In their earlier Report, the Committee had also made a specific recommendation for setting up Highway Police Force for monitoring and safeguarding all National Highways. In reply, the Ministry has intimated that creation of National Road Safety Management Board as per Sundar Committee

recommendation is under consideration of the Government. The Committee desire the Government to swiftly act on Sundar Committee recommendation and furnish a precise action taken reply to them on this aspect.

Recommendation No.11

Monitoring Role of the Ministry and NHA

33. The Committee in their First Report have recommended with regard to 'Monitoring Role of the Ministry and NHA' as follows:

"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 NHA, 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 NHA to decongest the increase in traffic, the reply given by Authority is "NHA 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 NHA 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 NHA as well as its administrative Ministry.

The NHA 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.”

34. In their action taken reply, the Ministry of Road Transport and Highways have stated as follows: -

“This project was monitored by High level Committee comprising of representative from various Departments like DUAC, HUDA, NCRPB, DDA, AAI,DVB, MTNL, GAIL, DJB, PWDs. Further this project being in the capital city of Delhi was also monitored by Hon’ble Minister, RTH, Secretary, RTH , Hon’ble LG, Delhi, Cabinet Secretary and other senior officials of GNCTD and Govt. of Haryana. The monitoring mechanism for monitoring the progress of NHDP-I, II,

III etc is already in place in NHAI in addition to periodical review by the Ministry of Road Transport & Highways and COS under Cabinet Secretariat.

The Government would reiterate its position that subject to the autonomy granted to NHAI under NHAI Act, it would not consider it appropriate to involve itself with NHAI's day-to-day affairs relating to the project. Through various review meetings NHAI has been advised of appropriate action within the framework of Concession Agreement. The Government would not hesitate to take stringent action if violation of the terms of agreement is noticed. It is already examining various issues brought to the fore by the Committee and CAG and will take action as appropriate. It will keep the Committee informed of the action taken."

35. The vetting comments of the Office of C&AG on the Reply of the Government were as follows: -

"The Committee concluded that the Government as well as NHAI should undertake a through review of the project and analyse the reasons for shortcomings/deficiencies observed therein to strengthen the supervision machinery. As per reply of the Government various issues brought out by the Committee/CAG are being examined and the Committee will be informed of the appropriate action taken. The issue may be watched through further ATNs."

36. The reply of the Government on the vetting comments of Office of C&AG was as follows: -

"NHAI will appoint a Retired Senior Officer to undertake a thorough review of Delhi-Gurgaon Project to analyze the reasons for shortcomings and deficiencies observed therein to strengthen the supervision mechanism. The results of the said analysis will be utilized in the future projects."

37. The vetting comments of Office of C&AG on the Reply of the Government were as follows: -

"The reply is interim as the required action to undertake a thorough review of Delhi-Gurgaon Project to analyze the reasons for shortcomings and deficiencies observed therein are yet to be taken up. The same may be expedited by NHAI and the results of the analysis/action taken thereon may be watched in further audits."

38. The reply of the Government on the vetting comments of Office of C&AG was as follows: -

"NHAI has been directed to take into cognizance of C&AG observations/directions. The Ministry is also studying the status of compliance of the

Concession Agreement by the Concessionaire so that appropriate corrective action can be taken.”

Comments of the Committee

39. After taking note of deficiencies observed during the execution of Delhi-Gurgaon Project, the Committee had recommended that the Government as well as NHAI may undertake a thorough review of the project and analyse the reasons for the shortcomings and deficiencies noticed in implementation, planning and execution so as to avoid recurrence of such lapses in the future. The Committee also desired that the irregularities/deficiencies observed in their Report needed to be investigated by an independent investigating agency. The Government in its action taken reply has *inter-alia* stated that it is examining various issues brought out by the Committee and the C&AG and the Committee will be informed of the appropriate action taken. It has subsequently been intimated by the Government that NHAI will appoint a retired senior officer to undertake a thorough review of Delhi-Gurgaon Project to analyze the reasons for shortcomings and deficiencies observed therein to strengthen the supervisory mechanism and the results of the said analysis will be utilized in the future projects. While the Government has agreed to analyze the reasons for deficiencies/shortcomings observed in Delhi-Gurgaon Project, the Committee would like to treat this reply as interim in nature since conclusive action is yet to be taken on the recommendations of the Committee. They, therefore, desire that the action proposed by the Government may be expedited and the results of the analysis/action taken thereon may be communicated to the Committee within three months from presentation of this Report.

CHAPTER II

RECOMMENDATIONS THAT HAVE BEEN ACCEPTED BY GOVERNMENT

Recommendation 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 takes objection to his indiscretion and condescending attitude.

Reply of the Government

The Chairman, NHAI tenders unqualified apology for the statements made.

Vetting comments of Office of C&AG on the Reply of the Government

In view of above an unqualified apology tendered by the Chairman/NHAI regarding statement made on CAG and his staff, no further action is needed.

Reply of the Government on the vetting comments of Office of C&AG

Needs no further reply.

[Ministry of Road Transport and Highways]
[O.M. No RW/NH-24035/6/2009-PIC(pt.I)dated 19/8/2011]

Recommendation No. 5

Delay in Execution of Project

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.

Reply of the Government

The strategy adopted by NHAI for expeditious completion of the process of land acquisition.

Several measures have been introduced to facilitate timely completion of pre-construction activities (which include land acquisition and utility shifting), as follows: -

(i) **Utilization of State Govt. machinery for land acquisition** : Under the current system of land acquisition State Govt. Revenue Department officers are appointed as Competent Authority for Land Acquisition (CALAs). Appointment of State Govt. Revenue Department officers as CALAs is advantageous to NHAI due to their familiarity with local conditions/land-rates/land-use patterns, and also because they/their Depts. are custodians of local Revenue Records on basis of which Notifications under NH Act are issued for acquisition of land.

(ii) **Strengthening CALAs infrastructure for speeding up land acquisition** : Primarily, it is the responsibility of concerned State Government to provide adequate staff and infrastructure to CALA. However, as a measure for providing assistance to CALAs for speeding up land acquisition, NHAI always provide additional support to CALAs in the shape of additional staff/infrastructure (i.e. vehicles/computers/fax/photocopy machine etc). Provision for sanction of additional

resources to CALAs are contained in Policy Circular dated 03 Oct. 06 . A copy of circular is at **Annexure-III**. NHAI HQ is more than liberal in sanctioning resources to CALAs; In fact, initial installment of resources sanctioned by NHAI are mostly more than sufficient for timely acquisition of land.

(iii) **Strengthening PIUs infrastructure for land acquisition:** In order to strengthen PIU level mechanisms for expediting timely land acquisition (which primarily comprises pursuit of land acquisition processes with CALA), aforementioned Circular also provides for engagement of 01 retired State Govt. Revenue officer and 01 Surveyor/Amin by each PIU for each District. In cases where PIUs need additional manpower due to large volume of work or time constraints, additional manpower over and above that provided for in Circular bid is frequently sanctioned. Recently, remuneration for personnel engaged by PIUs for land acquisition was increased by the Executive Committee (37th Meeting on 23 Dec. 08) to a consolidated Rs.20,000 and Rs.15,000 for Revenue Officers and Surveyors/Amins respectively. Further, provision was also made for engagement of (ie non-Govt. retired) private Surveyors/Amins @ consolidated monthly remuneration of Rs.10,000.

