

INDIA INFRASTRUCTURE FINANCE COMPANY LIMITED (IIFCL)
[BASED ON AUDIT PARA 5.2 OF C&AG REPORT NO.18 OF 2020]

**MINISTRY OF FINANCE (DEPARTMENT OF FINANCIAL
SERVICES)**

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

**SEVENTEENTH REPORT
(SEVENTEENTH LOK SABHA)**



**LOK SABHA SECRETARIAT
NEW DELHI**

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(2022-23)**

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**MINISTRY OF FINANCE
(DEPARTMENT OF FINANCIAL SERVICES)**

**[AUDIT BASED PARA 5.2 OF REPORT NO.18 OF 2020 REGARDING AVOIDABLE LOSS DUE TO
EXTENSION OF LOAN IN TERMINATED PROJECTS RELATING TO IIFCL]**



Presented to Lok Sabha on 01 August, 2022

Laid in Rajya Sabha on 01 August, 2022

**LOK SABHA SECRETARIAT
NEW DELHI**

August, 2022/ Shravana, 1944(Saka)

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COMPOSITION OF COMMITTEE ON PUBLIC UNDERTAKINGS (2022-23)

Shri Santosh Kumar Gangwar - Chairperson

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Lok Sabha

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4. Shri Chandra Prakash Joshi
5. Smt. K. Kanimozhi
6. Shri Lavu Sri Krishna Devarayalu
7. Smt. PoonambenHematbhaiMaadam
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14. Shri Uday Pratap Singh
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Rajya Sabha

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2. Shri Srinivasulu Gunda - Director
3. Shri G.C. Prasad - Additional Director
4. Shri Dhurv - Executive Officer

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7. Shri Arjunlal Meena
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12. Shri Ravneet Singh Bittu
13. Shri Sushil Kumar Singh
14. Shri Uday Pratap Singh
15. Shri Ramdas ChandrabhanjiTadas

Rajya Sabha

16. Shri Birendra Prasad Baishya
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20. Shri Surendra Singh Nagar
21. Shri K.C. Ramamurthy
22. Shri M. Shanmugam

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

INTRODUCTION

I, the Chairperson, Committee on Public Undertakings (2022-23) having been authorized by the Committee to submit the Report on their behalf, present this Seventeenth Report on 'Avoidable Loss due to extension of loan in terminated projects relating to India Infrastructure Finance Company Limited(IIFCL) (Based on C&AG Audit Para No. 5.2 of Report No.18 of 2020).

2. The Committee on Public Undertakings (2021-22) selected the above said subject for detailed examination.

3. The Committee on Public Undertakings (2021-22) were initially briefed about the subject by the representatives of the C&AG on 8thDecember, 2021. The Committee then took evidence of the representatives of India Infrastructure Finance Company Limited and Ministry of Finance (Department of Financial Services) on 16th March, 2022 and 5th April, 2022 respectively.

4. The Committee (2022-23) considered and adopted the draft Report at their sitting held on 28th July, 2022.

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

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

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

New Delhi;
28 July, 2022
06 Sravana , 1944(S)

SANTOSH KUMAR GANGWAR
Chairperson
Committee on Public Undertakings

REPORT

PART-I

A. BACKGROUND

The Union Finance Minister, while presenting the Union Budget for 2005-06 acknowledged the need and significance of building adequate infrastructure in the country and made the following announcement:

“The importance of infrastructure for rapid development cannot be overstated. The most glaring deficit in India is the infrastructure deficit. Investment in infrastructure will continue to be funded through the Budget. However, there are many infrastructure projects that are financially viable but, in the current situation, face difficulties in raising resources. I propose that such projects may be funded through a financial Special Purpose Vehicle. The SPV will lend funds, especially debt of longer-term maturity, directly to the eligible projects to supplement other loans from banks and financial institutions. Government will communicate the borrowing limit to the SPV at the beginning of each fiscal year”.

2. The Government of India, accordingly approved a Scheme for Financing Viable Infrastructure Projects through a Special Purpose Vehicle called the India Infrastructure Finance Company Ltd, broadly referred to as SIFTI. India Infrastructure Finance Company Ltd (IIFCL) was established in January 2006 as a wholly owned Government of India Company and commenced its operations from April 2006.

3. The Union Finance Minister in his Budget Speech 2009-10, while highlighting the role of IIFCL and the need for evolving a ‘Take Out’ financing scheme to boost infrastructure projects, announced as under:

“To stimulate public investment in infrastructure, we had set up the India Infrastructure Finance Company Limited (IIFCL) as a special purpose vehicle for providing long term financial assistance to infrastructure projects. We will ensure that IIFCL is given greater flexibility to aggressively fulfil its mandate. Take Out financing is an accepted international practice of releasing long-term funds for financing infrastructure projects. It can be used to effectively address Asset-Liability mismatch of commercial banks arising out of financing infrastructure projects and also to free up capital for financing new projects. IIFCL would, in consultation with banks, evolve a Take Out financing scheme, which could facilitate incremental lending to the infrastructure sector”.

4. IIFCL in a presentation made before the Committee on Public Undertakings explained the genesis, features and the benefits of its 'Take Out' Finance Scheme as under:

Genesis

- Take Out Finance Scheme has been approved by the Government of India.
- IIFCL pioneered the Take Out Finance in India.
- IIFCL, in consultation with banks and other key stakeholders, evolved a Take Out financing scheme, to facilitate incremental lending to the infrastructure sector.
- The scheme was launched on 16 April 2010 and operates under the aegis of SIFTI.
- The scheme has undergone changes from time to time as approved by the Government of India.

Features

- Lends only to completed projects.
- Transaction is between existing banks and IIFCL.
- No disbursement is made to the Borrower of the project.
- Two external credit ratings with investment grade.
- Satisfactory track record – One year of revenue generation with Debt Service Coverage Ratio (DSCR) of at least 1.0 before actual Take Out.
- No Objection Certificate and letter confirming the asset is standard from existing banks.
- IIFCL has no direct linkage with Concession Authority.

Benefits

(i) Banks:

- Derisks the banking sector
- Capital Release: Improve banks' liquidity for funding more projects
- Improves Capital Adequacy for further investments
- Addresses asset-liability mismatch concerns of banks
- Ensures availability of longer tenor debt finance for infrastructure projects

(ii) Infrastructure Developer/ Promoter:

- Enhanced viability in terms of elongated tenor
- Lower interest rates as completion risk is over

(iii) System:

- Market development for infrastructure sectors including 'Sunrise Sectors'
- Helps reduce government's outflow for generating new projects
- Attracts further investments in infrastructure projects

5. Elaborating further on the importance of Take Out Finance Scheme, the Managing Director, IIFCL appearing before the Committee on Public Undertakings submitted as under :-

“As far as IIFCL is concerned, we have pioneered the Take Out finance scheme for India’s financial market. This was pursuant to the Hon’ble Finance Minister’s announcement in the Budget and it was approved by the Government of India. Its main objective was to ensure long-term lending and lower the risk in the banking sector because, at the particular point in time when the Take Out finance was launched in April 2010, the concept of public-private partnership was emerging. Banking sector was the main lending source for infrastructure projects and they needed to less risk because infrastructure projects needed long-term money, whereas the majority of the liability profile of the banks up to 80 percent was for a short-term period. But we need loans for a period of 15 to 20 years. Take Out finance scheme was responsible to ensure that. The impact of the Take Out finance scheme has had, we have sanctioned Rs. 27,376 crore in 115 projects involving a project outlay of Rs. 1.93 lakh crore and we have disbursed Rs. 16,413 crore in 58 projects.”

6. IIFCL is registered as a Non-Banking Finance Company-Non-Deposit taking-Infrastructure Financing Company (NBFC-ND-IFC) with the Reserve Bank of India (RBI) since September 2013 and follows the applicable prudential norms of the RBI. The Government of India has infused Rs. 500 Crore in May 2019 and another Rs. 5,300 Crore equity in IIFCL through Recapitalisation Bonds in March 2020. The authorized capital of the Company is Rs. 10,000 Crore and the paid up capital of the Company is Rs. 9,999.92 Crore (as on 30th November 2020).

7. When asked about the amount of loan disbursed so far by IIFCL under Take Out Finance Scheme (TFS) and the number of projects financed so far and the number of those that turned out as NPA, the Company in a written note informed that the total amount disbursed so far under TFS was Rs. 16,413 Crore to 58 projects out of which only in 8 cases the loans disbursed amounting to total of Rs. 1411.64 Crore turned NPA. This implies that about 13.8% of the projects in which amount was disbursed by IIFCL, 8.6% of the amount disbursed turned NPA.

