

CHAPTER-III

3. Compliance Audit

Compliance audit of transactions of the Government departments, their field formations as well as that of the autonomous bodies brought out instances of lapses in management of resources and failures in the observance of the norms of propriety and economy. These have been presented in the succeeding paragraphs.

Forest Department

3.1 Short recovery of transit fee

The Department short recovered transit fee of ₹ 639.77 crore due to lack of co-ordination and absence of proper system to monitor the movement of forest produce.

The Government of Uttar Pradesh (GoUP) in exercise of the powers conferred under section 41, 42, 51 and 76 of the Indian Forest Act, 1927 (Act), framed (September 1978) the Uttar Pradesh Transit of Timber and Other Forest Produce Rules, 1978 (Rules) to regulate the transit of timber and other forest produce. Rule 3 and 5 of the Rules also provide that no forest produce shall be moved into, or from, or within the State without transit passes issued by the Forest Department and payment of transit fee at the prescribed rates. The GoUP prescribed (June 2004)¹, transit fee of ₹ 38 per ton (₹ 5 per ton up to 13 June 2004) for forest produce carted by lorry.

Forest produce, as defined in Section 2 of the Act includes peat, surface soil, rock and minerals (including lime stone, laterite, mineral oils and all products of mines and quarries) when found in or brought from a forest. The Hon'ble High Court of Allahabad in the case of Kumar Stone Works and Others Vs State of Uttar Pradesh further held (April 2005) that even if the aforesaid goods are carted on roads that pass through forest land, the goods would be covered under the definition of forest produce and were liable to levy of transit fee. The Hon'ble Supreme Court of India later stayed (April 2008) the demand and recovery of transit fee. The GoUP also removed (July 2008)² all the check posts/barriers established for the purpose of checking of transportation of forest produce.

Further, it was noticed that the Mining Department grants leases for mining of sand, morrum, stone grit, ballast from the river bed after obtaining 'No Objection Certificate' (NOC) from the Forest Department. The State Government with a view to bring uniformity in the NOCs issued by the Divisional Forest Officers (DFOs)/ Divisional Directors (DDs) issued (February 2008) directives to incorporate certain points in the NOCs which *inter-alia* included the condition of payment of transit fee by the concerned person/ lessee as prescribed by the GoUP in June 2004.

We cross checked the transit fee records of 21 DFOs/ DDs with the records of the relevant District Mining Officers (DMOs) and noticed that:

¹ Vide notification no. 1047/ XIV-2-2-2004-343 (एन) / 2001 dated 14 June 2004.

² Vide Order no. 2809/14-2-2008 dated July 2008.

- DFOs/DDs of two districts³ did not include the clause regarding levy of transit fee on the movement of forest produce in the NOCs.

The Department stated (December 2013) that process of disciplinary action against the concerned officers has been initiated.

- Forest Department was responsible for issuing NOCs to District Magistrates/DMOs for mining and for collection of transit fee. The Forest Department, however, did not co-ordinate with the Mining Department to obtain data of forest produce extracted by the lessees and MM-11⁴ issued to the lessees by the Mining Department for its transportation. No monitoring system was developed to plug the leakage of transit fee especially after removal of the check posts/barriers in July 2008.

In 21 districts test checked by Audit, 1,888.43 lakh ton of forest produce⁵ was excavated and transported during the period from April 2005 to March 2008 i.e. prior to the stay orders of the Hon'ble Supreme Court of India. Against the said transportation, the Forest Department was required to collect transit fee of ₹ 717.61 crore. The Forest Department, however, could collect transit fee of ₹ 77.84 crore only. Thus, due to lack of co-ordination and absence of proper system to monitor the movement of forest produce, the Department short recovered transit fee of ₹ 639.77 crore (**Appendix-26**).

Further, the Forest Department, did not maintain any details regarding the transit of forest produce after issue of stay orders by the Hon'ble Supreme Court of India in April 2008 that would enable it to recover the due transit fees in case the issue pending in the Hon'ble Supreme Court is finally decided in favour of recovery.

The Department stated (December 2013) that despite efforts made by the Divisional Manager/Conservator of Forest, transit fee from the licensees could not be recovered as the District Magistrate/Mining Department did not furnish the necessary information about lessees and the quantum of minerals excavated. It further stated that the collection of transit fee was also adversely affected due to stay orders passed by the Hon'ble Supreme Court of India.

The reply is not acceptable as despite the enormity of revenue involved, the matter was not pursued at the Department or Government level. Besides, in cases covered by the stay orders of the Hon'ble Supreme Court/High Court, the Forest Department failed to issue Transit Passes (as required under Rule 3 of the Rules) to keep a record of the movement of forest produce in order to recover the due transit fees in case the issue is finally decided by the Hon'ble Court in favour of the recovery.

The matter was reported to the Government in June 2013, the reply is awaited (February 2014).

3.2 Loss due to non-sale of roots of the trees

The Department was deprived of revenue of ₹ 36.13 lakh due to non-sale of roots of the trees.

The trees are felled and timber/fuel wood is sold by the Uttar Pradesh Forest Corporation (UPFC) as per the procedure laid down in the Forest manual. The UPFC sells timber/fuel wood through auction on the basis of base rate fixed

³ Lalitpur and Obra Forest Divisions.

⁴ Transit Pass issued by Mining Department authorising the transportation of minerals.

⁵ Sand, Morrum, Stone grit, Stone ballast, Boulder/slab, Granite size dimensional stone and Coal.

by it for various varieties of timber/fuel wood. In normal felling, the trees are felled above 10 cm from the earth and roots are left as the excavation of roots is uneconomical, but in case of construction of National Highways and roads, the trees are uprooted. Since the trees are uprooted their roots are also available for allotment by the Department to UPFC for sale as fuel wood.

We observed that, though Sitapur Division of the Department of Forests (Department) allotted the roots to UPFC for sale, three other Divisions⁶ of the Department failed to do so. As a result, the Department was deprived of revenue of ₹ 36.13 lakh⁷ on 55,158 trees uprooted between 2005-06 and 2009-10.