(iv) **Interaction with the State Govts:** As brought out above, NHAI is entirely dependent on State Govts for obtaining possession over encumbrance free land. Accordingly, instead of being assigned responsibilities over individual stretches of Highway (eg arms of GQ, halves of NS or EW Corridors, or BOT projects), CGMs have been assigned responsibilities for implementation of projects in individual States. The level at which NHAI coordinates-interacts with State Govts for problem-solving is at the level of NHAI's State CGM-State Govt's Nodal Officer for NHDP. Recently, in order to further streamline interaction with State Govts for smooth implementation NHDP, CGMs in charge of individual States have been posted to the respective State Capitals.

(v) **Constitution of High Powered Committee:**

Ministry had requested State Govt. to constitute State Level Committee under the Chairmanship of Chief Secretary to monitor the progress of land acquisition in the States.

(vi) **Decentralized System:** NHAI has set up 10 regional offices headed by CGM level officer. The purpose is to have close monitoring and coordination with the State authorities on regular basis.

(vii). Ministry/NHAI had taken up the matter of speedy land acquisition with the State Governments. Letters have been written from Hon'ble Minister, MoRTH, Secy, MoRTH and Chairman NHAI to the Chief Ministers/Chief Secretaries.

(viii) **Appointment of State Level Coordinator for land acquisition/pre-construction:** NHAI HQ has nominated a Project Director located in the State to function as State Level Coordinator for Land Acquisition/Pre-construction, whose functions are as follows:-

- Collection of information from all PIUs in the State, on pending land acquisition matters for various projects, and forwarding the same to HQ as per specified formats.
- Coordination with State Government officers on regular basis for all matters pertaining to land acquisition.
- Ensuring timely coordination meetings at the State level to resolve pending issues.

(ix) **Constitution of Special Land Acquisition Units (SLAUs):** In order to tide over the problem of land acquisition getting delayed due to frequent transfers of CALA, and because CALAs assign low priority to land acquisition for NHAI (which is their secondary task), Chairman has recently requested Chief Secretaries of all State Govts wherein NHDP projects are being implemented, to constitute dedicated Special Land Acquisition Units (SLAUs), for acquisition of land for NHAI. The activities of the Special Land Acquisition Units will include the following;

- (i) Preparation of notification under section 3A.
- (ii) Preparation of notification under section 3D(1)
- (iii) Preparation of award
- (iv) Disbursement of compensation to land owners
- (v) Dispute matters relating to Arbitration cases be referred to Arbitrator, mutation of land acquired under the Act.

State Govts have also been requested to consider posting a senior Revenue Officer (ADM level) on deputation to NHAI to coordinate with Special Land Acquisition Units in the State.

Vetting comments of Office of C&AG on the Reply of the Government

The Committee was aware of the fact that the land acquisition was a major bottleneck causing delays in project execution and felt that this needs to be addressed properly and some effective mechanism has to be evolved involving the representatives of State Government and other concerned functionaries.

The Government in reply detailed out several measures introduced to facilitate timely completion of pre-construction activities. These include land acquisition also. The compliance of these as well as the effectiveness will be verified during next audit of these units.

Reply of the Government on the vetting comments of Office of C&AG

Needs no further reply.

Vetting comments of Office of C&AG on the Reply of the Government

Despite the measures stated to be introduced, in following two cases delay in project implementation on account of land acquisitions were recently noticed:-

1. Upgradation of Mehrauli-Gurgaon Road (Andheria mode to Delhi/Haryanas Border)
2. Rehabilitation and Upgradation to 4/6 laning from km 547.400 to 596.750 of NH-7

Further, similar cases of delay would be examined in future audits.

Reply of the Government on the vetting comments of Office of C&AG

Needs no further reply.

[Ministry of Road Transport and Highways]
[O.M. No RW/NH-24035/6/2009-PIC(pt.I) dated 19/8/2011]

Recommendation No. 6

Pre-Mature Issuance of Completion Certificate

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 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.

Reply of the Government

There is no haste shown in giving the Provisional Completion Certificate. Provisional Completion certificate duly appended with Punch List (outstanding works) was issued by Independent Consultant (M/s RITES-Sheladia JV) on 23.1.2008. Toll collection is permitted after issue of Provisional Completion Certificate by the IC as per provisions of the concession Agreement. Since the Concessionaire did not complete the outstanding work within 120 days therefore penalty amounting to Rs. 60.42 lakhs as calculated by the Independent Consultant has been recovered from the

Concessionaire for delay in completion of punch list items. The new Independent Consultant (IC) (M/s STUP Consultant) having satisfied himself that all outstanding works covered under punch list (excluding de-linked items) have been completed by the Concessionaire, issued final Completion certificate (COD) on 22nd August, 2009. As regards de-linked items the same is being examined by the Independent Consultant (IC) and appropriate decision will be taken in accordance with provisions of the Concession Agreement.

Vetting comments of Office of C&AG on the Reply of the Government

The Authority replied that, since the Concessionaire did not complete the outstanding work within 120 days, penalty amounting to Rs. 60.42 lakh as calculated by the independent consultant has been recovered from the Concessionaire for delay in completion of Punch-List items, However, calculation details for penalty of Rs.60.42 lakh will be scrutinized by audit in due course, to comment on the adequacy of penalty imposed on Concessionaire.

The issue of delinked items has not yet been settled till date, outcome of which may be expedited by the Authority. Regarding punch list, what action has been taken on this issue of fixing responsibility.

Reply of the Government on the vetting comments of Office of C&AG

The action to settle the delinked items is being expedited. As regards fixing responsibility on the issue of punch list, since the punch list has been issued by IC in accordance with the provision of the Concession Agreement, NHAI is not contemplating to fix responsibility in this matter.

Vetting comments of Office of C&AG on the Reply of the Government

The issue of delinked items has not been settled till date, outcome of which may be expedited by the Authority. Regarding Punch-List no action has been taken on this issue of fixing responsibility as recommended by the committee. The detailed of penalty of Rs.60.42 lakh has been verified.

Reply of the Government on the vetting comments of Office of C&AG

NHAI has been directed to take note of C&AG observations/directions for suitable follow-up.

[Ministry of Road Transport and Highways]
[O.M. No RW/NH-24035/6/2009-PIC(pt.I) dated 19/8/2011]

Comments of the Committee

Please see para 18 of Chapter I

Recommendation No. 7

Non Compliance of Escrow Account Norms

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.

Reply of the Government

The agreement clauses relating to opening and periodical submission of escrow account has been included in Model Concession Agreement for ensuring compliances in all future projects. The Planning Commission in April, 2009 published Model Concession Agreement (MCA) in which under Article 31 the detailed instructions were provided for the Concessionaire to comply with. A copy of the Article 31 of MCA is at **Annexure-IV**. However, separately Independent Consultant appointed by NHAI is also responsible for implementing the Concession Agreement in true spirit. NHAI assures the Committee that agreement clauses shall be strictly followed in all future projects.

Vetting comments of Office of C&AG on the Reply of the Government

The management assured to follow agreement clauses of monitoring the project funding and utilization of Escrow Accounts strictly in future. This will be examined in next audit of PPP of NHAI as and when taken up.

Reply of the Government on the vetting comments of Office of C&AG

Needs no further reply.

Vetting comments of Office of C&AG on the Reply of the Government

During the audit of Karur-Dindigul section (Tamil Nadu) PIU Karur, it was noticed that the Concessionaire diverted the funds from Escrow Account amount to Rs.45 crore to mutual fund in March and October 2008. The NHAI ignored this fact and continued to release the grant. The NHAI has released total grant of Rs. 77.93 crore up to March 2011. As such the NHAI has not followed the agreement clauses of monitoring the project funding and utilization of Escrow Accounts.

Reply of the Government on the vetting comments of Office of C&AG

NHAI has been directed to take into cognizance of C&AG observations/directions for suitable further action.