8. C&AG examined the financing under Take Out Finance Scheme by IIFCL in case of Raipur Waste Management Private Limited (RWMPL) and Bhilai Durg Waste Management Private Limited (BDWMPL). In their Report No. 18 of 2020, CAG had pointed out several deficiencies on the part of IIFCL in execution of the 'Take Out' financing Scheme. The Committee on Public Undertakings during its term 2021-22 selected Audit Para no. 5.2 of this C&AG Report relating to avoidable loss due to extension of loan in terminated projects pertaining to India Infrastructure Finance Company (IIFCL) for examination and report to Parliament. The Committee during examination of the subject heard the views of officers of the C&AG, the representatives of IIFCL and the Department of Financial Services (Ministry of Finance) before finalizing its Report. The detailed observations of the Committee on the Audit Para have been given in succeeding paragraphs of this Report.

B. AUDIT PARAGRAPH

(I) Avoidable loss due to extension of loan in terminated projects.

9. As per para 5.2 of the C&AG Report, IIFCL sanctioned and disbursed two loans under Take Out Finance Scheme without ensuring compliance of critical requirement of obtaining 'No Objection Certificate' from Concessionaire Authorities, and without ensuring required debt servicing capacity of the borrowers from their audited annual accounts.

10. Further, in one case, the project had already been terminated before execution of the Take Out financing documents between IIFCL and the original lender banks, while in the other case, the notice of termination of project happened before disbursement of loan by IIFCL. Resultantly, the loans of Rs.26.20 crore became irrecoverable.

(II) Audit Observations

11 As per Credit Policy, 2012 of IIFCL for Take Out finance, 'No Objection Certificate(NOC)' from the Concessionaire Authority, lenders and the consortium of lenders was required to be obtained before scheduled date of occurrence of Take Out. However, NOC from the Concessionaire Authority was not obtained

12. IIFCL was also required to consider only those proposals, which had Debt Service Coverage Ratio (DSCR) of at least 1:00. However, sufficiency of the stipulated DSCR was also not ensured by IIFCL at the time of sanction of loans.

13 In the case of RSWPL (Raipur Waste Management Private Limited), notice for termination of concession agreement was served (24 December 2013) before the date of sanction of the loan by IIFCL (22 September 2014), and in the case of BDWPL (Bhilai Durg Waste Management Private Limited), signing of financing documents by IIFCL took place (27 November 2014), i.e., after termination of the concession agreement (24 November 2014). Moreover, the disbursement of funds in both the cases was done after termination of its concession agreements, which indicates injudicious disbursements of loans to the SPVs.

14. IIFCL in November 2019 had responded to CAG stating that NOCs dated 28 October 2014, 29 October 2014 and 26 November 2014 were obtained from all the lenders before effecting the Take Out. It was further replied that the loan was disbursed, based on the DSCR for the period July 2013 to June 2014, certified by a Chartered Accountant.

15. C&AG however found the reply of IIFCL not in consonance with the facts as stated below:

- NOC, as required to be obtained from the Concessionaire Authority as per the Credit Policy of the Company, was not obtained.
- The legitimacy of three of the four NOCs obtained (dated 28 October 2014 and 29 October 2014) could not be established as these were not dated and contain reference to a future date {i.e., signing date of 'Amended and Restated Facility Agreement' was 27 November 2014}.
- Regarding DSCR, it was seen from the annual accounts of the borrowers for the year 2013-14 that DSCR was only 0.13 for RSWPL and 0.48 for BDWPL i.e. less than the stipulated ratio of 1.
- Further, the fact remained that the disbursement of funds in both the cases were done after termination of its concession agreements.

16. Thus, as per C&AG, due to non-adherence of the provisions of its own Credit Policy, IIFCL extended loan in the projects which had already been terminated and resultantly suffered a loss of Rs. 26.20 crore (Rs.13.59 crore plus Rs. 12.61 crore written off). C&AG recommended that responsibility may be fixed for the lapses pointed out by Audit.

17. The sequence of events in sanction and disbursement of loan to RWMPL and BDWPL as per the inputs given by C&AG and IIFCL is given below:

CHRONOLOGY OF EVENTS		
Date	RWMPL	BDWPL
Jan -2013	Availed loan facility from initial set of lenders	Availed loan facility from initial set of lenders
24/12/13	Notice of Termination of Concession Agreement served	Notice of Termination of Concession Agreement served
27/08/14	Project duly awarded IND BBB Credit rating by India Rating and Research	27/08/14
22/09/14	Date of sanction of loan	---
17/10/14	Pre-disbursement site inspection done by IIFCL	Pre-disbursement site inspection done by IIFCL
21/10/14	Rating given by Brickwork Rating India Pvt.	Rating given by Brickwork Rating India Pvt. Ltd.

	Ltd.	
28/10/14	NOC issued. Letters received from consortium lenders confirming that the loan is 'Standard' asset in their book.	NOC issued. Letters received from consortium lenders confirming that the loan is 'Standard' asset.
29/10/14		
30/10/14	DSCR calculation of 1:16 for RWPL and BDWPL from July 13 to June 14 given by Gnanoba & Bhat, CA	-----
24/11/14	-----	Termination of Concession Agreement
26/11/14	NOC issued. Letters received from consortium lenders confirming that the loan is 'Standard' asset in their book.	NOC issued. Letters received from consortium lenders confirming that the loan is 'Standard' asset in their book.
27/11/14	RWMPL submitted that there was no litigation pending against them which shall have adverse affect in their project.	Signing of financing documents i.e. after termination of the Concession Agreement on 24.11.14
28/11/14	Lenders Legal Council (LLC) B7B Legal Syndicate opined that the documents are in accordance with law	-----
03/12/14	Disbursed loan by way of Take Out	Disbursed loan by way of Take Out
13/08/15	-----	BDWPL informed that termination notice of 24.11.14 was informed on 13.08.15
24/08/15	Catholic Syrian Bank in the JLM informed that no written communication was received at from Municipal Corporation and it was decided to furnish the copies to the lenders	

C. ISSUES EMERGED IN AUDIT OBSERVATIONS

(I) Disbursement of Loan to Raipur Waste Management Private Limited (RWMPL) done after termination of Concession Agreement

18. As per Audit, in case of Raipur Waste Management Private Limited (RWMPL), although notice for termination of concession agreement was served before the date of sanction of loan, yet, IIFCL had disbursed the loan. When asked about the reasons for sanctioning and disbursing of loan after termination of the project with respect to RWMPL, IIFCL submitted as below:

"The said project availed loan facility of Rs30.36 Crore from initial set of consortium of lenders in January 2013. After duly completing more than 01 year of successful commercial operation of the said project, in December 2014, IIFCL under its 'Take Out Finance' scheme, as mandated by the Government of India, disbursed the loan by way of Take Out finance on 03.12.2014 thereby taking over the loans of Dhanlaxmi Bank and Catholic Syrian Bank totaling to Rs13.59 Crore. The disbursements were thus done directly to the Banks only. No amount was disbursed to the promoter of the said project.

The initial lenders of the project including lenders to whom IIFCL disbursed the said loan were Dhanlaxmi Bank (DB) and Catholic Syrian Bank (CSB).

As per clause No. 6.1 (g) under Article 6 of the concession agreements of the project the respective Concessioneing Authorities (Municipal Corporations) were under obligation to intimate the Lenders regarding any termination or event of default that was initiated by the Concessioneing Authorities or any breach on part of the concessionaire in the said projects.

The details of issue of termination notices and termination of to the said project, were not provided to IIFCL or to the Lead Lender during the appraisal stage nor during the disbursement stage by the Concessioneing Authority which is in contravention of the clause 6.1(g) of the Concession Agreement. Pre-disbursement site inspection by IIFCL was done on 17.10.2014.

The Lenders Legal Counsel (LLC) B & B Legal Syndicate, as appointed by the consortium of lenders, vide its opinion dated 28.11.2014 for the project stated that they have examined the loan/ security documents (including the Concession Agreement from the Authorities) and certified that the documents are in accordance with the law, there-by ruling out any termination or event of default was initiated by the Concessing Authorities or was continuing in the said projects. In case of Raipur Waste Management Pvt Ltd, in the JLM held on 24.08.2015 (08 Months had lapsed after disbursement by IIFCL on 03.12.2014), Catholic Syrian Bank (Lenders Agent) informed that no written communication with respect to termination has been received from Municipal Corporation and it was decided to request the promoter to furnish the copies to the lenders.

Information pertaining to notices/termination was also not available in public domain. Also, none of the lenders had any knowledge about the notice/ termination notice issued at the time of IIFCL sanction or disbursement. Also, the company had submitted letter dated 27.11.2014 confirming that there was no litigation pending against the company which shall have adverse effect on the project.