The Department stated (December 2013) that instruction have been issued in September 2012 for sale of roots, through auction by UPFC, also.

The fact remains that the Divisions failed to allot the roots to UPFC for sale despite there being a system for sale of fuel wood⁸, resulting in loss of revenue to the Department.

The matter was reported to the Government in June 2013, the reply is awaited (February 2014).

3.3 Short levy of royalty due to delay in prescription of volume factor

The Department short levied royalty of ₹ 27.37 lakh on eucalyptus trees of diameters above 45 cm due to non-revision of volume factor simultaneously with the increase in felling cycle, for trees of diameter above 45 cm.

As per orders issued (June 1978) by the Chief Conservator of Forests (Management) Uttar Pradesh, the volume factor for calculating royalty on eucalyptus trees, of diameter up to 45 cm was prescribed, based on a felling cycle⁹ of 8 years. The felling cycle was increased to 10/30 years¹⁰ in April 1993 and to 15 years¹¹ in April 1998.

Despite the fact that, the volume factor is dependent on the diameter of trees, which naturally increases with age, the volume factor for trees of diameter above 45 cm was not prescribed simultaneously (or latest by April 1995¹² and April 2003¹³ respectively) with the increase in felling cycle. The volume factor of trees having diameter of more than 45 cm was prescribed¹⁴ only in December 2008.

In absence of the prescribed volume factor for trees of diameter above 45 cm up to December 2008, the divisional authorities of the Department of Forests (Department), continued to levy (up to December 2008) royalty on trees of 10-15 years age, having a higher diameter, at rates applicable for trees having diameter in the range of 40-45 cm i.e. the maximum diameter prescribed on the basis of felling cycle of eight years.

⁶ Divisional Director, Basti; Divisional Director, Barabanki and Divisional Forest Officer, Meerut.

⁷ 55,158 trees x ₹ 65.50 per root being the net realisable value fixed by a Committee of Sitapur Division = ₹ 36.13 lakh.

⁸ Roots are treated as fuel wood.

⁹ Felling cycle indicates the age fixed for cutting down the trees.

¹⁰ 10 year for canal side trees and 30 year for road side trees.

¹¹ For both canal side and road side trees.

¹² Within two years of increase in felling cycle from eight to 10 years in 1993.

¹³ Within five years from increase in felling cycle from 10 to 15 years.

¹⁴ In ranges of 45-50 cm, 50-55 cm, 55-60 cm, 60-65 cm, 65-70 cm, 70-75 cm, 75-80 cm, 80-85 cm, 85 to 90 cm and 90 cm and above.

Thus, six Divisions of the Department short levied royalty to the tune of ₹ 27.37 lakh on 6,646 eucalyptus trees of diameters above 45 cm allotted to and felled by Uttar Pradesh Forest Corporation (UPFC) during the period April 2004 to December 2008 as detailed in **Appendix-27** and summarised below:

Table 3.1: Summary of short levy of Royalty

Sl. No.	Name of the Division	Year	Diameter of the trees (in cm)	No. of trees felled by UPFC	Volume as per norms prescribed in Dec 2008 (in cum)	Actual volume taken by the Department (in cum)	Difference in volume (in cum)	Short levy of royalty (₹ in lakh)
1.	Divisional Conservator of Forests, Shivalik, Saharanpur	2004-05 to 2008-09	45-55	1666	2324.772	1611.022	713.750	8.20
2.	Divisional Forest Officer, Ambedkar Nagar	2005-06 to 2008-09	45-75	512	693.466	494.458	199.008	2.18
3.	Divisional Director, Barabanki	2004-05 to 2008-09	45-65	428	544.205	417.501	126.704	1.06
4.	Divisional Director, Sultanpur	2004-05 to 2008-09	45-85	3255	4457.293	3138.478	1318.815	12.87
5.	Divisional Director, Basti	2004-05 to 2008-09	45-55	276	347.104	260.611	86.493	0.89
6.	Divisional Forest Officer, Social Forestry, Deoria	2006-07 to 2008-09	45-70	509	696.588	492.203	204.385	2.17
	Total			6646	9063.428	6414.273	2649.155	27.37

The Department stated (December 2013) that the Government has now directed (November 2013) the Chief Conservator of Forests, Uttar Pradesh to revise the volume factor before revising the felling cycle.

The reply confirms that the Department suffered loss of revenue due to inordinate delay in revising (December 2008) the volume factor along with corresponding revision in the felling cycle.

The matter was reported to the Government in June 2013; the reply is awaited (February 2014).

Infrastructure and Industrial Development Department

3.4 Construction of Yamuna Expressway

Introduction

3.4.1 The Infrastructure and Industrial Development Department¹⁵ (IIDDD), Government of Uttar Pradesh (GoUP) conceived (March 2001) a Public Private Partnership (PPP) project for construction of 160¹⁶ km Taj Expressway to (i) provide a fast moving corridor to minimize the travel time from New Delhi to Agra (ii) open up avenues for industrial and urban development of the region and (iii) provide base for convergence to tourism and other allied industries. The GoUP established¹⁷ (April 2001) the Taj Expressway Industrial Development Authority¹⁸ (TEA) to anchor the development of the project. The

¹⁵ Formerly known as Department of Industries.

¹⁶ Actually constructed 165 Kms.

¹⁷ Under Clause (d) of Section-2 of Uttar Pradesh Industrial Area Development Act, 1976.

¹⁸ As per GO of April 2001 the Taj Expressway Industrial Development Authority shall consist of Principal Secretary, Industries and Industrial Development Commissioner as Chairman, Principal Secretary, Public Works Department; Principal Secretary, Avas; Principal Secretary, Finance; Managing Director, Uttar Pradesh State Industrial Development Corporation Limited; Chief Executive Officer, New Okhla Industrial Development Authority; Chief Executive Officer, Greater New Okhla Industrial Development Authority; Secretary, Industrial Development; District Magistrate, Gautam Budhha Nagar and District Magistrate, Agra as members and Chief Executive Officer, Taj Expressway Industrial Development Authority as Member Secretary.