[Ministry of Road Transport and Highways]
[O.M. No RW/NH-24035/6/2009-PIC(pt.I) dated 19/8/2011]

CHAPTER III

RECOMMENDATIONS / OBSERVATIONS WHICH THE COMMITTEE DO NOT DESIRE TO PURSUE IN VIEW OF THE GOVERNMENT'S REPLIES

Recommendation No. 2

Absence of Guidelines for Determining the Mode of Execution

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 recommends 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.

Reply of the Government

The Cabinet Committee on Economic Affairs (CCEA) in its meeting held on 12.12.2000 considered the note dated 29.11.2000 circulated by the Ministry of Road Transport & Highways and approved 40 sub-projects of 4/6/8 laning in a length of 4659 km at an investment of Rs. 30,300 crore under different modes of funding like BOT/SPV/Annuity/EPC/ External funding. While assessing the projects, PIB had observed that NHAI should make attempts to improve leveraging of government support by identifying more sub projects with high traffic density, which are amenable to BOT/SPV/Annuity mode of private funding.

Thus, undertaking high traffic density corridors on private funding was inherent in the decision of the Government. As regards various alternatives in the private funding option such as BOT (Toll), BOT (Annuity) and SPV, no guidelines were provided and the matter of investment decision in individual projects was left to the

decision of the NHAI Board. The Board decided this project is to be taken up on BOT (Toll).

The Government reiterated this policy in May, 2006 when it was decided inter-alia that BOT (Annuity) mode should be followed only where the response to the toll based BOT was inadequate and that too after approval of CCEA.

This policy shall continue after review by B. K. Chaturvedi Committee, wherein BOT (Toll) has been recognized as the most preferred delivery mode followed by BOT (Annuity) and EPC, though with a simplified procedure for change in mode – instead of CCEA approval, the change in mode can now be approved by an Inter-Ministerial Group (IMG) and by an Empowered Group of Ministers (E-GOM) where there is no consensus in IMG.

Thus, the Committee may appreciate that choice of deliver mode – BOT (Toll) or BOT (Annuity) now in accordance with policies of the Government, which was driven mainly by the need to leverage private funding and pass on the traffic risk to the Concessionaire at the same time giving him flexibility in design, construction and operation subject to provisions of concession agreement. The objective was never to dilute the accountability of NHAI or facilitate enrichment of the Concessionaire. The contract management framework consistent with BOT policy does not permit NHAI to have day-to-day monitoring of the contract, which has to be done by an Independent Engineer.

Vetting comments of Office of C&AG on the Reply of the Government

The Committee found serious lacunae in the present policy of the Government on the mode of execution of NH projects. The action taken on the recommendation of the Committee that (a) the Government need to review their guidelines on the mode of execution of projects on case-to-case basis and accountability of the Authority in respect of project related deficiencies need to be fixed and action taken initiated.

Reply of the Government on the vetting comments of Office of C&AG

It is to submit that the Guidelines for determining the Mode of execution of Projects have been inter alia examined in detail by the B.K. Chaturvedi Committee on National Highways Development Project (NHDP) constituted by the Government. The recommendations of the B.K. Chaturvedi Committee on revised strategy for implementation of NHDP have been accepted by the Government and accordingly, the revised guidelines for implementation of the National Project (NHDP) have already been circulated vide this Ministry O.M. No. RW/NH/37012/26/2009-PPP dated 05.11.2009. Salient features of the revised guidelines in respect of Modes of Execution of the projects are given at **Annexure-A**.

Vetting comments of Office of C&AG on the Reply of the Government

The implementation of the B.K. Chaturvedi Committee recommendation on NHAI Projects vis-à-vis. revised guidelines in respect of mode of execution of projects would be examined in Audit.

Reply of the Government on the vetting comments of Office of C&AG

Needs no further reply.

[Ministry of Road Transport and Highways]
[O.M. No RW/NH-24035/6/2009-PIC(pt.I) dated 19/8/2011]

Recommendation No. 4

Improper Fixation of Concession Period

The Committee noted 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 hassle free 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 advantageous 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.

Reply of the Government

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. The worst case scenario was considered considering diversion of traffic through existing old-Gurgaon road and through other improvement taking place in surrounding areas.

While it is conceded that fresh traffic survey and more due diligence of toll rates would have been a better course, nevertheless, in the competitive bidding process in which every bidder does his own assessment of cost and revenue, the deficiencies in DPR resulting from over / under estimation of traffic and toll rate get neutralized.

As regards curtailment of concession period it is to clarify that there is no provision in the Concession Agreement of Delhi-Gurgaon project to cut short the period after assessing that the Concessionaire has recovered his investment. It is further to mention that new MCA has a provision of curtailment of Concession period **(Copy at Annexure-II)**.

As regards the total project cost of Rs.555 crores and its comparison of toll revenue of Rs.208 crores, it is submitted that Concessionaire after completion of projects had to incur the expenditure on interest and expenditure on maintenance out of the toll revenue. Thus interest, expenditure on maintenance, establishment expenses are also to be met out of the toll revenue. As regards, the concession period of 20 years the project was awarded on BOT through competitive bidding with a pre-fixed concession period of 20 years which was based on the recommendation of financial consultant M/s SBI capital Market Ltd. The 20 years concession period was fixed taking in to account traffic growth, return on investment, expenditure for operation & maintenance during the period, interest on borrowed capital, risk of traffic diversion etc. To benefit from the revenue generation out of traffic growth and to protect the interest of NHAI, the concept of revenue sharing beyond the threshold limit of 1, 30,000 PCU per day was also provided in the contract.

As regards, protecting the interest of the commuters it is to clarify that as per Policy of the Government duly approved by the CCEA, the toll is to be collected on perpetuity basis therefore even after the end of concession period of the Concessionaire the commuters will have to pay user fee to the Government until the Government changes its policy.

As regards chaos at Toll plaza, it is to mention that this is operational issue and is being continuously monitored by Independent Consultant appointed to oversee Operation and Maintenance during the concession period and Project implementation Unit of NHAI also monitor the implementation and they instruct the Concessionaire to

take corrective action. The main reason for congestion and confusion is because of the rude behavior of the drivers ignoring direction signs and even manual instructions by the Marshall for no entry to cash users in Tag lanes.

As regards suitable guidelines/criteria for computing the concession period it is to mention that at present this is decided after carrying out sound financial evaluation by Financial Consultants, appraised by Planning Commission, Ministry of RTH and PPPAC constituted by the Government. However keeping in view the volatile market situation the bidder's perspective and analysis differs from that adopted by the Financial Consultant appointed by NHAI. Therefore in certain cases it has been found the projects approved by the PPPAC for less grant / more grant is quoted in actual bidding.

On certain other projects the scenario is reverse. It is to mention that TPC as given by NHAI is a fixed value for the purpose of BOT Concession Agreement and 'Grant' is based on this value. But actual TPC can never be the same for any two bidders. Depending on the sourcing/input costs/capitalized costs/EPC contractors margin/interest cost/managerial fee and risk premium the assessment of TPC by different bidders is bound to differ. Given this background there can be no single or correct value for TPC, and accordingly, quotation of grants would be different. In the competitive bidding process the price discovery is determined by market forces.

As regards illegal method of collection, it is may be mentioned that Concessionaire is collecting user fee in accordance with the provision of the Concession Agreement either by cash or by electronic collection and by no other method. As regards renewal of monthly Tag , the Concessionaire has already been requested to review the discount policy in such a way so as to facilitate the commuters using Tag / Smart cards. The entire operation of project highway including management of Toll Plaza is being monitored by the Independent Consultant and they issue the instructions to the Concessionaire from time to time. As regards adoption of smart card on the line of DMRC, it is to clarify that smart cards are also in use along with Tag and the commuters have a choice.