Letters and No Objection certificates dated 26.11.2014, 28.10.2014 and 29.10.2014 received from all the existing consortium lenders confirming that the loan is 'Standard' asset in their books were taken on record before disbursement of the loan, indicate that none of the existing lenders had received any termination/notice from the authority. Otherwise, the said existing banks are required to classify the account as Written-off/NPA instead of 'Standard' in their books.

Two external ratings from RBI approved external rating agencies namely India Ratings and Research and Brickwork assigned 'BBB-'confirming stable investment grade outlook indicating no existing defaults in the project or knowledge of issuance of termination by the authority in the project were obtained in the project. The Project was duly awarded IND 'BBB-'credit rating as on 27.08.2014 by India Rating and Research i.e. one

month prior to the sanction. Second rating was obtained from Brickwork Ratings India Pvt. Ltd. on 21.10.2014 which assigned BWR BBB- ratings to the project, was obtained before disbursement of the loan.

The Statutory Auditor Certificate duly certifying DSCR of 1.16 in case of Raipur Waste Management Pvt Ltd for the period of 01 year from July 2013 to June 2014 had been obtained while processing for the disbursements in both the accounts.

IIFCL had therefore followed the necessary Due Diligence process and required procedure during appraisal and disbursement of the loan, all well in compliance with its Credit Policy.

Further, on 24 August 2015, lenders including IIFCL were informed in the Consortium meeting held on that date and received details of termination of the agreement dated 25th November 2014. It may be noted as the disbursement took place on 03rd December 2014 which is only 05 working days from date of termination letter and the said notices and termination letter are not addressed/sent to IIFCL or any other existing lenders (including the outgoing lenders) which is in contravention of the clause 6.1(g) of the Concession Agreement. Thus, there was no information available to IIFCL for taking any action in the matter at that time.

On receipt of details of termination of the project concession in August 2015, IIFCL immediately advised the Municipal Corporation to permit for substitution as per the Concession Agreement. However, Municipal Corporation has not accorded the approval, in violation of the executed provisions of the Concession Agreement. The project has turned non-viable due to the lackadaisical attitude of not honouring the obligations under the Concession Agreement by the Municipal Corporations/ Authority.”

(II) Disbursement of Loan to Bhilai Durg Waste management Private Limited (BWMPL) done after termination of Concession Agreement

19 When asked about the reasons for sanctioning and disbursing of loan after termination of the project with respect to BDWPL, IIFCL submitted as below:

“The said project availed loan facility of Rs. 27.69 Crore from initial set of consortium of lenders in January 2013. After duly completing more than 01 year of successful commercial operation of the said project, in December 2014, IIFCL under its ‘Take Out Finance’ scheme, as mandated by the Government of India, disbursed the loans of by way of Take Out Finance on 03.12.2014 thereby taking over the loans of Dhanlaxmi Bank and South Indian Bank (SIB) totaling to Rs. 12.61 crore. The disbursements were thus done directly to the Banks only. No amount was disbursed to the promoter of the said project. The initial lenders of the project including lenders to whom IIFCL disbursed the said loan were Dhanlaxmi Bank (DB) and South Indian Bank (SIB).

The Bhilai agreement was terminated vide on 4th April 2015 and No termination letter has been received for the concession agreement of Durg, it may be noted as the disbursement took place on 03rd December 2014 the said project was NOT Terminated and also the referred notices are not addressed/sent to any lenders nor IIFCL, there was no information available to IIFCL until August 2015 for taking any action in the matter.

.... (Already covered)

The details of issue of termination notices to the said project, were not provided to IIFCL or to the Lead Lender during the appraisal stage nor during the disbursement stage by the Concessing Authority which is in contravention of the clause 6.1(g) of the Concession Agreement. Pre-disbursement site inspection by IIFCL was done on 17.10.2014.

The Lenders Legal Counsel (LLC) B & B Legal Syndicate, as appointed by the consortium of lenders, vide its opinion dated 28.11.2014 for the project stated that they have examined the loan/ security documents (including the Concession Agreement from the Authorities) and certified that the documents are in accordance with the law, there-by ruling out any termination or event of default was initiated by the Concessing Authorities or was continuing in the said projects.

In case of Bhilai-Durg Waste Management Pvt Ltd, the promoter, in the consortium of lenders meeting held on 13.08.2015 (08 Months had lapsed after disbursement by IIFCL on 03.12.2014), informed that termination notice has been received from Bhilai Municipal Corporation and no notice has been received in case of Durg Municipal Corporation. South Indian

Bank (Lenders Agent) and IIFCL did not receive any communication from the Municipal Corporation in this regard and requested the promoter to furnish the copies to the lenders.

Information pertaining to notices/termination was also not available in public domain. Also, none of the lenders had any knowledge about the notice/ termination notice issued at the time of IIFCL sanction or disbursement. Also, the company had submitted letter dated 27.11.2014 confirming that there was no litigation pending against the company which shall have adverse effect on the project.

Letters and No Objection certificates dated 26.11.2014, 28.10.2014 and 29.10.2014 received from all the existing consortium lenders confirming that the loan is 'Standard' asset in their books were taken on record before disbursement of the loan, indicate that none of the existing lenders had received any termination/notice from the authority, otherwise the said existing banks would have classified the account as Written-off/NPA instead of 'standard' in their books.

Two external ratings from RBI approved external rating agencies namely India Ratings and Research and Brick work assigned 'BBB-'confirming stable investment grade outlook indicating no existing defaults in the project or knowledge of issuance of termination by the authority in the project were obtained in the project. The Project was duly awarded IND 'BBB-'credit rating as on 27.08.2014 by India Rating and Research i.e. one month prior to the sanction. Second rating was obtained from Brickwork Ratings India Pvt. Ltd. on 21.10.2014 which assigned BWR BBB- ratings to the project, was obtained before disbursement of the loan.

The Statutory Auditor Certificate duly certifying DSCR of 1.20 in case of Bhilai - Durg Waste Management Pvt Ltd for the period of 01 year from July 2013 to June 2014 had been obtained while processing for the disbursements in the account.

IIFCL had therefore followed the necessary Due Diligence process and required procedure during appraisal and disbursement of the loan, all well in compliance with its Credit Policy.

Further, on 13 August 2015 lenders including IIFCL were informed in the consortium meeting held on that date and received details of termination of the agreement date 04th April 2015 of only Bhilai agreement and No termination letter has been received for the concession agreement of Durg, it may be noted as the disbursement took place on 03rd December 2014 and the said project was NOT Terminated and also the referred notices are not addressed/sent to IIFCL or any other existing lenders (including the outgoing lenders) which is in contravention of the clause 6.1(g) of the Concession Agreement. Thus, there was no information available to IIFCL for taking any action in the matter at that time.

On receipt of details of notice of termination in the project concession in August 2015, IIFCL immediately advised the Municipal Corporation to permit for substitution as per the Concession Agreement. However, Municipal Corporations has not accorded the approval, in violation of the executed provisions of the Concession Agreement. The project has turned non-viable due to the lackadaisical attitude of not honouring the obligations under the Concession Agreement by the Municipal Corporations/Authority.”

20. Audit in response to the reply of IIFCL clarified as under:

“The reply is not tenable because as per Credit Policy 2012 of IIFCL for Take Out finance, No Objection Certificate (NOC) from the Concessionaire Authority, Lenders and the consortium of lenders was required to be obtained before scheduled date of occurrence of Take Out. However, NOC from the Concessionaire Authority was not obtained.

Moreover, no documents have been produced before the audit to substantiate that matter was ever taken up with the Concessionaire Authority for obtaining of NOC.

In the Bhilai Durg Waste Management Case, the borrower had issued preliminary notice of termination of Concession Agreement to BMC (i.e. the Concessioning Authority), on 21.10.2014, which, due to no remedial action taken by BMC, was followed by Notice of termination of the Concession Agreement on 24.11.2014 under Article 9.2 (c) of the Concession Agreement. Therefore, the fact of the matter is that the requisite NOC was not obtained by IIFCL before making disbursement especially in view of the fact that the event of default had already occurred and termination notice had also been issued and actual termination was a foregone outcome after lapse of stipulated time of 90 days.

Besides this, IIFCL itself admitted that they were not in receipt of any information till August 2015 about issue of termination notice and subsequent termination of the project for taking any action in the matter. This tantamount to acceptance that there was failure of internal control.’

Further, reply of IIFCL that ‘The Lenders legal Counsel (LLC) B&B Legal Syndicate, as appointed by the consortium of lenders vide its opinion dated 28.11.2014 for the project stating that they have examined the loan/ security documents (including the Concession Agreement from the Authorities and certified that the documents are in accordance with the law thereby ruling out any termination or event of default initiated by the Concessioning Authorities or was under process for the said projects’ is not relevant as LLC has examined the loan/ security documents (including

the Concession Agreement from the Authorities) which nowhere confirmed/ ruled about the termination or event of default.

