

CHAPTER – VII

Financial Irregularities

In construction activities, financial management is a vital aspect. Financial planning for the project is intended to ensure that a firm plan with adequate safeguards and contingency plans are in place before the project is started and it is required to ensure that the plan is properly executed over the life of the project. Further, as per GFR, every officer is responsible for financial prudence during financial management of the projects. However, it was noticed that financial irregularities existed during execution of projects as explained in succeeding paras. This chapter does not contain the cases of cost escalation which were elucidated in Chapter-IV and V. This chapter only contains cases of deviation from the financial rules and regulations and its monetary impact.

7.1 Mobilization Advance

Mobilisation advance is an advance paid to the contractor in order to mobilise his resources for starting the work. Para 32.5 of CPWD works manual stipulates that in respect of certain specialized and capital intensive works with estimated cost put to tender of ₹ 2.00 crore and above, provision of mobilization advance may be kept in the tender documents. As per the provisions of the MOU/agreement, PWOs are required to maintain a separate project account for each work. As per provisions of CPWD manual and instructions of CVC, interest was to be charged on mobilization advance for the period not adjusted. The CPWD Manual also envisages that recovery of 100 *per cent* mobilisation advances by the time 80 *per cent* work stands completed should be made. As per practice in vogue, CAPFs gives mobilize advance to PWOs, which in-turn grant it to contractors.

Audit examination of records revealed instances of non-maintenance of separate project account for mobilization advance, non-accountal of interest, irregular payment, excess payment, non recovery/adjustment, improper utilization of mobilization advance which were as follows:

- In 20 works, mobilisation advances amounting to ₹ 87.64 crore were given by the CAPFs to the executing agencies, but no separate project account for mobilization advance was maintained by the executing agencies due to which account of interest/adjustment of mobilisation advance could not be ascertained (**Annex 7.1**). NBCC did not offer their comments.
- Mobilization advance of ₹ 4.81 crore was paid for CRPF Group Centre, Bahalgarh, Sonipat (Haryana) during September 2012. It was required to be adjusted from the bills raised by NBCC as per provisions by May 2014, though 80 *per cent* of works had been completed, it was still outstanding as of December 2014.

- NBCC obtained mobilization advance of ₹ 33.78 crore for executing seven works at GC, CRPF Bahalgarh, Sonipat (Haryana) for onward advancing to contractors engaged for execution of works but only ₹ 6.59 crore was given to the contractor. Thus, the advances taken from the client department amounting to ₹ 27.19 crore were not fully utilized / invested for the intended purpose.

Further, as per standard format of MoU issued by MHA in May 2011, mobilisation advance was to be given at the rate of 10 *per cent* simple interest. However CRPF entered into MoU with NBCC in September 2012 without quantifying the rate of interest and gave an advance of ₹ 33.78 crore for executing above seven works, out of which NBCC gave only ₹ 6.59 crore mobilisation advance to contractors at the rate of interest of 13 *per cent* instead of prescribed 10 *per cent per annum* rate of interest and collected ₹ 55.39 lakh as interest from the contractors which was not adjusted in the works account. They released the bank guarantees without adjusting the interest on mobilization advance.

In its reply, CRPF admitted the facts and stated that the bank guarantee was released as per directions from Director General CRPF. Reply was not convincing as the conditions of MoU/codal provisions were to be followed in letter and spirit.

7.2 Non- levy of liquidated damages

As per clause-2 of General Conditions of Contract, compensation or liquidated damages (LD) at the rate of 1.5 *per cent* per month for delay in completion of work, computed on per day basis, not exceeding 10 *per cent* of the tendered value of work should be recovered.

It was noticed that, although there were delays up to 56 months in completion of 58 works, no compensation/LD charges amounting to ₹ 19.86 crore were levied on the contractors (**Annex-7.2**). In each case CAPFs authorities granted Extension of Time (EOT) as per clause of the agreement. It indicated that either executing agencies/CAPFs were responsible for delays in the works or contractors were given undue benefits by not levying LD charges for delays.

