23

REVIEW OF LOANS TO ROAD PROJECTS RELATING TO INDIA INFRASTRUCTURE FINANCE COMPANY LIMITED (IIFCL)
[BASED ON PARA NO. 5.1 OF C&AG REPORT NO. 18 OF 2020]

INDIA INFRASTRUCTURE FINANCE COMPANY LIMITED (IIFCL)

MINISTRY OF FINANCE
(DEPARTMENT OF FINANCIAL SERVICES)

COMMITTEE ON PUBLIC UNDERTAKINGS
(2023-24)

TWENTY-THIRD REPORT

SEVENTEENTH LOK SABHA

सत्यमेव जयते

LOK SABHA SECRETARIAT
NEW DELHI

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[BASED ON PARA NO. 5.1 OF C&AG REPORT NO. 18 OF 2020]**

INDIA INFRASTRUCTURE FINANCE COMPANY LIMITED (IIFCL)

MINISTRY OF FINANCE
(DEPARTMENT OF FINANCIAL SERVICES)

(Action Taken by the Government on the Observations/Recommendations contained in the Nineteenth Report (17th Lok Sabha) on Audit Para No. 5.1 of C&AG Report No. 18 of 2020 relating to IIFCL)

Presented to Lok Sabha on 08 February, 2024
Laid in Rajya Sabha on 08 February, 2024

LOK SABHA SECRETARIAT
NEW DELHI

February, 2024/ Magha, 1945 (Saka)

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4. Dr. Heena Vijaykumar Gavit
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21. Shri V. Vijayasai Reddy
22. Shri Binoy Viswam

SECRETARIAT

1. Shri Neeraj Semwal - Joint Secretary
2. Shri Jyochnamayi Sinha - Director
3. Smt. Mriganka Achal - Deputy Secretary
4. Shri Dhruv - Executive Officer

* Elected as a Member of the Committee on Public Undertakings (2023-24) for the un-expired portion of the term of the Committee *vide* Bulletin Part-II Para No. 7765 dated 19.12.2023 vice Shri Uday Pratap Singh resigned as Member of Lok Sabha w.e.f. 06.12.2023.

INTRODUCTION

I, the Chairperson, Committee on Public Undertakings (2023-24) having been authorized by the Committee to submit the Report on their behalf, present this Twenty-Third Report on Action Taken by the Government on the Observations/ Recommendations contained in the Nineteenth Report (17^{th} Lok Sabha) on 'Review of Loans to Road Projects Relating to India Infrastructure Finance Company Limited (IIFCL) [Based on Para No. 5.1 of C&AG Report No. 18 of 2020]'.

2. The Nineteenth Report of the Committee on Public Undertakings (17^{th} Lok Sabha) was presented to Lok Sabha and laid on the Table of Rajya Sabha on 20 March, 2023. The Action Taken Replies to all the 13 Recommendations contained in the Report were received from the India Infrastructure Finance Company Limited (IIFCL) on 26 September, 2023.

3. The Committee considered and adopted the draft Report at their sitting held on 6 February, 2024. The Minutes of the sitting are given in Appendix- I

4. An analysis of the action taken by the Government on the Observations/ Recommendations contained in the Nineteenth Report of the Committee (17^{th} Lok Sabha) is given in Appendix -II.

New Delhi;
07 February, 2023
18 Magha, 1945(S)

SANTOSH KUMAR GANGWAR,
Chairperson,
Committee on Public Undertakings

CHAPTER I

This Report of the Committee deals with the action taken by the Government on the Observations/Recommendations contained in the Nineteenth Report of the Committee on Public Undertaking on 'Review of Loans to Road Projects Relating to India Infrastructure Finance Company Limited (IIFCL) (Based on Para No. 5.1 of C&AG Report No. 18 of 2020)'; which was presented to Lok Sabha on 20th March 2023. It contained eleven observations/recommendations.