Further reply of IIFCL that 'the Company had submitted letter dated 27.11.2014 confirming that there was no litigation pending against the Company which shall have adverse effect on the project' is also not relevant as the same does not confirm status of the project or information regarding termination of project."

21. IIFCL's clarification on the aforesaid observations was similar to the case of RWMPL.

(III) Safeguards available to IIFCL in the Take Out Finance Scheme

22. Regarding the safeguards available to IIFCL in the Take Out finance scheme, the Company in a written note submitted as under:

"The Take Out Finance Scheme (TFS) duly approved by the Government of India is designed in a manner to safeguard IIFCL in the following ways:

- Under the TFS, IIFCL lends only to completed projects which are revenue earning (BOT Toll or Annuity).
- The fund based transaction takes place only between existing banks and IIFCL. No disbursement is made by IIFCL to borrower/ promoter's account or project Escrow Account.
- To ensure viability of the projects being funded IIFCL considers:
 - a) Two external credit ratings with investment grade,
 - a) Satisfactory track record established by ensuring DSCR of at least 1,
 - b) NOCs are obtained from existing banks
 - c) Certificates from existing banks confirming the asset is standard.

The only drawback of the TFS is that no direct contractual linkage of lenders with Concession Authority. This is throughout the lending industry, where the lenders having 70% stake in any infrastructure project under PPP model, have no direct linkage with the Concession Authorities.

To plug this gap in infrastructure funding, IIFCL has been professing the need to have a Tri-partite Concession Agreement and a Model Concession Agreement in across the sectors to safeguard lenders' interest and to address the issues as highlighted by C&AG in the instant cases and to give impetus to financing of Sunrise sectors in Social Infrastructure."

23. When asked about the time period when the Company came to know that the loans to RWMPL and BDWMPL have turned into NPA, Representatives of Department of Financial Services stated during the course of oral evidence that

"सर, मैं आपकी अनुमति से निवेदन करना चाहूंगा कि सीएंडएजी ऑडिट ने इसके अंदर जो मुख्यतः दो ऋण – रायपुर वेस्ट मैनेजमेंट प्राइवेट लिमिटेड और भिलाई दुर्ग वेस्ट मैनेजमेंट प्राइवेट लिमिटेड को आईएफसीएल द्वारा 13.71 करोड़ रुपये और 12.74 करोड़ रुपये क्रमशः सितंबर, 2014 में सैंक्शन किए और दिसंबर, 2014 में उनको डिस्बर्स किया। यह लोन टेकआउट लोन के द्वारा था, मतलब पहले यह ऑलरेडी धनलक्ष्मी बैंक, कैथॉलिक सीरियन बैंक, साउथ इंडियन बैंक के द्वारा फाइनेंस किया हुआ था। यह लोन बाद में एनपीए हो गया। इसके बारे में लेखा परीक्षा के ऑडिट में उभर कर आया है।"

(IV) Sufficiency of stipulated Debt Service Coverage Ratio(DSCR)

24. When asked by the Committee whether the sufficiency of stipulated Debt Service Coverage Ratio (DSCR) at RWMPL and BDWMPL was ensured, IIFCL in their written reply to the Committee as below:

"The applicable Take Out Finance scheme norms stipulate that at time of occurrence of actual Take Out the debt service ratio (DSCR) of the project should be at least 1.00. Accordingly, the debt service ratio (DSCR) for the period from July 2013 to June 2014 have been duly verified and found to be more than 1.00 in compliance with SIFTI's Take-out financing norms. CA certificate from the Statutory Auditor of the company confirming debt service ratio (DSCR) of more than 1.00 for one year in the case has been obtained at time of disbursement in compliance of the applicable Take Out Finance Guidelines.

The disbursement in the project was done only to the existing consortium of Banks in Dec 2014 after receipt of CA certificate from the Statutory Auditors of the company certifying debt service ratio (DSCR) as 1.16 for Raipur Waste Management Pvt Ltd (RWMPL) for the period of one year of operation from June 2013 to June 2014. The same is in compliance with the stipulations of the applicable Take Out Finance scheme and Credit Policy of IIFCL.

Further, it may be noted that the CA certificate from the Statutory Auditor of the company certifies that the financial particulars like PAT, interest, depreciation, revenue, direct and indirect expenses,

etc. based on which the debt service ratio (DSCR) has been calculated.”

25. On the same issue, a representative of the Department of Financial Services appearing before the Committee on Public Undertakings submitted as under:

“डीएससीआर की गणना और फिगर्स दिए गए हैं, वे वर्ष 2013-14 के हैं जबकि पालिसी के द्वारा पिछला एकवर्ष है, जब ये लोन सितम्बर में सैंक्शन हुए, तो उन्हें जुलाई 2013 से लेकर जून 2014 को देखा जोकि सबसे नवीनतम अवधि थी। मैं समझता हूँ कि यह उचित था और यदि इस पीरियड की गणना हम करते हैं तो उसमें डीएससीआर एक से ऊपर था। रायपुर के लिए यह 1.6 था और भिलाई के लिए 1.20 था। कम्पनी का जो कार्य और फाइनेंसेस थे, वह ठीक था। इन दोनों स्वतंत्र कम्पनियों के लिए रेटिंग भी कराई गई थी। एक इंडिया रेटिंग और ब्रिक वर्क कम्पनी थी। इनके अनुसार भी इनकी वित्तीय स्थिति ठीक थी और इन्हें बीबीबी(ट्रिप्लबी) रेटिंग दी गई थी। यह पुरानी रेटिंग नहीं थी, बल्कि इन्होंने बिलकुल नवीनतम रेटिंग कराई थी”।

26. C&AG on the aforesaid issue in their vetting remarks clarified as under:

“copy of the then applicable SIFTI Take Out Financing Scheme norms, stipulating that Debt Service Coverage Ratio (DSCR) of the project should be at least 1.00 at the time of occurrence of actual Take Out was not furnished. Further, the period of DSCR to be considered was not mentioned in the credit policy of IIFCL 2012 in respect of Take Out Finance Scheme. However, IIFCL should have to consider the available Balance Sheet figures for arriving the DSCR. As the DSCR in 2013-14 for both the projects were less than 1:00, the reply of IIFCL for considering the DSCR for the period June 2013 to June 2014 is not tenable.”

27. On the aforesaid issue, C&AG again during the course of evidence before the Committee further deposed as under:

“I have just a small clarification regarding the July 2013 to June 2014 score. Normally, the quarterly scores are unaudited figures. So, the

figure of April 2013 to March 2014 is an audited figure which comes along with the balance-sheet. So, these are unaudited figures. If we see the difference, from .24 to 1 plus, in just one quarter, the first point which comes to the mind of an auditor is that it is an unaudited figure. Just to support this fear of it being an unaudited figure, within the next one year, the Company is known as 'gone bad' and it is closed. So, to that extent, I think when you think of a way forward in the future and when you want to include it, our suggestion from the C&AG side would be that you please take the audited figures and not the unaudited figures."

(V) No Objection Certificate (NOC) not obtained and other loopholes in the Agreement

28. As per Audit observation, IIFCL was required to consider only those proposals, which had Debt Service Coverage Ratio (DSCR) of at least 1.00. However, sufficiency of the stipulated DSCR was also not ensured by IIFCL at the time of sanction as DSCR for the year 2013-14 was 0.13 and 0.48 for RWMPL and BDWPL respectively. When asked about the reasons behind not obtaining NoC, IIFCL in a written note informed the Committee as under:

"As per IIFCL's Credit Policy 2012, NOC from the Lender(s), the Concessing Authority (if applicable) and the consortium, is to be provided before scheduled date of occurrence of Take Out. There is No clause/provision/requirement in the said Concession Agreement stipulating that NOC is to be obtained from the respective Concessing Authorities by any lender(s) or borrower prior to extending Take Out facility by lenders. Therefore, even if IIFCL had applied for an NOC, there were no provisions under the Concession Agreement for the Authority to issue such NOC. Accordingly, as NOC from the Concessing Authority was Not Applicable/Not required as per the provisions of the said Concession Agreement, IIFCL was NOT required to obtain any NOC from the Concessing Authority for extending the Take Out finance. As per clause No. 5.2 of the Concession Agreement, pertaining to Financing Arrangement, it is the concessionaire's (borrower's) obligation to make financing arrangements to meet the cost of the ISWMP (project) at his cost, expenses and Risk. Accordingly, the concessionaire had the right to replace/Take Out lenders in accordance with the requirements of the project. Further, IIFCL was NOT required to obtain any NOC from the Concessing Authority for extending the Take Out finance."

29. In response to the aforesaid reply of IIFCL, Audit further clarified as under:-

“The reply is not tenable because, as per Credit Policy 2012 of IIFCL for Take Out finance, No Objection Certificate (NOC) from the Concessionaire Authority, lenders and the consortium of lenders was required to be obtained before scheduled date of occurrence of Take Out. However, NOC from the Concessionaire Authority was not obtained.

