



CAG Report Summary

Rationalisation of Premium in BOT Projects by NHAI

- The Comptroller and Auditor General of India (CAG) released its audit report on the ‘Rationalisation/ Deferment of Premium in Built Operate and Transfer (BOT) projects by the National Highways Authority of India (NHAI)’ on August 4, 2022. Key observations and recommendations of CAG are as follows:
- **BOT (Toll) mode of highway development:** Under the BOT (Toll) model, bidders of a project either quote viability gap funding (VGF) payable by NHAI or premium payable to NHAI during the construction/concession period. A concessionaire is a private partner who is responsible for financing, constructing, and operating a project during the specified concession period. In 2013, NHAI proposed a scheme to defer the premium payable by concessionaires, to revive the road sector due to a slowdown in the economy. Among the available alternatives, the scheme which was approved involved the rescheduling of premium for all stressed projects. NHAI deferred premium worth Rs 9,296 crore for 20 projects for over eight to 14 years.
- **Scheme approved despite alternatives:** CAG observed that concession agreements of all BOT projects contained provisions that allowed NHAI to grant relief to the concessionaires. NHAI cited problems faced by concessionaires such as an inability to make payments, which could have led to a loss of Rs 98,115 crore if the projects were terminated. CAG observed that the scheme for deferment of premium had a higher risk of being misused. It observed that providing deferment of eight to 14 years at one go was an undue favour and was detrimental to the financial interest of NHAI. CAG recommended that NHAI should follow existing provisions of concession agreements before proposing new schemes beyond contractual provisions.
- **Post-tender amendments for concessionaires:** The premium payable by the concessionaires was as per a legal contract which was drawn up after an open bidding process. The premium offered was the only parameter in deciding financial bids. CAG observed that any post-tender amendments amounted to vitiating the tendering process. It recommended NHAI to avoid such post tender amendments which are against the principle of sanctity of contracts.
- **Scheme formulated on flawed presumptions:** The scheme was initially proposed for 23 projects which were awarded on premium. It was later extended to all stressed projects. CAG observed that out of the 23 projects, 18 were terminated and five had not been completed till December 2019.
- **Variation in toll revenue projections:** CAG noted that the concessionaires made higher toll revenue projections at the time of raising debt from banks while much lower projections were made while seeking deferment of premiums. The variations ranged between 31% to 85%. CAG observed that higher projections were made to raise more debt, and lower projections were made to benefit from deferment. It noted that NHAI failed to exercise due diligence and review the significant variation in toll projections.
- **High debt servicing:** CAG observed that there was a huge variation in the total project cost in the concession agreement and the cost achieved by the concessionaire. This led to the concessionaires availing higher debt. The higher debt servicing impacted the subsistence revenue of concessionaires which was in turn related to the premium deferred. CAG recommended that NHAI may introduce a mechanism to review the total project cost/debt to protect its interest in the long term.
- **Inadequate safeguards against deferred premium:** In case a concessionaire decided to walk out of a project, the Expert Group recommended obtaining a bank guarantee during the construction period of a project as a safeguard. The Expert Group was constituted to determine if a project is stressed. CAG noted that NHAI obtained inadequate bank guarantees worth Rs 430 crore against deferred premium of Rs 7,364 crore. It recommended that NHAI may ensure reasonable amount of bank guarantees to cover the risk of non-payment of deferred premium by the concessionaire. Additionally, the bank guarantees were linked with achieving project milestones instead of the amount of premium deferred. This provided an undue favour to the concessionaires as project completion was due within one to two years, while premiums are deferred for eight to 14 years.
- **Monitoring of projects:** As per the model concession agreement, a concessionaire must pay concession fees from an escrow account. An escrow account is a third-party account where funds are kept before transferring them to the final party. Paying such fees takes priority over other payments or investments. CAG observed that concessionaires invested funds worth Rs 5,304 crore from escrow accounts into mutual funds along with diversion of funds to other projects. The report observed that NHAI failed to monitor the escrow account. It recommended that NHAI should regularly monitor deposits and withdrawals from the escrow account.

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