Vetting comments of Office of C&AG on the Reply of the Government

The audit issue highlighted in the para was that NHAI had not systematically developed its 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. The Committee was in agreement thereof and further observed lack of traffic study or any other home work done by the Authority to assess the revenue generation and resultantly the undue benefits was extended/derived by Concessionaires due to longer concession period i.e. 20 years as he had already recovered his investment. The Authority replied that the new MCA has a provision of curtailment of Concession period. Further, in the case of suitable guidelines/ criteria for computing the concession period, the Authority stated that at

present this is decided after carrying out sound financial evaluation by Financial Consultants, appraised by Planning Commission, Ministry of RTH and PPPAC constituted by the Government. With respect to the protecting the interests of commuters, as per the policy of Government, they have to pay the toll even after the concession period is over.

The reply re-iterates dependency on outsourcing whereas the Authority should also at the same time conduct adequate studies/surveys at its own. More ways and means need to be explored to protect the interest of commuters.

Action taken to reduce the dependency on others will be verified during Audit in due course.

Reply of the Government on the vetting comments of Office of C&AG

In reply to dependency of the Authority on outsourcing, it is submitted that NHAI model is outsource based with lean and thin organization. In order to implement a massive development programme like NHDP with skeleton staff, NHAI is bound to depend on DPR/Feasibility Study Consultants, Financial Consultants and Supervision Consultants/Independent Consultants from feasibility to execution of the projects. The contracts with these Consultants provide for standard of performance, responsibility for performance, professional liability, etc. In connection with payment of Toll after expiry of concession period, Government has further amended the Fee Rules in Dec., 2010 & Jan., 2011. As per the revised Fee Rules, after the Concession Agreement is over, the fee shall be collected by the Central Government executing authority at a reduced rate of 40% of the fee on the date of transfer.”

Vetting comments of Office of C&AG on the Reply of the Government

The Committee recommended that the Government should find some ways and means for provision of some relief to the commuters either by sharing the toll or making it toll free once the Concessionaire has recovered his investment. The reply stated that the Government has issued revised fee notification on 12 Jan. 2011. As per the revised notification the fee as notified as per Concession Agreement shall be leviable till the end of the concession period and after the Concession Agreement is over, the fee shall be collected by the Central Government executing authority at a reduced rate of 40% of the fee on the date of transfer of such section of National Highways, bridge, tunnel or bypass, as the case may be to revised annually in accordance with the rules.

In respect of public funded project, the fee leviable would be reduced to 40% of the user fee for such section after the recovery of capital cost.

The recommendations of committee are not yet taken in its true spirit as the rate of fee is not reduced even after the capital cost is recovered by the Concessionaire in the ongoing/future BOT projects.

Reply of the Government on the vetting comments of Office of C&AG

Concession Agreement are long term contracts and it is not open to NHAI to reopen these contracts during the concession period and adjust fee rates during the course of the contract.”

[Ministry of Road, Transport and Highways]
(O.M. No RW/NH-24035/6/2009-PIC(pt.I) dated 19/8/2011]

Recommendation No. 10

Inadequate Road Facilities

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, recommends 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.

Reply of the Government

As regards to way side amenities, it is to mention that the stretch is passing through very dense populated areas of Delhi and Gurgaon and acquisition of costly commercial land for way side amenities is not possible. **However project was conceived within the available Right of Way without much land acquisition due to high commercial value and difficulty in getting the land within time.** Further fuel stations are already located along the route in plenty. Exit points are also located on stretch at selected locations for approaching nearby area through service road. The

matter of incomplete service road has already been taken up with Ministry of Civil Aviation and the matter of handing over of land of AAI is under advanced stage and Estimate for construction of service road is under preparation. After taking over the land the work will be got executed in short period of time. The matter of entry of two /three wheelers have been taken up with respective state Government for enforcing this requirements but in vain. As part of ERP (Emergency Response Protocol) the Concessionaire has provided following and sequence of action taken is below.

ACTION TAKEN IN CASE OF ACCIDENT OR ANY INCIDENT ON THE EXPRESSWAY

- Accident information is received by control room through Patrolling Team / Police / Public / Emergency Services / NHAI / Company Employee / Other Authority.
- Control Room directs the nearest patrolling team on wireless to rush to the accident site. In case information received about injured person in accident, Ambulances is directly sent to the site of accident.
- Patrolling team reaches accident site, access the severity of accident and reports back to Control Room informing about the accident and necessary help such as Ambulance / Recovery / Fire Brigade / Police etc.
- Accident site is immediately cordoned off by traffic cones & Traffic is regulated.
- Control Room directs the Ambulance / Recovery if required to accident site and also informs the police about the accident.
- Ambulance & Recovery reaches the site. Injured person is taken to the nearest hospital and recovery removes the accidental vehicle from the site after police clearance.
- In the event of fatal accident, the police authority takes over the dead body and the accident vehicle is removed after IOs (Investigating Officer) permission.
- Site is cleared and reported to Control Room.

AMBULANCE LOCATION		
Code	Location	Area of Responsibility
Ambulance-1	24 Toll Plaza just after u turn on LHS / RHS	RTR(Km 14.300) to Km 42 Plaza
Ambulance-2	FOB 26+900 LHS	Km 24 Plaza to Rajeev Chowk (km 33.200)
Ambulance-3	32+500 RHS	Rajeev Chowk (km 33.2000 to Nursing Pur (km 39)

Ambulance-4	Km 42 toll Plaza	Km 42 to Nursing Pur (km 39)
PCR / CAT Ambulance	Delhi Area	Rajokri (km 22) to RTR (km 14.300) (If reaches before our ambulance)
<u>HOSPITAL</u>		
HOSPITAL NAME		DISTANCE FROM EXPRESSWAY
SAFDARJUNG HOSPITAL, RING ROAD, NEW DELHI		Appx. 10 km from km 14+300 (RTR F/Over)
R & R, SUBROTO PARK NEW DELHI		Appx. 02 km. from km 14+300 (RTR F/Over)
CIVIL HOSPITAL, CIVIL LINES,GURGAON		Appx. 03.5 km. from km 33+200 (Rajeev chowk)
PARAS HOSPITAL, 4 GURGAON		Appx. 04 km from km 29+640 (southcity F/Over)
PUSPANJALI HOSPITAL, CIVIL LINES,GURGAON		Appx. 0.5 km. from km 33+200 (Rajeev chowk)
SRS HOSPITAL, KHERKI DAULA, GURGAON		Appx. 0.5 km from 42 Toll
KALYANI HOSPITAL, MEHROLI ROAD,GURGAON		Appx. 02.5 km from km 28+160 (IFFCO chowk)
AYUSHMAN HOSPITAL ,HERO HONDA CHOWK GURGAON		Appx 100 mtr from km 36 +100(Hero honda chowk)
SUNRISE HOSPITAL, ANAJ MANDI, GURGAON		Appx 1 km from km 36 +100(Hero honda chowk)

AMBULANCE FACILITY

MANPOWER:

Paramedic with Nursing Diploma and Ambulance Driver

Equipments: Motorola Set (Wireless) / Cell Phone, Stretcher folding , Linen/ Blanket, Oxygen Cylinder with Mask , Ambu Bag , Section Apparatus, Tourniquet, First Aid Box , BP Apparatus , Stethoscope, Splints , Dressing Material Analgic, IV fluid & IV Set

Prevention Safety Measures

1. With a view to ensuring that accidents do not take place on the expressway, the Concessionaire has been taking the following preventive measures:

- (i). Marshals (3 shifts) have been deployed on the Expressway to guide advise the commuters to follow the correct lanes and to prevent the pedestrians and the drivers of the slow moving vehicles from entering the Expressway.
 - (ii). A commuter education/ awareness program was launched by the Concessionaire with special emphasis on safety and lane driving.
 - (iii). Poll kiosks have been installed at key locations on the Expressway displaying what is permitted on the Expressway and what is not. It has also been displayed that violations would attract penalty:
 - (iv). Patrolling vehicles and motor cycles have been deployed. They are always on the move along the Expressway all the time to supervise operations and come to the aid of any commuter in need and to advise erring commuters and passengers to adhere to the user norms;
 - (v). Three recovery cranes of difference sizes have been deployed to remove the vehicles, which encounter a fault or accident, form the Expressway so that smooth flow of traffic is not hampered. Apart from this, ambulances also have been deployed at various locations on the Expressway to deal with any kind of emergency.
 - (vi). SOS telephone booths have been provided on the Expressway for immediate contact in case of need.
 - (vii). Speed limit instructions and advice regarding lane driving have been prominently displayed throughout the stretch of the Expressway.
 - (viii). Trees and shrubs have been planted on the median to reduce glare of opposite traffic and improve environment;
 - (ix). Expressway has been fully illuminated for better vision;
 - (x). Crash barriers have been installed on the Expressway on both sides;
 - (xi). 500 meters of steel rope barriers has been installed at one of the most prominent locations on the expressway catering to rural traffic;
 - (xii). Solar Blinkers have been installed on key junctions;
 - (xiii). VMS have been installed on gantries displaying safety messages day and night;
 - (xiv). Three control rooms have been set up for traffic management with communications set up with wireless sets;
 - (xv). Dedicated call centre and emergency numbers have been displayed all across the Expressway for any emergency;
 - (xvi). 30 DG sets have been deployed on the Expressway to supply power back up in case of power failure;
 - (xvii). Two cushion crash barriers have been installed;
 - (xviii). Multiple solar studs have been installed on the flyovers and edges;
 - (xix). Declinators installed on all the flyover railings; and
 - (xx). Two speed enforcement cameras are being installed for checking violations and evasion of traffic rules on the Expressway.
2. In spite of all these precautions and steps, at times accidents do take place. An analysis of the accidents that have taken place reveals that the main factors responsible for the accidents have been as under:

- (i). Over speeding
- (ii). Drunken driving
- (iii). Pedestrians attempting to cross the Expressway
- (iv). Slow moving vehicles forcibly and illegally using the Expressway.

Emergency medical aid to the accidents victims

3. With a view to providing emergency medical aid and assistance to the accident victims, the Concessionaire have been taking the following specific measures;

- (i). Ambulances fitted with all the services have been deployed.
- (ii). Arrangements have been made with the private hospitals for providing emergency services to the accident victims;
- (iii). Private hospital ambulances are available round the clock which can be rushed to the accident spot any where on the Expressway within 10 to 20 minutes of the accidents on receiving the communication through communication system and the victims reach the nearest hospital within 20 to 35 minutes.
- (iv). Adequate facilities of basic first aid have been made available for the Expressway.

Vetting comments of Office of C&AG on the Reply of the Government

On the observation of the Committee about lack of basic facilities, the Authority replied that acquisition of costly commercial land for way side amenities is not possible. Though the exit points and fuel station already exist, matter of land acquisition for service road is under pursuance with AAI. As regard insufficiency of required action on the part of Concessionaire viz deployment of marshals, maintenance of service roads, absence of patrolling vehicles etc., the issue has not been replied properly.

Reply of the Government on the vetting comments of Office of C&AG

The matter of land related to Airport Authority of India (AAI) for construction of balance service road in Delhi Between Rajokri and Palam is being pursued at the level of Secretary Ministry of Civil Aviation (MoCA) and the land is likely to be made available. As regards deployment of Marshalls, this is being regularly monitored by Independent Consultant as well as NHAI and any deficiency noted is being got rectified. The service road has got damaged near a Hero Honda Junction because of stagnation of sewerage, which is being discharged by local villagers into storm water drain. The natural drainage i.e. Khandsa Drain has been blocked by local villagers and the civic bodies of Government of Haryana (GoH) has to make drain functional so that the stagnated water flows. Even the issues have been taken up at the highest level of Government of Haryana but the same has not been sorted out so far, Adequate numbers of patrolling vehicles are available on the stretch, however, this is being

regularly monitored by Independent consultant as well as NHAI and any deficiency noted is being got rectified.

Vetting comments of Office of C&AG on the Reply of the Government

As regard insufficiency of required action on the part of Concessionaire viz. deployment of marshals, maintenance of service roads, absence of patrolling vehicles etc. the management has replied that these issues are being regularly monitored by Independent Consultant and NHAI; any deficiency noticed is being rectified.

As regarding the matter of land acquisition related to Airport Authority of India(AAI) for construction of balance service road in Delhi between Rajokri and Palam for service road, the management replied that the matter is being pursued at the level of Secretary, Ministry of Civil Aviation (MoCA) and the land is likely to be made available. These issues may be watched through further ATN/Audits.

Reply of the Government on the vetting comments of Office of C&AG

Needs no further reply.

[Ministry of Road Transport and Highways]
[O.M. No RW/NH-24035/6/2009-PIC(pt.I) dated 19/8/2011]

CHAPTER IV

RECOMMENDATIONS / OBSERVATIONS IN RESPECT OF WHICH REPLIES OF THE GOVERNMENT HAVE NOT BEEN ACCEPTED BY THE COMMITTEE AND WHICH REQUIRE REITERATION

Recommendation No. 8

Delay in Appointment of Independent Auditors

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.

Reply of the Government

There is no time frame given in the Concession Agreement for appointment of Additional Auditors. NHAI exercised its right after about 8 months from start of toll

collection, which is a reasonable period to audit the Concessionaire account of toll revenue and other transaction details. There was no deliberate intention to delay the appointment of Additional Auditor. Moreover, Statutory Auditor is already in place to audit the accounts of the Concessionaire on continuous basis. The current policy in this regard is given in the Model Concession Agreement issued by the Planning Commission in April, 2009. The relevant Clause (Clause 33.2.3) is extracted below: -

*33.2.3 Notwithstanding anything to the contrary contained in this Agreement, the Authority shall have the right, **but not the obligation**, to appoint at its cost from time to time and **at anytime**, another firm (the “**Additional Auditors**”) from the Panel of Chartered Accountants to audit and verify all those matters, expenses, costs, realisations and things which the Statutory Auditors are required to do, undertake or certify pursuant to this Agreement.*

The Concessionaire is being reminded from time to time by the Independent Consultant and Project Director the events of delay in receipt of information on Escrow Account statement.

Vetting comments of Office of C&AG on the Reply of the Government

The Committee noted that the Authority has not followed the principles of good governance by not appointing the Independent Auditors.

The Management replied that there was no deliberate intention to delay the appointment of Additional Auditors (Independent Auditors). It is also stated that the current policy in this regard is given in the Model Concession Agreement issued by the Planning Commission in April 2009. The relevant Clause (33.2.3) is extracted below:-

33.2.3 Notwithstanding anything to the contrary contained in this Agreement, the Authority shall have the right, but not the obligation, to appoint at its cost from time to time and at anytime, another firm (the “Additional Auditors”) from the panel of Chartered Accountants to audit and verify all those matters, expenses, costs, realizations and things which the Statutory Auditors are required to do, undertake or certify pursuant to this Agreement.