TEA was renamed (July 2008) as Yamuna Expressway Industrial Development Authority (YEIDA)¹⁹. Consequently, the project was also renamed (July 2008) as Yamuna Expressway.

We examined (April 2012 to May 2012) the bid documents, records relating to finalisation and approval of the bid and the Concession agreement of Yamuna Expressway project at the Secretariat of the Infrastructure and Industrial Development Department (IIDD); collected information and documents from the concerned field offices to see whether the process of selection of the PPP bidder and award of Concession was fair, transparent and competitive and risks/ rewards were optimally shared between YEIDA and bidder and the PPP project and the Concession Agreement were effectively and properly implemented.

Finalisation of bid and award of the project for execution

3.4.2 The YEIDA invited (3 November 2002) offers from interested parties of national/international repute for (i) development of Techno-Economic Feasibility Report (TEFR) and Detailed Project Report (DPR); (ii) arrangement of finances; and (iii) construction and operation of a six lane super expressway between Noida and Agra. First phase of the Expressway between Noida Toll Bridge and Greater Noida (about 25 Kms) had already been constructed by the GoUP and was also opened for general public before the offers were invited in November 2002.

The salient features of the project as per the bid document were as follows:

- A private sector developer was to be selected by the YEIDA and a Joint Venture Company (JVC)/Special Purpose Vehicle (SPV) was to be formed for execution of the project. In return, the JVC/SPV was to be given rights to levy tolls and also rights for land development.
- The Expressway was to pass through virgin area along the River Yamuna and total land²⁰ measuring 2,500 hectare at five or more locations, of which one location with total area of 500 hectare was to be in Noida or Greater Noida, was to be offered to the developer along the Expressway, for commercial, amusement, industrial, institutional and residential development at premium equivalent to the acquisition cost and lease rent of ₹ 100 per hectare per year, on lease for a period of 90 years.
- The project was to be executed on JVC/SPV basis with 25 per cent equity to YEIDA and 75 per cent equity to the JV partner. In this case, the cost of Expressway commissioned between Noida and Greater Noida was to be treated as equity participation of YEIDA in the JVC/SPV and if the cost of Noida-Greater Noida Expressway would be in excess of 25 per cent equity, the surplus amount was to be treated as interest free loan to the JVC/SPV. Alternatively, at the option of the bidder, the project could be taken up by the bidder exclusively without any equity participation by YEIDA. In this case, the entire cost of Noida-Greater Noida Expressway was to be treated as interest free-loan to JVC/SPV.
- The bid variable i.e. the parameter on the basis of which the financial bids were to be evaluated was the concession period²¹ to be specified in years, months and days.

¹⁹ In the report we have used the name YEIDA (erstwhile TEA).

²⁰ In addition to land in stretch of 100 meters for construction of Expressway.

²¹ Concession period is the period for which the Concessionaire will collect and use toll charges and for which the Concessionaire shall operate and maintain the Expressway.

In response to the open offers invited (November 2002) by YEIDA, three bidders²² submitted their bids, of which one bid²³ was rejected as it was submitted after the scheduled time. The technical bids²⁴ of the remaining two bidders were evaluated and found suitable (20 January 2003). Thereafter, their financial bids were also opened on 20 January 2003. Jaiprakash Industries Limited, New Delhi (JIL) was selected for execution of the project, as it had offered a concession period of 36 years against concession period of 39 years 07 months and 10 days offered by Laing DSC Joint Venture. Finalisation of the bid in favour of JIL, with concession period of 36 years, was approved by the Economic Development Committee (EDC) of the Cabinet on 23 January 2003.

The YEIDA intimated (23 January 2003) JIL regarding approval of its selection as the Concessionaire for execution of the project. Further, the JIL (Concessionaire) opted (23 January 2003) to implement the project without any equity participation from YEIDA and insisted to execute a Concession Agreement instead of a Promoters Agreement²⁵. Accordingly, the YEIDA executed (7 February 2003) a Concession Agreement with the Concessionaire.

The project was to start after signing of Concession Agreement and was to be completed within seven years as per the Agreement. The progress of the work was adversely affected during the period up to March 2007 due to delay in approval of the alignment of the Expressway by YEIDA. The alignment of the Expressway was, however, approved by the YEIDA in March 2007 after which the Concessionaire, in compliance of the provisions of the bid document and concession agreement, incorporated (October 2007) a Special Purpose Vehicle (SPV) named Jay Pee Infratech Limited, Noida for execution of the project.

Status of the Yamuna Expressway

3.4.3 The YEIDA allotted 2,458.45 hectare land to the Concessionaire at five locations at acquisition cost and other expenses totalling to ₹ 2,705.26 crore as detailed in the table below:

Table 3.2: Details of land allotted to the Concessionaire

						(₹ in crore)
Sl. No.	Location of land parcel	Land allotted to Concessionaire (in Hectare)	Acquisition cost paid by Concessionaire	Resettlement and Rehabilitation charges	External development charges (EDC)	Total
1.	Noida, Gautam Buddha Nagar	498.93	37 4.67	NIL	*	374.67
2.	Jaganpur, Gautam Buddha Nagar	490.79	510.39	4.62	281.71	796.52
3.	Mirzapur, Gautam Buddha Nagar	480.89	484.75	2.29	276.03	763.07
4.	Aligarh	496.15	358.95	1.44	**	360.39
5.	Agra	491.69	397.26	13.15	**	410.41
Total		2458.45	2126.02	21.50	557.74	2705.26

(Source: Lease deeds of land for development and reply of the Department)

* to be recovered from Concessionaire when EDC is intimated by New Okhla Industrial Development Authority.