2. Action Taken notes have been received from the Government in respect of all the 11 observations/recommendations contained in the Report. These have been categorized as under:-

(i)	Observation/Recommendations which have been accepted by the Government Sl. Nos.1, 2 , 4, 6, 7, 10 & 11	(Chapter II) (Total: 07)
(ii)	Observations/Recommendations which the Committee do not desire to pursue in view of the Government's replies. - NIL -	(Chapter III) (Total: 00)
(iii)	Observations/Recommendations in respect of which replies of Government had not been accepted by the Committee and which require reiteration. Sl. Nos. 8 and 9	(Chapter IV) (Total:02)
iv)	Observations/Recommendations to which the Government has furnished interim replies and final replies are still awaited. Sl. No. 3 and 5	(Chapter V) (Total:02)

3. The Committee desires the Ministry of Finance to furnish final Action Taken Notes/replies in respect of observations/recommendations contained in Chapter I of the Report.

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

<u>Recommendation (Sl. Nos. 1 & 2)</u>

5. The Committee in their Nineteenth Report, had observed and recommended as

under:-

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

The Committee have been informed that since inception of SIFTI in 2006, the Scheme has so far been revised ten times. These revisions were effected based on the experience of IIFCL in the dynamics of the evolving infrastructure financing environment. Consequently, the lacunas in BOT model have been addressed with the introduction of Hybrid Annuity Model (HAM) in 2016. The Committee without delving much into the present status of the projects financed by IIFCL, have rather attempted to address a larger issue in identifying the inadequacies and shortcomings attached to the model itself that resulted in huge NPAs. The Committee in their report have stressed the need for (a) tripartite agreement, (b) inclusion of pre-disbursement clauses in Common Lending Agreements (CLA), (c) outsourcing of termination payments to insurance company, (d) restricting concessionaire from allowing any advance other than mobilisation advance, (e) need for providing rating to traffic consultants, (f) emphasised the importance of site visits, (g) institute measures to address NPAs and monitoring the utilization of funds. The observations of the Committee are elaborated in subsequent paragraphs. The Committee hope that, with the suggested improvements in the system, the risk involved in lending and borrowings in road infrastructure projects will be greatly minimised."

6. The Ministry, in their action taken reply, have stated as follows:-

"No comments were made by the Government on the aforementioned recommendations."

7. The Committee have commented on these issues in succeeding Para of this chapter including need for tripartite agreement, restricting concessionaire from allowing any advance other than mobilisation advance and need for providing rating to traffic consultants. The Committee hope and trust that Ministry will make all out efforts to implement the same in letter and spirit to avoid the risk involved in lending and borrowings in road infrastructure projects.

<u>Restricting Concessionaire From Allowing Any Advance Other Than Mobilization Advance</u>

Recommendation (Sl. Nos. 6 & 7)

8. The Committee in their Nineteenth Report had observed and recommended as under:-

> "The Committee are surprised to note that IIFCL did not vet the Engineering Procurement Construction (EPC) contracts although it had every right to do so and did not ensure that the terms of EPC contract was fair, transparent and not unduly favourable to the promoter companies. Besides, the concessionaires were allowed to extend mobilisation advances to their promoter companies without adequate provisions of Bank Guarantees/ en-cashable security and there was no independent evaluation / monitoring of the project done as per agreed terms / milestones to safeguard its own interest by IIFCL. The Committee are not in agreement with the rationale put-forth by IIFCL that in PPP infrastructure projects, the contractual/ concessioning obligations of the primary lenders are with the borrower at SPV level and not with the sub-contractors/ service providers being engaged by the borrower which includes EPC contractor who is a sub-contractor of the SPV.
>
> The Committee are of the view that Bank Guarantee (BG) clauses in agreements protect the financial interests of lenders and as an industry practice, NHAI is in the practice of including the above clauses on advance and BGs in its agreements and ICA. Ironically, these issues were never brought to the attention of the Lead Banks in any consortium meetings by IIFCL and provisions of the Agreements were not properly vetted by lenders to protect their financial interests. The Committee, therefore, desire that a mechanism may be developed to restrict the Concessionaire from allowing any advance, other than mobilization advance, to the EPC contractor, that too backed by sufficient en-cashable security, in the possession of the lenders and such advances should be recovered in a time bound manner."

9. The Ministry in their action taken reply have stated as follows:-

> "IIFCL has informed this Department that mobilization advance is extended a part of term loan which is secured by primary security i.e. charge on projects assets including escrow accounts, receivables etc and undertaking from sponsor. The mobilization advance is recovered by Concessionaire from EPC contractor under running accounts bills, based on progress of the projects/milestones as per EPC contract. Generally, no

other advance is given to EPC contractor. As the mobilization advance is extended out of term loan only, the same is secured in nature."