The reply is not satisfactory. The Authority should have exercised its right which would have helped to safeguard its own interests.

Reply of the Government on the vetting comments of Office of C&AG

NHAI is appointing the Additional Auditors whenever any issue arises in BOT(Toll) Projects. NHAI may be permitted to continue with this policy viz to appoint the Additional Auditors as and when any issue arises.

Vetting comments of Office of C&AG on the Reply of the Government

Action/reply of management is not in line with the recommendation of the committee. Further the reply is also silent about the action taken against the Concessionaire for inaccuracy of records, as desired by the Committee.

Reply of the Government on the vetting comments of Office of C&AG

NHAI has been directed to take note of C&AG observations/directions.

[Ministry of Road Transport and Highways]
[O.M. No RW/NH-24035/6/2009-PIC(pt.I) dated 19/8/2011]

Comments of the Committee

Please see para 25 of Chapter I

Recommendation No. 9

Failure to Conduct any Road Safety Audit

The Committee note from a report submitted by the Central Road Research Institute (CRR) 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 CRR 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 CRR 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 recommends 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.

Reply of the Government

1. A Detailed Project Report (DPR) study was assigned to M/s. RITES Ltd. in June, 1997 to assess the technical feasibility and financial viability to augment the capacity of Delhi-Gurgaon section of NH-8. DPR was completed in June, 2000 for section of NH-8 from km. 15.40 to km. 36.630. In order to make the project financially viable, six laning of road starting from km. 36.630 to km. 42.00 (already 4-laned) was also added during September, 2001. The reach from km. 13.70 (i.e. RTR) to km. 15.40 (Palam Junction) was also added. Final DPR was approved in October, 2001.

2. The project was awarded to M/s. Jaypee-DSC Ventures Ltd. in April, 2002 for Development to 8/6 lane access controlled highway from Km 14.300 to Km 42.00 on BOT (Toll) basis. The Independent Consultant was M/s RITES-Sheladia (JV) for this project since start of construction up to 31.12.2008. As per original scope of works, there was provision for providing two nos. of pedestrian / cattle crossings at locations to be decided by NHAI. After discussion with Haryana Govt. officials in 2004, this facility was decided to be provided at Anaz Mandi and Kherki Daula (between Rajiv Chowk and km. 42.00). These have since been completed.

3. In view of the rapid development which had taken place in Delhi and Haryana areas falling on the project highway, Delhi and Haryana administrative authorities suggested some improvements, which were considered essential. The matter of change of scope was discussed at length in various meetings held with officers of the Airport Authority of India, Haryana Govt. and Delhi Govt. First change of scope notice was issued on 10th April, 2003 and second on 22nd September, 2003.

4. The project highway was inspected by the then Hon'ble Minister of Road Transport & Highways along with the Secretary (RT&H) on 29th November, 2003, when it was directed to further optimize the design and provide some more value additions. Accordingly, Secretary (RT&H) directed Central Road Research Institute (CRRI) to undertake a study and suggest optimization in project design. Based on the CRRI study, following two main decisions was taken:-

- (iii) Clubbing of Palam and RTR intersections to provide an elevated section for about 1.1 km. length from km. 14.30 to km. 15.40.
- (iv) Flyover across NH-8 at Hero Honda Chowk (Which was subsequently deleted).

The change of scope / value additions was approved by the then Secretary (RT&H) and Hon'ble Minister of Road Transport & Highways on 8th April, 2004.

5. The change of scope necessitated transfer of land of Ministry of Defence and Airport Authority of India. Thus till confirmation of land transfer was received, change of scope could not be finalized. Finally on 1st April, 2005, it was decided in the meeting of Committee of Secretaries (COS) that Ministry of Defence and AAI should give permissive possession of required land to NHAI.

6. Proposal of change of scope costing Rs. 224.48 crore as assessed by the Independent Consultant was put up in the 55th meeting of the Authority held on 15th July, 2005. This proposal also included additional two nos. Pedestrian Foot Over Bridges and one no. Pedestrian Underpass at Kendriya School (all in Delhi). These were provided on the request of Army Authorities and were agreed during discussion in connection with transfer of land from Ministry of Defence to NHAI. Out of this, the Pedestrian / Cycle Foot Over Bridge at Shankar Vihar as also the pedestrian underpass at Kendriya School near RTR Junction have already been opened for use by the public.

7. As regards the second Pedestrian Foot Over Bridge near Subroto Park even though the proposal was approved in July, 2006, Air Force Authorities did not allow construction to be taken up and were insisting for providing a flyover at this location. This continued upto as late as in November, 2007. The matter was sorted out in December, 2007 and they allowed the construction of the Foot over Bridge in front of Subroto Park Gate. This work has been completed. In addition to above there is another Pedestrian underpass near Toll plaza at Km 24 constructed by the Concessionaire. Thus total four Pedestrian sub way and two FOB's have been constructed by the Concessionaire.

8. In February / March, 2007, the Independent Consultant (M/s RITES- Sheladia (JV) submitted a proposal to NHAI for additional safety works on this project. During the 63rd meeting of the Authority held on 30th March, 2007, it was informed that after opening to traffic 8 out of 9 flyovers, the stretch between Palam Junction and Rajiv Chowk has become hindrance free providing smooth flow conditions for the traffic. This has also increased the average speed of travel on the highway. Due to pedestrians' crossings, the Expressway at random instead of crossing the road at designated places namely viaduct openings of the flyover, there have been some accidents in recent past. Under the circumstances, certain additional works mainly for safety of traffic / pedestrians' were felt necessary. It was, therefore, proposed to provide 5 more Foot Over Bridges at a cost of about Rs. 13 crores. The proposal was approved by the Authority. It was also approved to get this work executed through open competitive bidding.

9. Subsequently, based on request of Delhi Police for a pedestrian overbridge at Dhaula Kuan, an estimate and RFP for construction of six FOBs was approved by the Competent Authority on 31.05.2007. Bids for six FOBs were invited on 06.06.2007 to be received on 02.07.2007. At the request of some bidders, the date was extended to 09.07.2007. However, only one bid was received, therefore, as per procedure outlined in NHAI's Works Manual, it was decided to go for rebidding.

10. In order to ensure better participation of contractors, the work was split into three packages of 2 FOBs each and bids invited on 12.09.2007 to be received on 05.10.2007. The proposals received were evaluated by the Evaluation Committee which recommended some relaxation in RFP as regards condition of having done similar works in last 7 years (one contractor had done similar work in 2000-01 i.e. older than 7 years) to have at least two responsive bidders for each package (otherwise only one contractor was found responsive in all three packages). The matter was referred by the Competent Authority to Finance Division which did not favor relaxation and suggested quick re-bidding.

11. Bids were invited for third time on 16.01.2008 and received on 06.02.2008. This time the single bid has been received and found that the rates quoted by the bidders are abnormally high therefore it was decided to cancel the bidding process. During meeting taken by the Secretary, RTH on 26.2.2008 it was decided to entrust this work to Haryana Govt as a deposit work. The following 5 nos. FOBs in Haryana portion have been approved at an estimated cost of Rs. 13.20 Crore:-

- | | | |
|--------|------------|---|
| (vi) | km.26.000 | between Udyog Vihar and IFFCO Junction |
| (vii) | km.26+915 | between South City and and IFFCO Junction |
| (viii) | km.34+320 | near Rajiv Chowk |
| (ix) | km. 36+710 | near Khandsa Village (new location instead of 37+030) |
| (x) | km.38+780 | near Narsinghpur Village |

Out of above two FOB at sl. No. (i) and (ii) has already been completed and third is in progress. For two FOB, Land Acquisition is being done.