Moreover, no documents have been produced before audit to substantiate that matter was ever taken up with the Concessionaire Authority for obtaining NOC.

Further, the Concessions Agreement (CA) was entered between ‘Raipur Waste Management Private Limited and Raipur Municipal Corporation’. Thus, there was no contractual obligation/ safeguard available to IIFCL as far as CA was concerned.”

30. IIFCL justifying its action on the comments of the Audit further submitted as under:-

“IIFCL’s applicable Credit Policy 2012 states that ‘The No Objection Certificate (NOC) from the lender(s), the Concessions Authority (if applicable) and the Consortium, is to be provided to IIFCL for extending the Take Out finance under the Scheme. This NOC is to be arranged by the Borrower Company / Lender(s) before Scheduled Date of Occurrence of Take Out’

As IIFCL had disbursed the Take Out amount only to the existing banks of the consortium of lenders, as per the applicable credit policy, the NOC was required to be arranged and obtained only from the lenders before scheduled date of occurrence of Take Out. The applicability was to the extent of lenders providing the NOC since the Take Out was directly between IIFCL and the lending banks.

Accordingly, in compliance with the provisions of IIFCL’s Credit Policy 2012, IIFCL had duly obtained No Objection Certificates (NOCs) from the consortium of lenders i.e Dhanlaxmi Bank and Catholic Syrian Bank before effecting Take Out in the instant case as per the requirements. Further, all the lenders have confirmed the asset classification as ‘Standard’ before the disbursement of loan in both the loan accounts as per the norms.

Also in the instant case, NOC from Authority was not applicable as there was no clause/ provision / requirement in the Concessions Agreement stipulating requirement of taking NOC from the Concessions Authorities by any lender(s) or borrower prior to extending Take Out facility by lenders.

Even if IIFCL had applied for the NOC, there was no provision under the Concessions Agreement for the Authority to issue such NOC. The Authority had no *locus-standi* to issue NOC to IIFCL.

Further, the extant lending banks also had no direct linkage with the Concession Authority under any agreement. IIFCL being a third party did not have any direct linkage with the Concession Authority. Therefore, IIFCL did not have any contractual right to approach the authority for requesting or obtaining such an NOC from the authority. Hence, IIFCL could not approach the Authority for any such NOC.

Accordingly, as NOC from the Concessioneing Authority was Not Applicable/ Not required as per the provisions of the said Agreement, IIFCL was no required to obtain any NOC from the Concessioneing Authority for extending the Take Out finance.

As per clause no. 5.2 of the Concession Agreement, pertaining to Financing Arrangement, it is the concessionaire's (borrower's) obligation to make financing arrangements to meet the cost of the ISWMP (project) at his cost, expenses and Risk. Accordingly, the concessionaire had the right to replace/ Take Out lenders in accordance with the requirements of the project.

In this context, IIFCL was a third party (with intention to Take Out part of loan of the existing banks and not directly transact with the concessionaire) and not required to obtain any NOC from the Concessioneing Authority for extending the finance.

It is pertinent to note that there has not been practice where lenders (in India) seek any NOC from Concession Authority for any change in financing in terms of Take Out Finance, Refinance, or down selling in respect of Infrastructure projects.

Accordingly, in view of the above, the prevalent industry practice and with the learning gained over the years, this provision/ clause for obtaining NOC from Authority has since been revised and done away with in IIFCL's Credit Polity (Credit Policy dated 09 December, 2021)."

31. In written reply to a query whether IIFCL is of the opinion that a concession agreement with no clause stipulating the need for NOC from the Concessioneing authority to any lender or borrower prior to extending Take Out Finance facility, IIFCL in a written reply clarified as under:

"Presently in India, the Concession agreements are bi-partite in nature between the Concessioneing Public Authority and the Concessionaire only. Currently, lenders are not party to the concession agreements in the PPP arrangements in the country.

It is submitted that IIFCL has been persuading the concerned authorities to stipulate Tripartite Agreements between the Concessioneing Authority, Concessionaire and the lenders to ensure better coordination among all

the stakeholders, and share information with all the concerned. This will protect the interests of all the stakeholders including the lenders and enable lenders to take informed decisions before disbursements. This will therefore be in the best interest of the system”.

32. C&AG was however of the view that “Had NOCs been obtained from the Concessioning Authorities, IIFCL would have become aware of notice of termination and may not have disbursed the loan.’

33. Referring to the loopholes in the extant Concession Agreement and the need for Model Concession agreement, IIFCL clarified as under:

“Solid Waste Management being a Sunrise Sector, State Governments still have to evolve Model Concession Agreement under PPP arrangement while awarding new projects.

When IIFCL sanctioned loan to these 2 projects in 2014, the Concession Agreement was in nascent stages and thus did not quite safeguarded the lenders’ interest and lacked the termination related provisions.

To plug these gaps, IIFCL has been professing the need to have a Tri-partite Concession Agreement and Model Concession Agreements across all the sectors including sunrise sectors like Solid Waste Management.

IIFCL has been pursuing to take up concerns of lenders regarding the Tri-partite Concession Agreement with NHAI and has been advocating for similar Tri-partite Agreement in other sunrise sectors as well. In this process, IIFCL has taken up the matter with Department of Financial Services, Government of India. IIFCL could raise the concerns with concerned ministries, which we have done in past, now it is with the concerned authorities, ministries and the project authorities to consider the concerns/issues being faced by lenders and to adopt necessary modifications/ evolutions to plug the gap in system”.

34. Regarding the corrective measures taken by the Department of Financial Services (DFS) to ensure that there are no further such instances of this nature in future, the Secretary, DFS during course of evidence before the Committee held on Public Undertakings deposed as under:

“सर, आगे इस प्रकार का टेकआउट फाइनेंस न हो, उसके लिए अब आईआईएफसीएल ने 3 टियर का एक रिस्क असेसमेंट फ्रेमवर्क तैयार किया है। चूंकि प्रोजेक्ट में फाइनेंशियल रिस्क हेतु उन्होंने रेपसफाइनेंशियल के लिए क्रेडिट

रेटिंग करवाली थी, लेकिन इस प्रकार से क्या यह टर्मिनेट हो सकता है? क्या स्थिति है? इन सब चीजों को देखने के लिए या इस प्रकार की अन्य परिस्थितियों के लिए, जिनके कारण कहीं कांट्रैक्ट टर्मिनेट हो जाए या रेवेन्यू कम हो जाए, इस हेतु इस प्रकार का रिस्क असेसमेंट फ्रेमवर्क उन्होंने तैयार किया है। आगे के जो भी लोन्स वे दे रहे हैं, उनको वे रिस्क असेसमेंट फ्रेमवर्क से क्लीयरेंस मिलने के बाद ही सैंक्शन कर रहे हैं। यही इस के बारे में संक्षेप में मुझे कहना था”।

35. When asked by the Committee regarding the need for a tripartite agreement, the representatives of DFS appearing before the Committee on Public Undertakings stated that:

“विशेष कर जो ट्राइपार्टाइट एग्रीमेंट की बात आईआईएफसीएल ने की है और माननीय सदस्य ने भी की है। टर्मिनेशन के बाद जो पेमेंट है, यदि वह कंसेशनेयर अथॉरिटी स्वयं, भारत सरकार या राज्य सरकार या उसका कोई इंस्टीट्यूशन है तो उसके पेमेंट के लिए कोई एक तरीका होना चाहिए। मैं आपसे यह निवेदन करूंगा कि समिति इसके बारे में सिफारिश करें”।

(VI) Action Taken against the erring officials

36. In written response to a query on the action taken against erring officials in the case of RWMPL, IIFCL furnished the following written information:

“...IIFCL had followed all the Due Diligence process and required procedure during appraisal and disbursement of the said case and has adhered to and complied with all the provisions of its own Credit Policy and SIFTI, mandate by the Government of India for IIFCL. IIFCL had been constantly following-up for recovery of dues from the borrower. In respect of RWMPL, IIFCL filed individual recovery suit in the Debt Recovery Tribunal (DRT), Bengaluru. IIFCL has written off the outstanding amount of loan of Rs.13.71 Crore.

In case of RWMPL IIFCLs decision also has legal tenacity as the Debt Recovery Tribunal (DRT), Bengaluru has awarded its order in favor of IIFCL and has ordered that Raipur Waste Management Pvt. Ltd. (SPV) and its promoter Kivar Holdings Pvt. Ltd. resp. shall be liable to pay entire amount of Rs.17,98,51,762.10 (Rs.17.985 Crore) at an interest rate of 9.50% p.a. and penal interest of 2% from the date of application till final realization of entire outstanding loan of IIFCL amounting to Rs. 13.71 Crore.