10. The Committee hope that no other advance is given to EPC contractor as stated by the Ministry in their reply and trust that the Ministry will implement the intent of the Committee by developing a mechanism to restrict the Concessionaire from allowing any advance, other than mobilization advance, to the EPC contractor, backed by sufficient en-cashable security, in the possession of the lenders and such advances should be recovered in a time bound manner.

NEED FOR PROVIDING RATING TO TRAFFIC CONSULTANTS

Recommendation (Sl. No. 8 and 9)

11. The Committee in their Nineteenth Report, had recommended the following with regard to obtaining No Objection Certificate (NOC) before extending take out finance; need for tripartite agreement; and the model concession agreement:-

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

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

12. The Ministry, in their action taken reply, have stated as follows:-

> "The Department vide OM dated 13.4.2023 and reminder dated 1.8.2023 (copy attached) forwarded the suggestion regarding rating of traffic consultants, to MoRTH for favourable consideration and submit an Action Taken Report, which is yet to be received. IIFCL has also informed that it has also taken up this matter with MoRTH, requesting for a suitable action vide letter dated 16.6.2023 (copy of letter attached)".

13. The Committee while examining C&AG Audit Para 5.1 of Report No.18 of 2020 based on "Review of Loans to Road Projects Relating to India Infrastructure Finance Company Limited (IIFCL)", highlighted critical vulnerabilities in road financing, where lenders like IIFCL and Banks lack physical security due to project assets being owned by the Concessioning Authority, mainly NHAI. With loans primarily serviced through toll revenue from BOT model projects, the risk of loans turning into Non-Performing Assets (NPAs) is high if toll revenue falls short. The availability of Right of Way (RoW), realistic traffic projections, and shortfall in toll collection greatly influence the commercial viability of road projects. Overstated projections by traffic consultants, often appointed and evaluated by NHAI, contribute to severe toll revenue discrepancies, leading to financial instability. Considering this, the Committee recommended a transparent rating system for traffic consultants. The ratings should be available in public domain, which will enhance reliability and facilitate informed decision-making by lenders, concessionaires, and borrowers in undertaking/financing road projects.

14. The Committee note that IIFCL acting upon the recommendations of the Committee, had forwarded the suggestion regarding rating of traffic consultants, to Ministry of Road Transport and Highways (MoRTH) for favourable consideration but the replies from the Ministry are still awaited. The IIFCL upon the direction of DFS had sought opinion of MoRTH on three observations/recommendations of the Committee:

(i) <u>Need for Tripartite Agreement</u>: A tripartite agreement involving the Concessionaire, Concessioning Authority, and lenders/IIFCL/Banks will address the concerns about the unprotected interests of lenders. This will enhance legal framework, and provide additional security for financial institutions.
(ii) <u>Outsourcing of termination payments to insurance Company:</u> Outsourcing termination payments to an insurance Company, would facilitate early payments in terminated projects. This could streamline the termination process and reduce delays, ensuring timely compensation in case of project termination.
(iii) <u>Need for providing rating to traffic consultants</u>: A rating system for traffic consultants will address the root cause of wrong projections and shortfall in toll revenue.

15. The implementation of above recommendations of the Committee will enhance transparency and financial security of IIFCL. The Committee desire that DFS should take up the matter with the MoRTH for having a transparent rating system of traffic consultant in a time-bound manner not later than six months. Further, the Tripartite Agreement involving Concessionaire, Concessing Authority and IIFCL and outsourcing of termination to Insurance Company may be ensured by IIFCL and DFS while financing Road Projects or others. The provisions and procedure may be completed before financing next project.

IMPORTANCE OF SITE-VISITS

Recommendation (Sl. No. 10)

16. The Committee in their Nineteenth Report had observed and recommended as under:-

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

17. The Ministry in their action taken reply have stated as follows:-

> "IIFCL has informed this Department that the observations of the Committee have been noted for compliance, and suitable provisions regarding site visits have been incorporated in IIFCL's credit policy. IIFCL has stated that site visits are conducted by IIFCL for all the projects at various stages of development. As lead lender, pre-sanction site visits are taken up as part of appraisal process. For

other cases, site visits are taken up either before sanction or prior to disbursement.