12. As regards median fencing, it is to mention that erection of un-climbable median fencing all along Delhi-Gurgaon Access Controlled Highway was not envisaged in the scope of the work of the Project Highway. Neither the same were advised in the DPR of the Project Highway by the RITES. M/s. RITES-Sheladia (JV) in year 2007 submitted proposal for additional safety measures. In this connection, a meeting was convened by Chairman, NHAI on 5.3.2007 and additional works were agreed for implementation which includes, median fencing, service road on RHS and five FOB. NHAI vide letter dated 22.10.2007 directed the Concessionaire to provide median fencing in about 22.0 Km length of road (un-climbable) between Km 14.300 to 42.000 in accordance with para 4.13 (Traffic Safety Measures) of Concession Agreement. IC Vide letter dated 26.10.2007 intimated that median fencing is not part of Concession Agreement, therefore it is not his obligation.

The matter was examined in NHAI and matter put up to NHAI board. In a meeting of the authority held on 25.3.2008, the proposal for erecting median fencing at the cost of NHAI was approved. NHAI invited tenders and in first call only single bid was received therefore as per NHAI policy, bids were invited second time in June, 2008. The work was awarded on 23.9.2008 and presently work is completed.

13. Further, in addition to above NHA has also engaged a consultant for providing 5 vehicular underpasses between Rajiv Chowk and end of project. Final Feasibility report has been submitted on 25.9.2009. Draft DPR submitted for only three feasible underpasses/ overpass. 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 Draft PPR on 15.4.2009. However, recently Government of Haryana requested the NHA to explore possibility of Elevated NH-8 between Rajiv Chowk and Kherki Daula instead of piecemeal improvement as above. The NHA has submitted the Detailed Report showing three scenario based on techno-economic study to the Ministry on 16th March, 2010 for decision.

14. It may be stated in this connection that progress of Delhi-Gurgaon project has been reviewed in Ministry and also by Haryana Govt. Authorities at Chandigarh from time to time and the Authorities have been kept apprised of the progress as also issues / problems affecting the project. The issue of pedestrian over bridges in Haryana was raised only towards end of 2006, when few accidents occurred on this road. Prior to that, number of meetings was held with Haryana Govt. officials and they raised issues only of increasing length of viaducts, increasing vertical clearance of some underpasses, provision of flyover / underpass at Hero Honda Crossing and widening of service roads in Haryana portion.

15. As regards setting up of Highway Police Force for monitoring and safeguarding all National Highways, there is no such proposal under consideration by the Government.

Vetting comments of Office of C&AG on the Reply of the Government

The Committee's concern is over not carrying out any safety Audit and inadequacies of sub-way/foot-over bridges at the planning as well as DPR stage causing neglect of the interests of pedestrians resulting in fatal accidents. The reply details developments at later dates. Further, it also does not specify the required action to be taken by Concessionaire after the Compliance Report of September 2009.

The Committee also desired to fix the accountability on concerned officials responsible for lapses, which have placed human, Lives at danger and take strict punitive action them. Action taken in aspect have not been replied. The Government has also not considered Committee's recommendation of setting up of a Highway Police Force for monitoring and safeguarding all NHs, without assigning any reasons. Since Government has taken no action, Audit has no remark to offer.

Reply of the Government on the vetting comments of Office of C&AG

Very few projects of this nature have been build in the country so far under such complex situations. The Coordination of several authorities is involved in construction, operation and maintenance of Delhi-Gurgaon Highway. The improvements to the safety provisions is a continuous process towards achieving safer/forgiving roads by

overcoming the constraints like vehicle condition/population, road user behaviour, education level of truck drivers, etc. NHAI/Government is making sincere efforts to make a roads safe. The Manual of Standards & Specifications for construction of highways have been published by IRC. As regards the compliance report of Sept., 2009, the Concessionaire has attended to all the observations related to safety pointed out by the safety auditors. In connection with setting up of a Highway Police force, it is submitted that creation of National Road Safety Management Board as per Sundar Committee recommendation is under consideration of the Government.

Vetting comments of Office of C&AG on the Reply of the Government

Though the reply states in general that sincere efforts are being made for road safety, but it is silent about the specific action taken as per recommendation of committee for fixing accountability on the concerned officials responsible for lapses which had placed human life in danger. However the Safety Audit Report along with the action taken thereon was not provided to Audit. As regarding setting up of Highway Police Force for monitoring and safeguarding all national highways, management submitted that creation of National road Safety Management as per Sundar Committee recommendations is under consideration by the Government, the same needs to expedited by the Authority.

Reply of the Government on the vetting comments of Office of C&AG

NHAI has been directed to take into cognizance of C&AG observations/directions.

[Ministry of Road Transport and Highways]
[O.M. No RW/NH-24035/6/2009-PIC(pt.I) dated 19/8/2011]

Comments of the Committee

Please see para 32 of Chapter I

CHAPTER V

RECOMMENDATIONS IN RESPECT OF WHICH REPLIES OF GOVERNMENT ARE STILL AWAITED

Recommendation No. 3

Deficient Detailed Project Report

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 meter to 5.5 meter, 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 meters 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 meters 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. meter for such areas, find by the plea of the Government that the height of the underpass was raised to 5.5 meter instead of 3.5 meter 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 meter 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.

Reply of the Government

Preparation of Detailed Project Report (DPR) was assigned to M/s. RITES Ltd. in June, 1997 to assess the technical feasibility and financial viability to augment the capacity of Delhi-Gurgaon section of NH-8. DPR was completed in June, 2000 for section of NH-8 from km. 15.40 to km. 36.630. In order to make the project financially viable, six laning of road starting from km. 36.630 to km. 42.00 (already 4-laned) was also added during September, 2001. The reach from km. 13.70 (i.e. RTR) to km. 15.40 (Palam Junction) was also added. Final DPR was approved in October, 2001. In view of the rapid development which had taken place in Delhi and Haryana areas falling on the project highway, Delhi and Haryana administrative authorities suggested some improvements, which were considered essential. It may be stated in this connection that progress of Delhi-Gurgaon project has been reviewed in Ministry and also by Haryana Govt. Authorities at Chandigarh from time to time and the Authorities have been kept apprised of the progress as also issues / problems affecting the project. The issue of pedestrian over bridges in Haryana was raised only towards end of 2006, when few accidents occurred on this road. Prior to that, number of meetings was held with Haryana Govt. officials and they raised issues only of increasing length of viaducts, increasing vertical clearance of some underpasses, provision of flyover / underpass at Hero Honda Crossing and widening of service roads in Haryana portion.

From the old records available it transpired that High level Committee comprising of representative from various Departments like DUAC, HUDA, NCRPB, DDA, AAI,DVB, MTNL, GAIL, DJB, PWDs, was interacting with NHAI / RITES during preparation of DPR. However even after consultation certain changes in design was felt and were considered technically essential and necessary for the project as per site

requirements and requests of various departments. 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 still fall 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 M/s. RITES (A Govt. of India undertaking, Ministry of Railways) on this account. However in order to streamline the procedure NHAI has issued a circular on 3rd March, 2008 that prior to finalization of DPRs, participation of state Authorities should be ensured in order to incorporate their views/comments in the project preparation.

Vetting comments of Office of C&AG on the Reply of the Government

As seen from the reply the task for preparation of DPR was assigned to M/s RITE in June 1997, which was approved in 2001. However, the work was executed during 2003-04 i.e. after delay of three years. The Committee took serious note of the deficiencies in the initial DPR, non-cognizance of the developments subsequently. It was, therefore, recommended by the Committee that:

- (a) 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 meter for underpass and
- (b) Authority is required to evolve clear procedures and identify the accountability to ensure that DPRs are prepared after extensive consultation with the State Government, as well as the requirement of the locals.