..... (already covered in p.8 of the draft)

..... (already covered in para 9)

As per the applicable staff accountability policy of IIFCL duly approved by the Board of Directors of IIFCL, the staff accountability exercise has been conducted and completed in the said project by two separate committees of Fact Finding and Comprehensive Review committee. The two separate committees have examined the case in detail and have NOT found any lapses on part of any official of IIFCL.

The reports of the two committees have been considered by the competent authority, Managing Director in this case, and concurred with the recommendations of the two committees and has approved closing of the fact finding exercise with no lapses found on part of any official of IIFCL. The status of closure of the staff accountability exercises with No lapses on part of any official of IIFCL in the case has also been informed to the Board of Directors of IIFCL.”

37. When asked by the Committee about the action taken against erring officials in case of BDWMPL, IIFCL furnished the following written information:

“..... covered in page no. 20).

.....(covered in page 10)

.....(covered in p 10)

IIFCL has been constantly following-up for recovery of dues from the borrower. In respect of Bhilai-Durg project, IIFCL has issued recall notice/ invoked guarantee and joint recovery suit filed in Debt Recovery Tribunal (DRT), New Delhi. The proceedings are underway. IIFCL has written off the outstanding amount of loan of Rs12.61 Crore.

IIFCLs decision also has legal tenacity as Debt Recovery Tribunal (DRT) hearing is ongoing in case of Bhilai Durg Waste Management Pvt. Ltd. and the Debt Recovery Tribunal (DRT) order is expected to be adjudicated in favor of IIFCL. The order will make Bhilai Durg Waste Management Pvt. Ltd. and the promoters liable to pay the entire OA amount of Rs17.18 Crore at an interest rate of 9.50% p.a. and penal interest of 2% from the date of application till final realization of entire outstanding loan of IIFCL amounting to Rs12.61 Crore. (The award of DRT order in this case is expected to be in favor of IIFCL in line with DRT order that has been awarded in case of Raipur Waste Management Pvt Ltd).

..... (already covered)

.....”

38. C&AG on the aforesaid issue expressed its concerns as under:

“The fact remains that IIFCL, did not obtain the NOC from the Concessing Authority (Raipur Municipal Corporation and Bhilai & Durg Municipal Corporation) which was in violation of its own credit policy.

Further, IIFCL has not furnished documents relating to (i) Report of Fact Finding and Comprehensive Review Committee, (ii) Approval of Competent Authority and Managing Director for closing the fact finding exercise with no lapses found on part of any officials of IIFCL, (iii) Intimation to Board of Director for closure of staff accountability exercise and no lapses found on part of any officials of IIFCL and (iv) course of action taken by IIFCL to recover the dues from the date of issue of Recovery Certificate by Debt Recovery Tribunal, Bangalore (DRT-2) i.e. October 2020 to till date. Hence, audit is unable to verify the same.”

(VII) Improvement measures taken by IIFCL

39. When asked about the measures undertaken by IIFCL for improvements in the Take Out Financing Scheme for non-recurrence of such instances and the way forward, the Company in a power point presentation highlighted the measures as under:

“Internal Due diligence and Credit Appraisal Department

- Internal capacities and specializations
- Enhanced monitoring mechanisms
- Regular due diligence and monitoring

Strengthened Risk Management Function

- Independent Chief Risk Officer (CRO)
- Dedicated Risk Management Department: Enhanced capacities to address credit, market and operational risks
- 360-degree assessment of market environment before sanction

Reinforced Legal Department

- Independent experts and reputed legal firms empanelled by IIFCL

Adequate & continuous Capacity Building

- All officers imparted with technical training in operational areas

Specialized Recovery and NPA Management

- External experts: Independent High Level Advisory Committee chaired retired Hon'ble Judge of Madras High Court and Executive Directors of Banks/ Fis
- Officers with specialized skills in recovery and NPA Management

Digital Initiatives

- Real-time Online Project Monitoring System, first of its kind in India
- Digitization of services for enhanced tracking and monitoring

WAY FORWARD

Tri-partite Agreement with Concession Authority

- To address the highlighted issues
- To safeguard lenders interest
- To give impetus to financing of Sunrise sectors in Social Infrastructure

Develop a Model Concession Agreement across sectors

- To standardize the procedures as per industry practice
- To ensure banks get an equal opportunity to be heard on the matter of termination, arbitration, etc.”

PART- II

OBSERVATIONS / RECOMMENDATIONS OF THE COMMITTEE

A. OVERVIEW

To stimulate public investment in infrastructure sector, the Government of India set up the India Infrastructure Finance Company Limited (IIFCL) as a Special Purpose Vehicle (SPV) in January 2006 for providing long term financial assistance to infrastructure projects. IIFCL in consultation with banks and other key stakeholders pioneered and evolved a 'Take Out' financing scheme. The scheme was launched on 16 April 2010 and it operates under the aegis of 'SIFTI'. The main objective of the Take Out finance scheme is to ensure long-term lending and lower the risk in the banking sector because, at that particular point of time, when the Take Out finance scheme was launched, the concept of public-private partnership was emerging. Banking sector was the main lending source for infrastructure projects and they needed to lessen the risk because infrastructure projects needed long term money, whereas the majority of the liability profile of the banks upto 80 percent was for a short-term lending.

2. The present Audit Para no. 5.2 of C&AG Report No. 18 of 2020, examined by the Committee, relates to extending loans under 'Take Out Finance Scheme' to two concessionaires viz. Raipur Waste Management Private Limited (RWMPL) and Bhilai Durg Waste Management Private Limited (BDWPL) in September 2014 by IIFCL. In both the cases the notices of termination were issued by the Concessioneing Authority before sanctioning of loan/ signing of the documents. C&AG observed that loans to these two concessionaires under the Take Out Finance Scheme were disbursed without ensuring compliance of critical requirement of obtaining 'No Objection Certificate' from the Concessionaire Authorities and without ensuring the stipulated Debt Service Coverage Ratio (DSCR) of the borrowers as per their audited annual accounts. These loan accounts consequently turned NPAs. The two internal Committees set up by IIFCL on staff accountability have not found any lapses on any of the officials of IIFCL. The reports of the two Committees, C&AG pointed out, were not made available to them for further analysis leading to doubts about the

credibility of such reports. The Committee, before finalizing their observations in their report heard the views of the officers from C&AG that conducted the Audit, and also the views of the representatives of IIFCL and Department of Financial Services, Ministry of Finance. The evidence of the stakeholders, the information and clarifications submitted by them, and after internal deliberations led the Committee to arrive at the conclusions and make suggestions as mentioned in the succeeding paragraphs.

B. OBTAINING OF NO OBJECTION CERTIFICATE (NOC) BEFORE EXTENDING TAKE OUT FINANCE; NEED FOR TRIPARTITE AGREEMENT; AND THE MODEL CONCESSION AGREEMENT.

3. The Audit had observed that as per IIFCL's Credit Policy 2012, the Company, for affecting Take Out finance, 'The No Objection Certificate (NOC) from the lender(s), the Concessionaire Authority (CA) (if applicable) and the Consortium, is to be provided to IIFCL for extending the Take Out finance under the Scheme. This NOC is to be arranged by the Borrower Company/ Lender(s) before Scheduled Date of Occurrence of Take Out". Though the company has obtained NOC from the existing lenders and the consortium, yet it could not do so from the CAs (in this case Raipur and Bhilai- Durg Municipal Corporations) as -

- (i) there was no clause /provision/ requirement in the Concession Agreement stipulating requirement for taking NOC from the CAs by any lender or borrower prior to extending Take Out facility by the lenders ,
- (ii) even if IIFCL had applied for NOC, the CA had no 'locus standi' to issue NOC to IIFCL. IIFCL being a third party, had no direct linkage with the CAs under any agreement. Even extant lending banks also had no direct linkage with the CA under any agreement.
- (iii) there has not been industry practice where lenders in India seek any NOC from Concession Authority for any change in financing in terms of Take Out Finance, Refinance, or down selling in respect of Infrastructure Projects the Company could not obtain CA's NOC.

4. The IIFCL had disbursed the Take Out amount only to the existing banks of the consortium of lenders, as per the applicable credit policy, the NOC was required to be arranged and obtained from the lenders before scheduled date of occurrence of Take Out. The applicability was to the extent of lenders providing the NOC since the Take Out was directly between IIFCL and the lending banks.

Accordingly, in compliance with the provisions of IIFCL's Credit Policy 2012, IIFCL had obtained No Objection Certificates (NOCs) from the consortium of lenders i.e. Dhanlaxmi Bank and Catholic Syrian Bank in case of RWMPL and Dhanlaxmi Bank and South Indian Bank in case of BDWMPL before effecting Take Out in the instant case as per the requirements. Further, all the lenders have confirmed the asset classification as "Standard" before the disbursement of loan in both the accounts, as per the norms.