For projects under construction, site visits are conducted as the construction progresses, in addition to obtaining Lender's Independent Engineer (LIE) reports. These site visits not only help in assessing the project progress but also verifying the contents of LIE report on a broader level. The LIE report covers various aspects, including detailed physical progress, land acquisition status, utility shifting, status of various permissions and approvals, availability of construction material (like stone chips, sand etc in the vicinity). Additionally, it comments on financial progress, including Running Account (RA) bills. The visiting team also interacts, inter alia, with company officials at the site to understand the ground situation better.

IIFCL has further submitted that during construction period, LIE reports are obtained before each disbursement, and their contents are analysed and recorded in the LCN/disbursement notes. After implementation, site visits are carried out to assess assets status and discussions are held with company officials to comprehend the ongoing business and physical/financial progress. This comprehensive approach facilitates proactive asset monitoring and the implementation of necessary steps.

IIFCL has also informed that it has developed Online Project Monitoring system (OPMS), for monitoring of the projects, which is currently in the pilot phase. IIFCL submitted that through OPMS, 9 site visits have been conducted in 7 projects under various sector such as Road, Power, Port, Metro.

18. The Committee are happy to note that IIFCL has developed Online Project Monitoring System (OPMS), for monitoring of the projects, which is currently in the pilot phase. IIFCL submitted that through OPMS, 9 site visits have been conducted in 7 projects under various sector such as Road, Power, Port, Metro. The Committee are of the view that site visits are one of the key elements instituted for effective monitoring of the project for securing project viability and ensuring quality of loan assets. Therefore, they desire that the outcome of OPMS and site visits undertaken by the company on the ground which have resulted in positive outcome may be shared with the Committee.

CHAPTER II

OBSERVATIONS/RECOMMENDATIONS WHICH HAVE BEEN ACCEPTED BY THE GOVERNMENT

<u>Overview</u>

Recommendation (Sl. Nos. 1 & 2)

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

The Committee have been informed that since inception of SIFTI in 2006, the Scheme has so far been revised ten times. These revisions were effected based on the experience of IIFCL in the dynamics of the evolving infrastructure financing environment. Consequently, the lacunas in BOT model have been addressed with the introduction of Hybrid Annuity Model (HAM) in 2016. The Committee without delving much into the present status of the projects financed by IIFCL, have rather attempted to address a larger issue in identifying the inadequacies and shortcomings attached to the model itself that resulted in huge NPAs. The Committee in their report have stressed the need for (a) tripartite agreement, (b) inclusion of pre-disbursement clauses in Common Lending Agreements (CLA), (c) outsourcing of termination payments to insurance company, (d) restricting concessionaire from allowing any advance other than mobilisation advance, (e) need for providing rating to traffic consultants, (f) emphasised the importance of site visits, (g) institute measures to address NPAs and monitoring the utilization of funds. The observations of the Committee are elaborated in subsequent paragraphs. The Committee hope that, with the suggested improvements in the system, the risk involved in lending and borrowings in road infrastructure projects will be greatly minimised.

Reply of the Government

No comments were made by the Government on the aforementioned recommendations.
[Ministry of Finance (Dept. of Financial Services)]
[O.M. No. 6/14/2021-IF-I Dated 18th September, 2023)]

Comments of the Committee

(Please see Para no. 7 of Chapter –I)

<u>Inclusion Of Pre- Disbursement Clauses in Commom Lending Agreement (CLA)</u>

Recommendation (Sl. No. 4)

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

Reply of the Government

IIFCL has informed to this Department that it is stipulating the condition of availability of RoW as stipulated in Concession Agreement in its sanction and Common Loan Agreements (CLA). Hence, the direction of the Committee is complied with.
[Ministry of Finance (Dept. of Financial Services)]
[O.M. No. 6/14/2021-IF-I Dated 18th September, 2023)]

Restricting Concessionaire From Allowing Any Advance Other Than Mobilization Advance

Recommendation (Sl. Nos. 6 & 7)

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

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

Reply of the Government

IIFCL has informed this Department that mobilization advance is extended as a part of term loan which is secured by primary security i.e. charge on projects assets including escrow accounts, receivables etc and undertaking from sponsor. The mobilization advance is recovered by Concessionaire from EPC contractor under running accounts bills, based on progress of the projects/milestones as per EPC contract. Generally, no other advance is given to EPC contractor. As the mobilization advance is extended out of term loan only, the same is secured in nature.