In reply, the Government stated that in order to streamline the procedure, NHAI has issued a circular 9/2008 dated 3rd March 2008 that prior to finalization of DPRs, participation of State Authority should be ensured in to incorporate their views/comments at the project preparation stage itself. As per the above circular, the concerned Chief Engineer of National Highway Division of the State is required to be invited to participate in the discussions at the time of finalization of DPR, even prior to sending the said proposal to the Government. The concerned nodal officer of the State is to be invited for discussion.

It is however stated that NHAI did not meet out even the MoRTH specification in the Concession Agreement regarding the height of the underpass.

As regards the circular issued on 3rd March 2008, compliance thereto is also to be ensured to avoid lapses/deficiency in the projects.

Further, Government/Management have not replied on the recommendation of the committee regarding fixing of responsibility on DPR consultant.

Reply of the Government on the vetting comments of Office of C&AG

Show Cause Notice to M/s RITES by NHAI will be issued on taking deterrent action for the deficiencies in DPR and appropriate action will be taken after examining the reply of M/s. RITES to Show Cause Notice.

Vetting comments of Office of C&AG on the Reply of the Government

The reply is interim, the desired action is still to be taken up by the Authority, further progress would be watched. In this regard a copy of show-cause noticed issued if any to M/s RITES was called for from the management vide requisition dated 11th July, 2011. The same is yet to be received. Further, no reply in support of compliance to the circular issued for participation of State Authority prior to finalization of DPRs has been furnished. The same would be verified in Audit.

Reply of the Government on the vetting comments of Office of C&AG

NHAI has been directed to take into cognizance of C&AG observations/directions, and take appropriate action in this regard.

[Ministry of Road Transport and Highways]
[O.M. No RW/NH-24035/6/2009-PIC (pt.I) dated 19/8/2011]

Comments of the Committee

Please see para 11 of Chapter I

Recommendation No.11

Monitoring Role of the Ministry and NHAI

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 apprised.

Reply of the Government

This project was monitored by High level Committee comprising of representative from various Departments like DUAC, HUDA, NCRPB, DDA, AAI, DVB, MTNL, GAIL, DJB, PWDs. Further this project being in the capital city of Delhi was also monitored by Hon'ble Minister, RTH, Secretary, RTH, Hon'ble LG, Delhi, Cabinet Secretary and other senior officials of GNCTD and Govt. of Haryana. The monitoring mechanism for monitoring the progress of NHDP-I, II, III etc is already in place in NHAI in addition to periodical review by the Ministry of Road Transport & Highways and COS under Cabinet Secretariat.

The Government would reiterate its position that subject to the autonomy granted to NHAI under NHAI Act, it would not consider it appropriate to involve itself with NHAI's day-to-day affairs relating to the project. Through various review meetings NHAI has been advised of appropriate action within the framework of Concession Agreement. The Government would not hesitate to take stringent action if violation of the terms of agreement is noticed. It is already examining various issues brought to the fore by the Committee and CAG and will take action as appropriate. It will keep the Committee informed of the action taken.

Vetting comments of Office of C&AG on the Reply of the Government

The Committee concluded that the Government as well as NHAI should undertake a through review of the project and analyse the reasons for shortcomings/deficiencies observed therein to strengthen the supervision machinery. As per reply of the Government various issues brought out by the Committee/CAG are being examined and the Committee will be informed of the appropriate action taken. The issue may be watched through further ATNs.

Reply of the Government on the vetting comments of Office of C&AG

NHAI will appoint a Retired Senior Officer to undertake a through review of Delhi-Gurgaon Project to analyze the reasons for shortcomings and deficiencies

observed therein to strengthen the supervision mechanism. The results of the said analysis will be utilized in the future projects.

Vetting comments of Office of C&AG on the Reply of the Government

The reply is interim as the required action to undertake a through review of Delhi-Gurgaon Project to analyze the reasons for shortcomings and deficiencies observed therein are yet to be taken up. The same may be expedited by NHAI and the results of the analysis/action taken thereon may be watched in further audits.

Reply of the Government on the vetting comments of Office of C&AG

NHAI has been directed to take into cognisance of C&AG observations/directions. The Ministry is also studying the status of compliance of the Concession Agreement by the Concessionaire so that appropriate corrective action can be taken.

[Ministry of Road Transport and Highways]
[O.M. No RW/NH-24035/6/2009-PIC(pt.I) dated 19/8/2011]

Comments of the Committee

Please see para 39 of Chapter I

**New Delhi:
4 April 2012
15 Chaitra 1934(S)**

**JAGDAMBIKA PAL
Chairman,
Committee on Public Undertakings.**

APPENDIX-I**MINUTES OF THE 12th SITTING OF THE COMMITTEE ON
PUBLIC UNDERTAKINGS (2011-12)**

The Committee sat on Wednesday, the 04th April 2012 from 1130 hrs to 1345 hrs in Committee Room 'E', Basement, Parliament House Annexe, New Delhi.

PRESENT**Chairman**

Shri Jagdambika Pal

Members, Lok Sabha

- 2 Shri Hansraj G. Ahir
- 3 Shri Ramesh Bais
- 4 Shri Ambica Banerjee
- 5 Shri Shailendra Kumar
- 6 Shri Vilas Baburao Muttemwar
- 7 Shri Ponnam Prabhakar
- 8 Dr. Prabha Kishor Taviad

Members, Rajya Sabha

- 9 Shri Pyarimohan Mohapatra
- 10 Dr. Bharkumar Raut
- 11 Shri N.K. Singh

Secretariat

- 1 Shri Rajeev Sharma Director
- 2 Shri Ajay Kumar Garg Additional Director

Representatives of Office of C&AG

- 1 Shri Gautam Guha Director General (Commercial)-I
- 2 Ms. Saroj Punhani Director General (Commercial)-II

2. At the outset, the Committee took up for consideration the following two draft action taken reports on:-

- (i). 1st Report of 15th Lok Sabha on Public Private Partnership in implementation of Road Projects by National Highways Authority of India in respect of Delhi-Gurgaon Project; and
- (ii). XXXX XXXX XXXX.

3. The Committee adopted both the aforesaid Action Taken Reports and authorized the Chairman to finalize the Reports in view of the suggestions made by the Members and present the same to the Parliament.

4. *The representatives of the office of C&AG then withdrew.*

5. XXXX. XXXX XXXX.

6. XXXX XXXX XXXX.

7. XXXX XXXX XXXX.

The committee then adjourned.

APPENDIX II*(Vide para 3 of the Introduction)***Analysis of the Action Taken by Government on the recommendations/ observations contained in the First Report of the Committee on Public Undertakings (Fifteenth Lok Sabha) on “Public Private Partnership in implementation of Road Projects by National Highways Authority of India - Delhi-Gurgaon Sector.**

I	Total number of recommendations	11
II	Recommendations that have been accepted by the Government [vide recommendations at Sl. Nos. 1,5,6 and 7]	04
	Percentage of total	36.4%
III	Recommendation which the Committee do not desire to pursue in view of Government’s replies [vide recommendation at Sl. Nos. 2,4 and10]	03
	Percentage of total	27.2 %
IV	Recommendations in respect of which replies of the Government have not been accepted by the Committee and which require reiteration [vide recommendations at Sl. No. 8 and 9]	02
	Percentage of total	18.2%
V	Recommendations in respect of which final replies of Government are still awaited [vide recommendations at Sl. Nos. 3 and 11]	02
	Percentage of total	18.2%