The Committee find this a serious shortcoming in the concession agreement and also find it rather surprising for IIFCL not realizing the need to include a clause for obtaining NOC from the respective Concessioneing Authorities before affecting the Take Out although IIFCL's own Credit Policy 2012 has a provision for it. It should have realized this gap in the concession agreements and sought to plug the same before effecting Take Out to protect its own financial interest. Instead, it relied more on the presumption that NOC would be refused by the Concessioneing Authorities as it was not covered under any clause in the Agreement.

The Committee, therefore, recommend that IIFCL should make necessary amendments in its Credit policy to include clauses in concession agreements for making 'obtaining of NOC from Concessioneing Authorities, lender(s) as well as the consortium of lenders' a pre-requisite before extending any Take Out finance to the borrowers in the Credit Policy/ Take Out scheme. The Committee also strongly recommend that need for a modified Take Out Finance scheme with suitable conditions pertaining to Tripartite Agreement be incorporated in the Credit Policy. IIFCL should ensure that the proposed Take Out finance projects having existing Tripartite Agreement should have provision for inclusion of IIFCL as new or additional lender in all other

lendings viz. direct lending, credit enhancement, etc. In cases involving Concessioneing Authorities, IIFCL should finance only those projects where a Tripartite agreement will be entered.

5. In view of the important role played by Take Out Financing in development of Infrastructure sector and to protect the interest of the lenders and Take Out financiers , a model concession agreement may be drafted/ prepared where in a provision for Tri-partite Agreement, as is the norm globally, involving Concessioneing Authorities, Concessionaire and the lenders / Take Out financiers be inserted to enable furnishing of NOC to the lenders and Take Out financiers by the Concessioneing Authorities.

C. CLARITY ON STIPULATED DEBT SERVICE COVERAGE RATIO (DSCR)

6. Audit had observed that as per IIFCL's Credit Policy 2012 the Company is empowered to consider the proposals of those projects only which have Debt Service Coverage Ratio (DSCR) of at least 1.00. There was, however no clarity on the period of DSCR - a financial year or immediate 12 months period prior to effecting the Take Out. IIFCL has informed that a Statutory Auditor Certificate duly certifying DSCR of 1.16 and 1.20 in case of RWMPL and BDWPL respectively for the period of one year from July 2013 to June 2014 was obtained while processing the disbursements in the account. The Committee tend to agree with the views and suggestions of C&AG that quarterly figures are generally unaudited ones which may not have authenticity, acceptability and may not give as much confidence as that of audited figures to the lenders and accordingly recommend that in future, IIFCL should rely on audited figures and should also consider the available balance sheet figures for considering DSCR in the projects.

D. PRUDENT APPROACH BEFORE DISBURSAL OF FUNDS AND ACTION ON ERRING OFFICIALS

7. The Committee when asked about sanction of loan to RWMPL and BDWPL without obtaining of NOC from the Concessioneing Authority, IIFCL had stated that there was no provision or requirement in the concession agreement

stipulating that NOC is to be obtained from respective Concessioneing Authorities by any lender(s). In another issue regarding sanction and disbursement of loan after termination of the project of RWMPL and BDWPL, IIFCL informed the Committee that until August 2015 there was no information available to IIFCL about the termination of the projects of RWMPL and BDWPL. This was despite the fact that as per clause no. 6.1 (g) under Article 6 of the concession agreements of the project, the respective Concessioneing Authorities (Municipal Corporations) were under obligation to intimate the lenders regarding any termination or event of default that was initiated by the Concessioneing Authorities or any breach on part of the concessionaire in the said projects. The details of issue of termination notices and termination of the said project, were not provided to the Lead Lender and hence not provided to the IIFCL during the appraisal stage nor during the disbursement state (before the date of Take Out) by the Concessioneing Authority which is in contravention of the clause 6.1(g) of the Concession Agreement. Requirement of NOC not being part of Concession Agreement and Take Out Finance Scheme approved by the Government of India, IIFCL had disbursed the Take Out amount to the existing banks of the consortium of lenders, the NOC was required to be arranged and obtained only from the lenders before scheduled date of occurrence of Take Out. Accordingly, in compliance with the provisions of IIFCL's Credit Policy 2012, it has obtained No Objection Certificates (NOCs) from the consortium of lenders of both the projects before effecting Take Out in the instant case as per the requirements.

The Committee noted that IIFCL is well in agreement that the Concession Authority should inform the existing set of lenders in the projects regarding Termination Notices, which is in contravention to clause 6.1(g) of the Concession Agreement. This is the reason, IIFCL has been professing the need to have a Tri-partite Concession Agreement and a Model Concession Agreement for all infrastructure sectors to safeguard lenders' interest (having majority financial stake in Infrastructure projects), for building the confidence of lenders and to address the issues as highlighted by C&AG in the instant cases and to give impetus to financing the Sunrise sectors including such Social Infrastructure sectors.

The Committee feel that IIFCL should have been more careful and

vigilant in drafting financial agreements to address the issue of termination of projects by the Concessionaire Authorities.

8. Further, the pre-disbursement site inspection in both the cases was done by IIFCL on 17 October 2014, which was after the notice of termination of concession agreement (which IIFCL stated was unaware) was served and the loan sanctioned. The Committee further observe that the report of two Committees that conducted the staff accountability & fact finding exercise and concluded that there was no lapse on any of the officials of IIFCL was not made available to C&AG for further analysis giving the impression that the fact finding exercise was more like a cover-up exercise as the reports were considered by IIFCL's own Managing Director and the fact finding closed at his instance. The Committee without casting any aspersions on the conduct of the officials involved or without questioning the wisdom of the Board, feel that the IIFCL should have taken prudent approach by taking legal action against the Concessioning Authorities (Municipal Corporations) for violation of 6.1 (g) of the concession agreement to come out clean on their part.

E. IMPROVEMENT MEASURES

9. The Committee are happy to note the improvement measures taken by IIFCL in the Take Out Take Out Financing Scheme viz. (i) internal due diligence and credit appraisal department, (ii) strengthening of its Risk Management Function, (iii) empanelment of independent experts and reputed legal firms, (iv) imparting of adequate & continuous technical training and capacity building in operational areas, (v) digitization of services and real-time online project monitoring system, etc. The Committee hope that these measures will go a long way in improving and strengthening the functioning of IIFCL.

New Delhi ;
28 July, 2022
06 Sravana , 1944(S)

SANTOSH GANGWAR
Chairperson
Committee on Public Undertakings

APPENDIX I
COMMITTEE ON PUBLIC UNDERTAKINGS
(2021-2022)

MINUTES OF THE FOURTEENTH SITTING OF THE COMMITTEE

The Committee sat on Tuesday, the 08th December, 2021 from 1555 hrs. to 1620 Hrs. in Committee Room 'C', Ground Floor, Parliament House Annexe, New Delhi.

PRESENT

Shri Santosh Kumar Gangwar - Chairperson

MEMBERS

Lok Sabha

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

Rajya Sabha

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

SECRETARIAT

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

**REPRESENTATIVES OF THE OFFICE OF COMPTROLLER & AUDITOR
GENERAL OF INDIA**

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

2. At the outset, the Representatives of O/o C&AG made a Power Point presentation and briefed the Committee on 'Audit Para No. 5.2 of Report No.18 of 2020 regarding Avoidable Loss due to extension of loan in terminated projects relating to India Infrastructure Finance Company Limited (IIFCL)' in detail. The issues touched upon, *inter-alia*, involved non-obtaining of NOC, insufficiency of Debt Service Coverage Ratio (DSCR) and disbursement of loans even after termination of the projects with regard to Raipur Waste Management Private Limited (RSWPL) and Bhilai Drug Waste Management Private Limited (BDWMPL).

3. Thereafter, Chairperson and Members sought clarifications from the representatives of the O/o C&AG on various aspects of IIFCL seeking reasons behind such glaring lapses, involvement of possible corruption motives, need to fix responsibility, accountability and liability, fabricated balance sheets, non-ensuing of project viability before lending, involvement of sub-contractors with the intent of siphoning-off finance by borrowers, etc.

4. The representatives of the C&AG clarified on some issues on which information was readily available with them. The Committee decided to hear the views of IIFCL and Department of Financial Services (DFS) on the Audit Para No. 5.1 and 5.2 of Report No. 18 of 2020 for further examination of the subject in next sittings of the Committee.

The witness then withdrew.

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APPENDIX II
COMMITTEE ON PUBLIC UNDERTAKINGS
(2021-2022)

MINUTES OF THE TWENTY-SIXTH SITTING OF THE COMMITTEE

The Committee sat on Wednesday, the 16th March, 2022 from 1530 hrs. to 1625 hrs. in Committee Room 'D', Ground Floor, Parliament House Annexe, New Delhi.