[Ministry of Finance (Dept. of Financial Services)]
[O.M. No. 6/14/2021-IF-I Dated 18th September, 2023)]

Comments of the Committee

(Please see Para no. 10 of Chapter –I)

Importance of Site-Visits

Recommendation (Sl. No. 10)

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

Reply of the Government

IIFCL has informed this Department that the observations of the Committee have been noted for compliance, and suitable provisions regarding site visits have been incorporated in IIFCL's credit policy. IIFCL has stated that site visits are conducted by IIFCL for all the projects at various stages of development. As lead lender, pre-sanction site visits are taken up as part of appraisal process. For other cases, site visits are taken up either before sanction or prior to disbursement.

For projects under construction, site visits are conducted as the construction progresses, in addition to obtaining Lender's Independent Engineer (LIE) reports. These site visits not only help in assessing the project progress but also verifying the contents of LIE report on a broader level. The LIE report covers various aspects, including detailed physical progress, land acquisition status, utility shifting, status of various permissions and approvals, availability of construction material (like stone chips, sand etc in the vicinity). Additionally, it comments on financial progress, including Running Account (RA) bills. The visiting team also interacts, inter alia, with company officials at the site to understand the ground situation better.

IIFCL has further submitted that during construction period, LIE reports are obtained before each disbursement, and their contents are analysed and recorded in the LCN/disbursement notes. After implementation, site visits are carried out to assess assets status and discussions are held with company officials to comprehend the ongoing business and physical/financial progress. This comprehensive approach facilitates proactive asset monitoring and the implementation of necessary steps.

IIFCL has also informed that it has developed Online Project Monitoring system (OPMS), for monitoring of the projects, which is currently in the pilot phase. IIFCL submitted that through OPMS, 9 site visits have been conducted in 7 projects under various sector such as Road, Power, Port, Metro.

[Ministry of Finance (Dept. of Financial Services)]
[O.M. No. 6/14/2021-IF-I Dated 18th September, 2023)]

Comments of the Committee

(Please see para no. 18 of Chapter –I

New Measures Instituted To Address NPAs and Monitoring The Utilization of Funds

Recommendation (Sl. No. 11)

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

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

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

Reply of the Government

The observations of the committee are factual in nature based on the submissions made by IIFCL. The same has been noted.

[Ministry of Finance (Dept. of Financial Services)]
[O.M. No. 6/14/2021-IF-I Dated 18th September, 2023)]

CHAPTER III

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

- Nil -

CHAPTER IV

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

Need for Providing Rating to Traffic Consultants

Recommendation (Sl. Nos. 8 and 9)

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

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

Reply of the Government

The Department vide OM dated 13.4.2023 and reminder dated 1.8.2023 (copy attached) forwarded the suggestion regarding rating of traffic consultants, to MoRTH for favourable consideration and submit an Action Taken Report, which is yet to be received. IIFCL has also informed that it has also taken up this matter with MoRTH, requesting for a suitable action vide letter dated 16.6.2023 (copy of letter attached).

[Ministry of Finance (Dept. of Financial Services)]
[O.M. No. 6/14/2021-IF-I Dated 18th September, 2023)]

Comments of the Committee

(Please see Para no. 13, 14 and 15 of Chapter-I of the Report)

CHAPTER V

OBSERVATIONS/RECOMMENDATIONS TO WHICH THE GOVERNMENT HAS FURNISHED INTERIM REPLIES AND FINAL REPLIES ARE STILL AWAITED

Need for Tripartite Agreement

Recommendation (Sl. No. 3)

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

Reply of the Government

The decision to include/execute Tri-partite agreement needs to be taken by the Line Ministry i.e. Ministry of Road, Transport and Highways (MORTH). This Department vide OM dated 27.12.2021 (based on the recommendation of C&AG) had requested MoRTH to consider suggestion favourably. After receipt of the 19th Report of COPU, the Department vide OM dated 13.4.2023 and reminder dated 1.8.2023 (copy attached) had requested to MoRTH to consider the recommendation favourably and submit an Action Taken Report, which is yet to be received. IIFCL has also informed that it has also taken up this matter with MoRTH, requesting for a suitable action vide letter dated 16.6.2023 (copy of letter attached).