** to be paid by Concessionaire at the time of development.

²² Laing DSC Joint Venture, Jaiprakash Industries Limited and Techni Bharti Limited.

²³ Techni Bharti Limited submitted the bid late by 20 minutes.

²⁴ The technical bids were to be evaluated and shortlisted on the basis of technical competence, experience of implementing/ executing construction works and financial parameters such as net worth, ability to raise resources including debt funds, cash flows etc.

²⁵ Promoters Agreement was to be executed in case of equity participation by YEIDA whereas Concession Agreement was to be executed in both cases i.e. with or without equity participation by YEIDA.

The conceived project (March 2001) initially included the existing Expressway from Noida to Greater Noida (25 km) and construction of expressway from Greater Noida to Agra by the Concessionaire. The Concessionaire constructed the Yamuna Expressway (Greater Noida to Agra) during November 2006 to July 2012 at the cost of ₹ 9,962 crore²⁶ which was opened for public use in August 2012.

Clause 3.4 and 3.7 of the Concession Agreement stated that in consideration of capital cost of Expressway between Noida and Greater Noida, YEIDA was to grant leave and licence to the Concessionaire to use it for concession during the Concession period. The capital cost of this already constructed expressway should be treated as interest free loan to the Concessionaire which should be repaid by the concessionaire to YEIDA in fifteen equal yearly instalments starting from eleventh year of concession period. Concessionaire was also entitled to collect and retain fee from the users of Expressway during the terms of Concession Agreement. However, the Expressway was yet to be handed over to the SPV (January 2014).

The IIDD/Government stated (January 2014) that to meet the public demand for not levying toll on the Noida-Greater Noida Expressway, the Concessionaire proposed (August 2012) that they would not levy toll tax on this segment provided they would be given liberty not to pay capital cost and O&M cost of this portion of Expressway. No decision has, however, been taken by the Government so far (January 2014) on the proposal of the Concessionaire.

Audit findings

3.4.4 During examination of the records, we found various pre-bid and post-bid deficiencies as discussed in the succeeding paragraphs:

Pre-bid deficiencies

3.4.5 We found various deficiencies in the pre-bid stage, such as absence of mechanism for assessing the reasonableness of concessions, non-identification of land parcels, dilution of the principle of Public Private Partnership (PPP) and lack of control over the profit margin of the concessionaire, which have been discussed below:

No mechanism to assess the reasonableness of concessions

3.4.6 The Principal Secretary, Department of Finance, GoUP had advised (July 2002) the Infrastructure and Industrial Development Department (IIDD) to first prepare a Techno Economic Feasibility Report (TEFR) to ensure the feasibility of the project and then invite bids for preparation of DPR and execution of the project. It further advised to make a provision in the bid document that as soon as the Concessionaire gets 20 per cent Return on Equity (ROE) on the project from toll collection and land development rights, the concession period would be over and the assets shall be automatically transferred to YEIDA because if profit of the Concessionaire is not limited, the Concessionaire shall always show less toll income in the TEFR and get development rights on more land and shall continue to earn profit from toll revenue.

²⁶ The reply of the IIDD furnished in January 2014.

We noticed that IIDD/Government neither prepared any draft feasibility report to work out a tentative concession period nor made provisions in the bid document in consonance with the suggestions of the Department of Finance, GoUP. YEIDA estimated the cost of construction of the Expressway at ₹ 1,680 crore in 2002-03. Rather than following the instructions of the Finance Department, YEIDA invited bids on parameters as discussed in Paragraph no 3.4.2.

The IIDD/Government in its reply (January 2014) did not render any justification for non-compliance of the advice of the Finance Department which was a pre-requisite for implementing the project on the principles of PPP.

Thus, it is clear that no mechanism was devised to ascertain the reasonableness of the concession period quoted by the bidders.

Non-identification of locations of land parcels and unjustified allotment of land parcel at Noida

3.4.7 Clause 1.5 of the bid document provided that the Expressway would pass through virgin area along the River Yamuna and land²⁷ for development shall be offered to the developer, as per its request and choice and subject to availability, along the Expressway. The locations of land parcels for development, however, were not even tentatively identified by YEIDA/IIDD at the pre-bid stage so as to assess the value of land being given as a concession, so as to arrive at a reasonable profit margin for the Concessionaire.

We noticed that in the absence of tentative pre-identification of locations of land parcels, the Concessionaire, at his own, identified a land parcel at prime location of Noida²⁸ which was handed over to it at acquisition cost. This land parcel was along the existing Noida-Greater Noida Expressway, which was already developed and was also not in the virgin area to be covered by the Yamuna Expressway, as laid down in Clause 1.5 of the bid document.

Moreover, the Concessionaire has not taken over the existing Noida- Greater Noida Expressway and asked for liberty from paying the O&M cost and capital cost on the same, allotment of land parcel of 498.93 hectare at Noida along this existing Expressway was not justified.

No reply has been received on the issue from the IIDD/Government.

Ambiguous provisions in the bid

3.4.8 We noticed that the YEIDA/IIDD took certain decisions at pre-bid stage which diluted the very spirit of execution of the project on PPP mode as discussed below:

- The bid document (Clause 1.8) provided an option to the bidders to execute the project either on JVC basis with 25 per cent equity contribution from YEIDA and 75 per cent equity contribution from the JV partner or exclusively by the JV partner without any equity contribution from YEIDA. This provision in the bid allowing two alternatives to the bidder gave room to YEIDA to escape from equity participation in the project and sharing of risks, benefits and responsibilities. This decision was against the principles of PPP as there was no return possible to the

²⁷ 25 million square meters or 2500 hectares.

²⁸ Sectors – 128, 129, 130, 131, 133, 134 and 151.

public sector and gave the bidders 100 *per cent* control free decision making.