CRPF and SSB in their reply (June 2015) accepted the observation and stated that LD Charges would be recovered from the Running Bills of the NBCC as per provisions contained in the MoU. CPWD authority is preparing bills at their own level, hence, LD are being recovered by PAO from them accordingly as per provisions.

A notable example for levying of LD was observed in AR. EPIL divided the construction of 48 Type-II quarters at Jorhat, Assam into 3 works (16 quarters each) and awarded the works at the same time (May 2006) to three different contractors. Two contractors completed the work in April-May 2008. But the third contractor completed the work only in May 2011. The AR granted extension of time on grounds of heavy rainfall, ethnic violence, road block, steep hike in construction material etc. without imposing liquidated damages. As other two contractors could complete the work by April-May 2008, the

justification of AR not to impose LD on third contractor was improper, especially as the site for construction of these three contractors was same.

7.3 Excess Payments

7.3.1 Excess payment to contractors

CPWD Manual as well as general conditions of contract have provisions for price escalation of items such as steel and cement under certain conditions. However, it was noticed that in 49 works (**Annex-7.3**), an excess payment of ₹ 6.42 crore over the contractual stipulation was made to the contractors/PWOs. The excess payments made were mainly due to wrong calculation of price index, escalation of labour rates, cement and steel rates etc.

NPCCL replied (December 2014) due to oversight, the item was included and due care shall be taken in future to avoid such kind of lapses. CRPF in its reply stated that release of excess payment to contractor was done by CPWD / PWO as they release project wise payment to the CPWD/PWOs. Assam Rifles admitted (April 2015) the audit findings by stating that over paid amount would be recovered from the concerned agency and they would ask PWOs to include such provisions in the contract. SSB in its reply accepted the observation and stated that the executing agency was asked time and again and the same would be continued for the works to come up.

7.3.2 Payment of secured advance without procurement of material

As per clause 10 B(i) of General Conditions of Contract, the contractor shall be entitled to secured advance up to 90 *per cent* of the assessed value of any materials brought on the site, during the progress of the execution of work.

Audit noticed that in the work C/o combined building of administrative block / quarter guard / store block and trade men shop for, CRPF at Khunti, Jharkhand, ₹ 1.17 crore was paid as secured advance by CPWD without procurement of construction materials by the contractor. Besides, the joint physical verification (July 2014) disclosed that no materials were available at the work site against which secured advance was paid. No material of site account/stock account was furnished to Audit.

CPWD in its reply stated that secured advance was paid to the agency for the materials which were brought at the site. The work was stopped by the villagers. It further stated that the amount for acquisition of land was paid to the state but unfortunately till date, the state government had not made any arrangement for payment to the villagers. The reply of the department was self explanatory which indicated that even the land had not yet been acquired and an amount of ₹ 1.17 crore was paid as secured advance to the contractor which was irregular and indicated undue favour to the contractor.