PRESENT

Shri Santosh Kumar Gangwar - Chairperson

MEMBERS

Lok Sabha

2. Shri Lavu Sri Krishna Devarayalu
3. Smt. Poonamben Hematbhai Maadam
4. Shri Janardan Mishra
5. Shri Nama Nageswara Rao
6. Shri Sushil Kumar Singh
7. Shri Uday Pratap Singh

Rajya Sabha

8. Shri Anil Desai
9. Shri Syed Nasir Hussain
10. Shri K.C. Ramamurthy

SECRETARIAT

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

REPRESENTATIVES OF OFFICE OF COMPTROLLER AND AUDITOR GENERAL

1. Dr. Kavita Prasad - Director General (Commercial)-I
2. Ms. Ritika Bhatia - Director General (Commercial)-II
3. Shri Deepak Kapoor - Director General (Infrastructure)
4. Shri Shailendra Vikram Singh - Director General (Parliamentary Committees)
5. Shri Mrinal Chawla - Director

REPRESENTATIVES OF INDIA INFRASTRUCTURE FINANCE COMPANY LIMITED

1. Shri P.R. Jaishankar - Managing Director
2. Sh. Gaurav Kumar - General Manager
3. Shri Samik Das Gupta - General Manager

2. The Chairperson welcomed the Members and the officers of C&AG at the sitting convened to take evidence of the representatives of India Infrastructure Finance Company Limited (IIFCL) in connection with examination of Para No. 5.2 of C&AG Report No. 18 of 2020 regarding 'Avoidable loss due to extension of loan in terminated projects' relating to IIFCL. The representatives of O/o CAG then made a brief presentation on the important issues pertaining to the subject. Audit pointed out to the two cases of loan extended under 'Takeout Finance Scheme' by IIFCL to Raipur Waste Management Private Limited (RWMPL) and Bhilai Drug Waste Management Private Limited (BDWPL) without obtaining No Objection Certificate from the Concessing Authorities. These loans eventually turned into NPAs and an amount of Rs. 26.20 crore for these cases had to be written off.

(The representatives of IIFCL were then called in.)

3. The Chairperson welcomed the representatives of IIFCL and drew their attention to Direction 55(1) of the 'Directions by the Speaker' regarding confidentiality of evidence before the Parliamentary Committees. Hon'ble Chairperson emphasized on important aspects of IIFCL and sought to be apprised on two project loans to BDWPL and RWMPL sanctioned and disbursed under 'Takeout Finance Scheme' after the termination of the projects without ensuring compliance of critical requirement of obtaining 'No Objection Certificate' from Concessing Authorities

turning them into NPAs.

4. Thereafter, the representatives of the IIFCL made a presentation to the Committee on the subject therein highlighting the Company's genesis and business profile; Company's impact and major achievements in financing infrastructure sector; Takeout Finance Scheme genesis, features, benefits and its impact on industry. IIFCL made submission on the observations by the Audit on both the projects BDWMPL and RWMPL and recovery actions on them along with measures taken by IIFCL for improvements and way forward.

5. The Members then raised various issues pertaining to Audit findings in the functioning of IIFCL vis-à-vis details of lending in major projects; financial loss to the exchequer and action taken to recover and responsibility for the same; details of Arbitration Award and issue relating to bank guarantee; future roadmap of the Company keeping in mind change to Hybrid Annuity Model in infrastructure sector to capitalise future growth. Thereafter Hon'ble Chairperson sought update on status of dues from both the borrowers against recovery proceedings in Debt Recovery Tribunal.

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

(The Committee then adjourned.)

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APPENDIX III
COMMITTEE ON PUBLIC UNDERTAKINGS
(2021-2022)

MINUTES OF THE TWENTY-SEVENTH SITTING OF THE COMMITTEE

The Committee sat on Wednesday, the 05th April, 2022 from 1500 hrs. to 1555 hrs. in Committee Room 'B', Ground Floor, Parliament House Annexe, New Delhi.

PRESENT

Shri Santosh Kumar Gangwar - Chairperson

MEMBERS

Lok Sabha

2. Shri Lavu Sri Krishna Devarayalu
3. Dr. Heena Vijaykumar Gavit
4. Shri Chandra Prakash Joshi
5. Shri Janardan Mishra
6. Shri Nama Nageswara Rao
7. Shri Arvind Kumar Sharma
8. Shri Sushil Kumar Singh
9. Shri Ramdas Chandrabhanji Tadas

Rajya Sabha

10. Shri Birendra Prasad Baishya
11. Shri Anil Desai
12. Shri Syed Nasir Hussain
13. Shri K.C. Ramamurthy
14. Shri M. Shanmugam

SECRETARIAT

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

REPRESENTATIVES OF OFFICE OF COMPTROLLER AND AUDITOR GENERAL

1. Shri Raj Ganesh Viswanathan - Dy. Comptroller & Auditor General (Commercial, Coordination & Local Bodies and Chairman, Audit Board)
2. Dr. Kavita Prasad - Director General (Commercial)-I
2. Ms. Ritika Bhatia - Director General (Commercial)-II
3. Shri Deepak Kapoor - Director General (Infrastructure)
4. Shri Shailendra Vikram Singh - Director General (Parliamentary Committees)
5. Shri S. Ahlladini Panda - Principal Director

REPRESENTATIVES OF DEPARTMENT OF FINANCIAL SERVICES, MINISTRY OF FINANCE

1. Shri Sanjay Malhotra - Secretary
2. Shri Amit Agrawal - Additional Secretary
3. Shri Lalit Kumar Chandel - Economic Advisor

2. At the outset, the Chairperson welcomed the Members and the officers of C&AG at the sitting convened to take evidence of the representatives of Department of Financial Services in connection with examination of Para No. 5.2 of C&AG Report No. 18 of 2020 regarding 'Avoidable loss due to extension of loan in terminated projects' relating to IIFCL. The representatives of O/o CAG then made a brief presentation on the important issues pertaining to the subject. Audit pointed out the two cases of loan extended under 'Takeout Finance Scheme' by IIFCL to Raipur Waste Management Private Limited (RWMPL) and Bhilai Drug Waste Management Private Limited (BDWMPL) without obtaining No Objection Certificate from the Consessioning Authorities. These loans eventually turned into NPAs and an amount of Rs. 26.20 crore for these cases had to be written off.

(The representatives of DFS were then called in.)

3. The Chairperson welcomed the representatives of DFS and drew their attention to Direction 55(1) of the 'Directions by the Speaker' regarding confidentiality of evidence before the Parliamentary Committees. Hon'ble Chairperson emphasized on important aspects of IIFCL and sought to be apprised on two project loans to

BDWMPL and RWMPL sanctioned and disbursed under 'Takeout Finance Scheme' after the termination of the projects without ensuring compliance of critical requirement of obtaining 'No Objection Certificate' from Concessioneing Authorities turning them into NPAs. Chairperson also sought clarifications on various safeguards provided by the Ministry to the IIFCL before finalizing schemes such as 'Takeout Finance Scheme'.

4. Thereafter, the representatives of the DFS gave clarification on various aspects about the two projects i.e. BDWMPL and RWMPL. The representatives of the Department clarified that before disbursement of loans to both the companies, requirement of Debt Service Coverage ratio was ascertained and further pointed out that the loans to BDWMPL and RWMPL were disbursed before the termination of the projects, etc.

5. The Members then raised various issues such as loopholes in concession agreement, need for tripartite concession agreements, provision of site visit before disbursal of every loan, mechanism to check the progress of the projects, status of provision of tripartite agreements etc.

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

(The Committee then adjourned.)

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APPENDIX IV
COMMITTEE ON PUBLIC UNDERTAKINGS
(2022-2023)

MINUTES OF THE TENTH SITTING OF THE COMMITTEE

The Committee sat on Thursday, the 28th July, 2022 from 1500 Hrs. to 1600 Hrs. in Committee Room No. 3, Extension to Parliament House Annexe (EPHA), New Delhi.

PRESENT

Shri Santosh Kumar Gangwar - Chairperson

MEMBERS

Lok Sabha

2. Shri Sudip Bandyopadhyay
3. Shri Lavu Sri Krishna Devarayalu
4. Smt. Poonamben Hematbhai Maadam
5. Shri Janardan Mishra
6. Sh. Kinjarapu Ram Mohan Naidu
7. Shri Arvind Kumar Sharma
8. Shri Uday Pratap Singh
9. Shri Ramdas Chandrabhanji Tadas

Rajya Sabha

10. Shri Syed Nassir Hussain
11. Dr. Anil Jain
12. Shri Prakash Javadekar
13. Dr. Amar Patnaik

SECRETARIAT

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