- While there would be no profit sharing in the 100 *per cent* equity option, we noticed that the IIDD/Government did not make any provision in the bid requiring the bidders to mandatorily quote the concession period separately in case the bidder opts for (i) equity participation in the ratio of 25:75 by the YEIDA and the Concessionaire; and (ii) 100 *per cent* equity contribution by the Concessionaire only. As concession period for both options would be different from point of view of ROE/IRR and financial impact, the bid document was deficient to that extent. Not assessing the reasonableness of the concession period for both options, the IIDD/Government compromised the transparency and accountability in all transactions relating to award and management of the project.

The IIDD/Government stated (January 2014) that there was provision in the bid document for alternate option to the bidder to take the project on its own with 100 *per cent* equity contribution and all the bidders had the pre-knowledge of this condition. No changes have been made during the bidding process on/after the award of the bid.

The reply does not address the audit observation on the lack of due diligence by not providing condition in the bid to quote the concession period separately for with and without equity participation by the YEIDA. The due diligence has not kept in view the interest of the Public Sector Entity (YEIDA).

Absence of conditions in the bid to allow reasonable margin

3.4.9 In the absence of own TEFR, the YEIDA invited offers for (i) development of Techno-Economic Feasibility Report (TEFR) and Detailed Project Report (DPR); (ii) arrangement of finances; and (iii) construction and operation of the Expressway. In such a situation, it was in public interest to place caps²⁹ on the concession period as advised by the Department of Finance and discussed in paragraph 3.4.6. We noticed that no caps on concession period were placed in the bid documents to ensure that the Concessionaire receives only reasonable return³⁰ on his investment.

No reply was furnished by the IIDD/Government on the issue.

Post-bid deficiencies

3.4.10 We examined the records related to the bid evaluation process and TEFR/DPR prepared/submitted by the concessionaire and found that the IIDD/Government did not exercise due diligence while approving the decision for relinquishment of equity participation of YEIDA and accepted the TEFR/DPR of the Concessionaire without analysing the financial pros and cons as discussed below:

- The IIDD/Government approved the bid in favour of JIL on 23 January 2003 without first taking the option from JIL as to whether it would implement the project on JVC basis with equity in the ratio of 75:25 or would implement it exclusively without any equity participation by YEIDA. JIL exercised the option of exclusive implementation of project

²⁹ As suggested by the Finance Department, GoUP in July 2002.

³⁰ Say IRR of 15 *per cent* as allowed in the Report of the Core Group of Financing of the National Highways Development Programme (NHDP) or ROE of 20 *per cent* as advised by the Finance Department, GoUP in 2002 based on actual return of Noida Toll Bridge or ROE of 14 *per cent* and 15 *per cent* as provided for private power projects which have long time frames and are capital intensive.

without equity participation from the YEIDA on the same day i.e. 23 January 2003. This shows a clear lack of scrutiny at Government level while finalising the bid. Moreover, relinquishment of equity participation after acceptance of the bid was irregular and tantamounts to extending undue favour to JIL.

- The IIDD/YEIDA did not analyse the financial pros and cons of executing the project with or without equity participation of YEIDA. There was no examination whether implementation of the project without equity participation of YEIDA was in public interest or not. While YEIDA would have shared the risks to the extent of equity participation of 25 *per cent* it would also have earned YEIDA ₹ 872.94 crore³¹ up to 31 March 2013³² on account of toll revenue and income from land development rights. Further, YEIDA would continuously be deprived of sharing of the profits which would accrue in future for the whole life of the SPV.
- Moreover, while accepting the relinquishment of equity, the IIDD/ Government even did not exercise due diligence like providing conditions in the Concession Agreement to retain control and access of YEIDA/Government over the records relating to transactions made for implementation of both the land development and toll collection rights. Thus lack of due diligence on the part of IIDD/Government was against the concept of transparency and accountability in all transactions relating to award and management of PPP projects. This was also detrimental to the financial interest of YEIDA and also against public interest.

The IIDD/Government did not furnish any reply (April 2014).

High Internal Rate of Return (IRR)

3.4.11 As per clause 3.5 of the Concession Agreement, the Concessionaire was required to submit TEFR/DPR within two years of signing the Concession Agreement. We noticed that:

- Though the concession agreement was signed on 7 February 2003 YEIDA directed (November 2006) the Concessionaire to submit TEFR and the Concessionaire submitted TEFR in November 2006³³ i.e. 3.5 years after the signing of concession agreement,
- In the above TEFR (which was prepared by the Concessionaire in January 2003) an Internal Rate of Return³⁴ (IRR) of 21 *per cent* was shown and considered attractive by the Concessionaire.
- This TEFR was updated in December 2006 wherein IRR of 26 *per cent* was considered as attractive by the Concessionaire.

The IRR of 26 *per cent* was already higher than the 20 *per cent* ROE³⁵ stated by the Finance Department, GoUP as being reasonable. The same is also higher than the IRR of 15 *per cent* allowed in the Report of the Core Group of Financing of the National Highways Development Programme (NHDP) and Return on equity (ROE) of 15 *per cent*³⁶ being allowed on long term and

³¹ Being 25 *per cent* of the Accumulated General Reserve (₹ 237.92 crore) and Surplus (₹ 3,253.77 crore) as per Balance Sheet as on 31 March 2013 of the SPV.

³² From incorporation of SPV in October 2007 till 31 March 2013.

³³ Prepared in January 2003.

³⁴ Internal rate of Return is the rate at which the present value of cash outflow and inflow will be equal.

³⁵ ROE of 20 *per cent* was allowed in Noida Toll Bridge as stated by Finance Department, GoUP in July 2002.

³⁶ 15 *per cent* as allowed by the State Government for Power Sector Companies (average of 14 *per cent* till March 2009 and 15.5 *per cent* since April 2009).

capital intensive private sector power projects in the State. The IIDD/Government did not take these factors into account before approving a project with such a high IRR and accepted the same without analysing the financial impact of the same.