[Ministry of Finance (Dept. of Financial Services)]
[O.M. No. 6/14/2021-IF-I Dated 18th September, 2023)]

Outsourcing of Termination Payments to Insurance Company

Recommendation (Sl. No. 5)

10. SIFTI provides that if a Concession Agreement is terminated by Concessioning Authority (NHAI) for concessionaire's (Contractor) default, a termination payment equivalent to 90 % of debt dues would be payable by the Concessioning Authority to the Concessionaire, provided that the project is issued the Certificate of Provisional Commercial Operation Date (PCOD) by the Concessioning Authority after completion of

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

Reply of the Government

The Department vide OM dated 13.4.2023 and reminder dated 1.8.2023 (copy attached) had forwarded the suggestion regarding outsourcing the termination payment to an Insurance Company, to MoRTH for favourable consideration and submit an Action Taken Report, which is yet to be received. IIFCL has also informed that it has also taken up the matter with MoRTH, requesting for a suitable action vide letter dated 16.6.2023 (copy of letter attached).

[Ministry of Finance (Dept. of Financial Services)]
[O.M. No. 6/14/2021-IF-I Dated 18th September, 2023)]

New Delhi;
07 February, 2023
18 Magha, 1945(S)

SANTOSH KUMAR GANGWAR,
Chairperson,
Committee on Public Undertakings

Appendix-I

COMMITTEE ON PUBLIC UNDERTAKINGS (2023-24)

MINUTES OF THE THIRTY THIRD SITTING OF THE COMMITTEE

The Committee sat on Monday, the 06th February, 2024 from 1015 hrs. to 1040 hrs. in Chairperson's Chamber, Room No. 147, 3rd Floor, Samvidhan Sadan, New Delhi.

PRESENT

Shri Santosh Kumar Gangwar - Chairperson

MEMBERS

Lok Sabha

2. Shri Chandra Prakash Joshi
3. Shri Janardan Mishra
4. Shri Nama Nageswara Rao
5. Shri Sushil Kumar Singh
6. Shri Ramdas Chandrabhanji Tadas

Rajya Sabha

7. Shri Syed Nasir Hussain
8. Dr. Anil Jain
9. Dr. Amar Patnaik
10. Shri V. Vijayasai Reddy
11. Shri Binoy Viswam

SECRETARIAT

1. Shri Neeraj Semwal - Joint Secretary
2. Smt. Jyochnamayi Sinha - Director
3. Smt. Mriganka Achal - Deputy Secretary

2. At the outset, the Chairperson welcomed the Members of the Committee and apprised them about the agenda for the sitting. The Committee then considered and adopted the draft Report on the action taken by the Government on the Observations/Recommendations contained in the Nineteenth Report (17th Lok Sabha) of the Committee on Public Undertaking on 'Review of Loans to Road Projects Relating to India Infrastructure Finance Company Limited (IIFCL) (Based on Para No. 5.1 of C&AG Report No. 18 of 2020)' without any changes/modifications. The Committee authorized the Chairperson for presenting the report during the current session of the Parliament.

The Committee, then, adjourned.

Appendix-II

(Vide para 4 of the Introduction)

Analysis of the Action Taken by Government on the Observations/ Recommendations contained in the Ninteenth Report of the Committee on Public Undertakings (2023-24) on "REVIEW OF LOANS TO ROAD PROJECTS RELATINGTO INDIAINFRASTRUCTURE FINANCE COMPANY LIMITED (IIFCL) (Based on Para No. 5.1 of C&AG Report No. 18 of 2020)"

I	Total number of recommendations		11
II	Observations/Recommendations that have been accepted by the Government Recommendations [*vide* Recommendations at Sl. Nos.1,2,4, 6, 7,10 &11]	Total - 07 Percentage- 63.63%	
III	Observations/Recommendation which the Committee do not desire to pursue in view of Government's replies.	Total - 00 Percentage - 0%	
IV	Observations/Recommendations in respect of which replies of the Government have not been accepted by the Committee and need reiteration. [*vide* Recommendations at Sl. Nos. 8 & 9]	Total - 02 Percentage -18.18%	
V	Observations/Recommendations to which the Government has furnished interim replies. [*vide* Recommendations at Sl. Nos. 3 & 5]	Total - 02 Percentage -18.18%	