In the both the TEFRs, the Concessionaire proposed to ignore profitability of the toll collection from users of the Expressway during concession period citing various constraints/factors affecting the traffic volume³⁷. The same was accepted by the IIDD/Government without evaluating the fact that the plea of the Concessionaire to ignore the revenue from toll collection on the basis of constraints affecting the traffic volume, was in contravention to the DPR wherein the traffic was estimated by the Concessionaire itself.

Ignoring the revenue from toll, the Concessionaire proposed Cash inflow from revenue from sale of land on “As is where is basis”, and proposed an year wise Cash outflow on the expenditure on construction of the Expressway, for the period of six years from 2006-07 to 2011-2012 which is summarised in the table below:

Table 3.3: Details of Cash inflow and Cash outflow

							(₹ in crore)
Year ending	Up to March 2007	During 2007-08	During 2008-09	During 2009-10	During 2010-11	During 2011-12	Total
Cash Outflow	532	1070	800	800	800	486	4488
Cash Inflow	350	700	825	1150	1100	1000	5125
Excess/ (Short fall)	(182)	(370)	25	350	300	514	-
Cumulative Excess/ (Short fall)	(182)	(552)	(527)	(177)	123	637	-
Internal Rate of Return	--	--	--	--	--	--	26 per cent

(Source: TEFR prepared by the Concessionaire)

In the above cash outflow acquisition cost of the land for Expressway and development, construction cost of Yamuna Expressway and other incidental expenses including cost of funds aggregating to ₹ 4,488 crore were included and were to be met out from the cash inflow of ₹ 5,125 crore by way of sale of land on “As is where is basis”. Thus, the Concessionaire, based on their own projection of cash outflow and inflow, proposed to meet the construction cost of the Yamuna Expressway and earn an attractive 26 per cent IRR on their investment from the sale of land provided for development.

We noticed that IIDD/Government did not evaluate the pros and cons of the TEFR submitted by the Concessionaire wherein cash inflow from sale of all the five land parcels on “As is where is” basis was shown ₹ 5,125 crore during 2006-07 to 2011-12. We found that at the time of preparation of TEFR, the

³⁷ (i) Development of township along expressway, alternative modes of travels, development of economic mode of travel may adversely affect the traffic on expressway; (ii) Tendency of people to use other roads to save toll rather use the toll expressway; (iii) Traffic on account of Taj Economic Zone and Taj International Airport cannot be taken for granted; (iv) Shifting of traffic from existing network of roads/highways to the expressway cannot be fairly estimated; and (v) Operation and maintenance may become expensive in future.

value of the land parcel of Noida alone was ₹ 5,718.30 crore³⁸. If value of all the other four land parcels is added at their circle rates, the total Cash inflow from sale of all land parcels will be very high. Hence the possibility that the actual IRR may be higher than estimated IRR of 26 per cent cannot be ruled out. This contention is supported by the fact that our check of some samples³⁹ of the land sold so far by the SPV at Gautam Buddha Nagar show that the sale is at par with the current prescribed circle rates of land. The value of land parcel of Noida alone i.e., ₹ 5,718.30 crore on the date of preparation of TEFR was able to meet the total project cost of ₹ 4,488 crore as estimated in the TEFR with IRR of more than 26 per cent; the allotment of other four land parcels were additional benefit given to the Concessionaire.

Fixation of Higher Toll Rates

3.4.12 Since the satisfactory IRR of 26 per cent as calculated by the Concessionaire was exclusive of the toll collection, it was in public interest to fix the toll rates in such a manner so as to enable the Concessionaire to meet only operation and maintenance cost and ensure that the toll collection did not become an additional source of monetary benefit to the Concessionaire over and above the already higher IRR of 26 per cent.

Even though the IIDD/Government had the knowledge of the high IRR which excluded toll collection, despite this the toll rates⁴⁰ were fixed at rates which would, after deducting O&M expenses, give an additional income to Concessionaire over and above the IRR of 26 per cent. As a result the Concessionaire has already earned ₹ 118.46 crore⁴¹ from toll collection during the period from August 2012 to January 2014 (one year and six months). This amount is after deducting the actual O&M expenses of ₹ 49.03 crore from the actual toll collection of ₹ 167.49 crore for the period.

Thus, lack of due diligence on the part of IIDD/Government to fix the toll at rates to meet only the O&M cost led to undue benefit to the Concessionaire in the form of toll collections, over and above the already high IRR of 26 per cent.

The IIDD/Government did not furnish any reply on this issue.

³⁸

Land allotted at Noida Nature	Area (Sqm)	DM circle rate effective from July 2006 circulated by DM Gautam Buddha Nagar (per sqm)	Value (₹ in crore)	Remarks
Commercial	201300	70000	1409.10	
Total	4989300 (498.93 Hectare)		5718.30	

³⁹ Three plots measuring 50 acres each at Mirzapur land parcel, Gautam Budha Nagar sold to Gaursons Realtech Private Limited at Circle rate in 2013.

⁴⁰

Type of vehicle	Toll rate at JEWAR (From 0 km to 48 km)	Toll rate at MATHURA (From 48 km to 110 km)	Toll rate at AGRA (From 110 km to 164.3 km)
Car	₹ 100	₹ 120	₹ 100
Bus	₹ 300	₹ 400	₹ 350
LCV	₹ 150	₹ 200	₹ 150
HCV	₹ 300	₹ 400	₹ 350
MAV	₹ 450	₹ 600	₹ 550

⁴¹ Toll collected: ₹ 58.78 crore minus O&M cost: ₹ 18.76 crore for eight months from August 2012 to March 2013 = ₹ 40.02 crore and Toll collected: ₹ 108.71 crore minus O&M cost: ₹ 30.27 crore for ten months from April 2013 to January 2014 = ₹ 78.44 crore. Total margin accrued from Toll Collection Rights = ₹ 40.02 crore plus ₹ 78.44 crore = ₹ 118.46 crore.

Other Concessions

Exemption of stamp duty passed on prior to notification

3.4.13 The Secretary, IIDD conveyed (28 February 2003) to Chief Executive Officer of YEIDA (CEO) the permission of the GoUP to exempt the Concessionaire from paying stamp duty on registration of lease deeds of land allotted to it. On the basis of this letter stamp duty exemption worth ₹ 9.98 crore⁴² on registration of 241.5123 hectare land⁴³ registered from February 2003 to July 2003 was extended by the concerned Sub-Registrars. This exemption in stamp duty was irregular as the Government can remit stamp duty only by a notification under Section 9⁴⁴ of the Indian Stamp Act, 1899 which had not been issued on the dates of registration.

Consequently, the GoUP issued (17 November 2007) a notification (with retrospective effect from 13 February 2003), for exemption of stamp duty chargeable on the instruments of transfer of land to projects where investment of ₹ 750 crore or more has been made, provided the project is in public interest and remission is necessary to make the project financially viable. Further, the Secretary, IIDD, GoUP certified⁴⁵ (November 2007) that the project is covered by the Notification of November 2007 and remission in stamp duty on registration of lease deeds may be allowed accordingly.

In view of the aforesaid orders and notification the concerned Sub-registrars, did not charge stamp duty from the Concessionaire on registrations of land allotted to the Concessionaire for commercial, amusement, industrial, institutional and residential development.

We noticed that the terms and conditions of the bid document and the Concession Agreement did not provide for any exemption from stamp duty, hence, the Concessionaire submitted their bid without considering such exemption and permitting this concession *post facto* was undue benefit to the Concessionaire

The IIDD/Government in reply (January 2014) stated that an in principal approval was given in February 2003 for big development projects of ₹ 750 crore or more shall be given exemption of stamp duty. The exemption was given in accordance with above policy decision of the State Government.

We do not accept the reply as the exemption on stamp duty as per Notification of November 2007 was to be given if such an exemption is necessary to make a project financially viable. This PPP project was giving an IRR of 26 per cent and was already financially viable. Moreover, Stamp duty exemption was not a condition in the bid document and post facto extension of such a concession to an already financially viable project was an undue favour. The extension of the exemption of stamp duty on registration of land transferred prior to the issuance of notification under Section 9 of the Indian Stamp Act, 1899 was also totally irregular.

⁴² Stamp duty at the rate of 8 per cent of acquisition cost of ₹ 124.77 crore

⁴³ Allotted in Noida during the period from February 2003 to July 2003.

⁴⁴ Power to reduce, remit or compound duties – Government may, by rule or order published in the Official Gazette reduce or remit, whether prospectively or retrospectively, in the whole or any part of the territories under its administration the duties with which any instruments or any particular class or instruments, or any of the instruments belonging to such class, or any instruments when executed by or in favor of any particular class of persons, by or in favor of any members of such class, are chargeable.

⁴⁵ Vide letter number 4363/77-4-07-227N/07 dated 28 November 2007.

Housing and Urban Planning Department

3.5 Non-deduction of Building and Other Construction Workers' Welfare Cess

The Development Authorities failed to deduct Cess amounting to ₹ 3.35 crore from the bills of the contractors.

The Government of India (GoI) enacted the Building and Other Construction Workers' (Regulation of Employment and Conditions of Service) Act, 1996 (Act) to regulate the employment and conditions of service of building and other construction workers and to provide for their safety, health and welfare measures and for other matters connected therewith or incidental thereto. The GoI enacted the Building and Other Construction Workers' Welfare Cess Act, 1996 (Cess Act) which provided for levy and collection of a cess⁴⁶ on the cost of construction incurred by employers. The GoI also framed the Building and Other Construction Workers' Welfare Cess Rules, 1998 (Cess Rules) in exercise of the powers conferred by sub-section (1) of Section 14 of the Cess Act.

The aforesaid Acts and Rules were made applicable in the State of Uttar Pradesh with the notification (February 2009⁴⁷) of the 'Uttar Pradesh Building and Other Construction Workers (Regulation of Employment and Condition of Service) Rules, 2009⁴⁸ (Rules) by the State Government. The State Government also constituted (November 2009⁴⁹) the 'Uttar Pradesh Building and Other Construction Workers' Welfare Board' (Board) under Section 18 of the Act.

Rule 4 (3) of the Cess Rules provides that where the levy of cess pertains to building and other construction work of a Government or of a PSU, such Government or the PSU shall deduct or cause to be deducted the Cess payable at the notified rates from the bills paid for such works. The State Government also clarified (February 2010⁵⁰) that the amount of cess shall be deducted from the bills presented for payment and deposited with the Welfare Board in the same manner and spirit as is done in case of income tax deducted at source.

We noticed that:

- Ghaziabad Development Authority (GDA) entered into 10 agreements for execution of building and other construction works during the period March 2009 to August 2010 and made payments of ₹ 327.91 crore against the said agreements up to March 2013. The GDA, however, did not deduct Cess of ₹ 3.28 crore from the bills of the contractors (**Appendix-28**) and deposited (till March 2014) Cess of ₹ 2.76 crore⁵¹ from its own sources (₹ 1.92 crore deposited after being pointed out by Audit).

The GDA stated (December 2013) that Cess was not deducted from the bills of the contractors, as at the time of execution of agreements it was not mentioned that Cess would be paid by the contractors.

⁴⁶ At such rate not exceeding two per cent, but not less than one per cent.

⁴⁷ Notification No. 143/36-2-2009-251 (एसएन/95) dated 04 February 2009.

⁴⁸ Framed in exercise of powers conferred by Section 40 read with Section 62 of the Act.

⁴⁹ Notification No. 1411/36-2-2009-251(एसएन/95) dated 20 November 2009.

⁵⁰ Order No. - 392/36-2/2010 dated 26 February 2010.

⁵¹ September 2011 - ₹ 15.99 lakh, December 2011 - ₹ 68.34 lakh and September 2013 - ₹ 192.16 lakh.

The reply is not acceptable as the Cess Act and Cess Rules were made applicable in the State from February 2009, hence, incorporating a suitable clause enabling deduction of Cess from the bills of the contractors in all the agreements was the duty of the GDA.

Thus, deposit of Cess by GDA from its own sources without deducting the same from the bills of the contractors has not only resulted in non-compliance of the provisions of the Cess Act and Cess Rules but also resulted in undue favour to the contractors and loss of ₹ 2.76 crore to the GDA. Moreover, the GDA is also liable for interest and penalty on ₹ 0.52 crore⁵², being short deposit of Cess, under Section 8 and 9 of the Cess Act.

- Kanpur Development Authority (KDA) entered into five agreements for execution of building and other construction works during the period February 2009 to June 2010 and made payments of ₹ 10.12 crore against the said agreements up to March 2013 but did not deduct Cess of ₹ 10.12 lakh from the bills of the contractors (**Appendix-28**).

On this being pointed out, the KDA deposited (September 2013 to December 2013) Cess of ₹ 3.29 lakh⁵³ pertaining to three agreements, after deducting the same from the subsequent bills of the contractors. As regards non-deduction of Cess of ₹ 6.83 lakh pertaining to the remaining two agreements, the KDA stated (October 2013) that as the agreements were executed before the GoUP notification dated 20 September 2009, Cess was not deducted.

The reply is not acceptable as the GoUP notification making the Cess Act and Cess Rules applicable in the State was issued on 4 February 2009 and not on 20 September 2009, hence, Cess was required to be deducted from the bills of the contractors in case of all agreements executed after 4 February 2009.

Thus, failure of the KDA to deduct the amount of Cess from the bills of the contractors has not only resulted in non-compliance of the provisions of the Cess Act and Cess Rules but also amounted to undue favour to the contractors to that extent. Moreover, the KDA is also liable for payment of interest and penalty on ₹ 6.83 lakh⁵⁴ being short deposit of Cess under Section 8 and 9 of the Cess Act.

The matter was reported to the Government in June 2013; the reply is awaited (February 2014).

3.6 Systemic failure to ensure compliance of Government Orders

The Development Authorities failed to take concrete steps to develop a system to ensure compliance of the Government Orders regarding reservation and concession in fee to children of families below poverty line.

The Government of Uttar Pradesh (GoUP) ordered (April 1996) that the Uttar Pradesh Avas Evam Vikas Parishad (Parishad) and Development Authorities

⁵² Cess due - ₹ 3.28 crore (one per cent of payment to contractors) minus Cess deposited - ₹ 2.76 crore = ₹ 0.52 crore.

⁵³ September 2013- ₹ 1.41 lakh, October 2013- ₹ 1.86 lakh and December 2013 - ₹ 0.02 lakh.

⁵⁴ Cess due - ₹ 10.12 lakh (one per cent of payment to contractors) minus Cess deposited - ₹ 3.29 lakh = ₹ 6.83 lakh.

(DAs) shall allot plots to educational institutions at concessional rates⁵⁵. In public interest, GoUP further ordered (June 2009) that it shall be mandatory for such educational institutions, which have been allotted or are being allotted plots at concessional rates in schemes of the Parishad or DAs, to admit children of families of all sections of the society living below poverty line, by reserving 10 *per cent* seats and to allow 50 *per cent* concessions in total fee to them. The Parishad and the DAs were expected to ensure strict compliance of the aforesaid system.

We during audit of DAs⁵⁶ noticed that they have allotted (1999 to 2010) 51 plots to educational institutions at concessional rates and have allowed a total concession of ₹ 83.54 crore as detailed in table below:

Table 3.4: Details of allotment of plots to educational institutions

Sl. No.	Name of the Authority	Period	No. of educational institutions allotted plots at concessional rates	Amount of concession allowed (₹ in crore)
1.	Ghaziabad Development Authority (GDA)	2007 to 2010	22	44.62
2.	Kanpur Development Authority (KDA)	1999 to 2010	12	17.11
3.	Agra Development Authority (ADA)	2007 to 2010	17	21.81
Total			51	83.54

To ensure that the educational institutions are complying with the conditions regarding reservations in admissions and fee concessions to students of deprived classes, as per the provisions of the Government Order, it was essential that the DAs develop a proper system.

The DAs, however, instead of taking concrete measures and developing a proper system to ensure strict compliance of the Government Orders took only the following measures:

- issued directions to the schools to display the provisions of the Government Orders at the school gate; and
- incorporated a clause in the allotment letters/ lease deeds requiring the educational institutions to comply with the provisions the Government Orders.

On this being pointed out by Audit:

- The GDA stated (September 2013) that notices are issued to the educational institutions, from time to time to comply with the provisions of the Government Order; inspection is also done from time to time; if any complaint is received it intervenes and disposes off the complaints; and articles are published in newspapers regarding reservations and concessions to be allowed by the educational institutions.
- The KDA constituted (January 2014) a committee, to ensure compliance of the conditions of the Government Orders, which shall present a quarterly report on which necessary action shall be taken by the KDA.

⁵⁵ At 40 *per cent* and 50 *per cent* of sector rate for primary/secondary schools and degree/ professional colleges respectively.

⁵⁶ Ghaziabad Development Authority, Agra Development Authority and Kanpur Development Authority.

The reply of the Development Authorities corroborates our observation that the DAs had taken only random measures and had not developed any proper and regular system to ensure the compliance of the Government Order, as no results of inspections done and action taken were made available.

The matter was reported to the Government and Management in August 2013; replies of the Government and ADA have not been received (February 2014).

In view of the social objective of the scheme we recommend that the DAs should develop a system to periodically obtain information regarding total number of available seats, seats reserved for children of the targeted beneficiary class, total number of children admitted by the schools against such reservation and concession in fee given to such children; examine the records of the educational institutions to verify the correctness of information furnished by them and put in place a grievance redressal cell to ensure strict and regular compliance of the Government Order by the educational institutions which have been allotted land at concessional rates.

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