7.3.3 Non-recovery of compensation

- In two cases, the amount of compensation due to recession of work levied on the contractor was not recovered by the executing agency. In one work, C/o 386 Nos. Type-II quarters including internal water supply, sanitary installation and electrification etc for CRPF Group Centre at Kadarapur, Gurgaon was awarded to a contractor at a tendered cost of ₹ 11.66 crore in September 2002 with stipulated date of completion as September 2004. The work could not be completed by the contractor and the work was rescinded in June 2006. The total payment made to the contractor was ₹ 6.16 crore till the rescission of the contract. As per Clause-2 of the agreement, compensation was to be levied by the CPWD from the contractor. CPWD issued notice for levy of compensation for delay at the rate of 10 *per cent* of the tendered value of the work for ₹ 1.14 crore in July 2006 and issued instructions to withhold an amount of ₹ 1.03 crore and no amount should be released to contractor without recovery of aforesaid amount. In absence of records, audit could not ascertain if the amount has been recovered from the contractor by CPWD.
- The work C/o 2 Nos. 180 men barrack at Behror, Rajasthan for CISF was awarded to a contractor by CPWD at tendered cost of ₹ 529.10 lakh in December 2004 with the stipulated date of completion as June 2006. Work was not completed by the contractor even up to August 2007. Department did not take punitive action against the contractor during the period of validity of contract. It unilaterally extended the contract up to June 2008 without the consent of the contractor. It issued show cause notice in February 2008 and rescinded the work in August 2008 by imposing compensation of ₹ 52.51 lakh. As there had been no valid contract after August 2007, action of department to issue show cause notice and rescission of work was lacking legal sanctity. On rescinding the work, the contractor approached the arbitrator who decided the matter in his favour stating that the action of department was unlawful and uncontractual awarding ₹ 52.91 lakh along with 9 *per cent* interest of ₹ 21.65 lakh from January 2009 to till date of payment i.e. August 2013. Thus, due to wrong rescission of work, department had to pay ₹ 21.65 lakh as interest which could have been avoided.

CPWD did not offer their comments in both cases.

7.3.4 Avoidable expenditure of ₹ 81.45 lakh

CRPF decided to construct an approach road at Kadarapur in March 2005 and requested CPWD to submit estimates. CPWD submitted estimates of ₹ 65.01 lakh in July 2005 and ₹ 84.40 lakh in January 2006 due to change of scope. CRPF HQ rejected the proposal in February 2006 as the proposed construction site belonged to State Government and not CRPF. The matter was taken up with State Government which asked CRPF to deposit funds for the project as they were not having sufficient funds. Instead of taking up the matter at the higher level, CRPF acquired the additional 3 acre state government land and constructed the road after incurring an expenditure of ₹ 81.45 lakh. CRPF incurred

avoidable expenditure of ₹ 81.45 lakh on construction of road in addition to cost of additional land acquired for this purpose.

CRPF accepted the observation and stated that avoidable expenditure was occurred due to non-availability of good road connectivity.

7.4 BANK GUARANTEE

As per Central Vigilance Commission (CVC) guidelines contractors should be insisted upon Bank Guarantees (BGs) to be submitted by them and sent to the organization directly by the issuing bank under Registered Post (AD). In order to safeguard the interests of the government, bank guarantees are obtained from the contractors, so that in case some defects creep in during or after execution, the same are rectified at the cost of contractor. Bank guarantee should not be released before fulfilment of the conditions of MoU. However following instances revealed irregularities in handling the bank guarantees:

- **Non-renewal/encashment of bank guarantee**

In 2 works executed by CPWD at Srinagar (CRPF & ITBP), it was noticed that the CPWD was not prompt in renewal of bank guarantee (BG) due to which they became time-barred while the work was in progress. The details are given below:

Table-7.1

(₹ in lakh)

S.No.	Name of the work	Force	Period for which bank guarantee not renewed	Amount
1	C/o Sos Mess and dormitory for SHQ ,ITBP Leh	ITBP	12.8.13 to 31.12.13	20.54
2	C/o 117 Nos Qtrs in CRPF Srinagar	CRPF	Since 31.12.10	7.03
Total				27.57

The executing agency in its reply stated that the concerned bank had been requested to revalidate the bank guarantees. The reply of the agency is to be seen in light of the fact that the concerned contractor was to revalidate the BG and not the bank.

- **Submission of fake Bank Guarantee (BG)**

Audit noted that the construction of 24 Type-II quarters of AR in Kangvai, Manipur with estimated cost of ₹ 4.81 crore was awarded in March 2010 and NPCCL paid ₹ 65.56 lakh to contractor during the period 25.3.2011 to 13.5.2011, without verifying the authenticity of two bank guarantees amounting to ₹ 20.34 lakh submitted by the contractor on 25 March 2011. After a lapse of one year NPCCL submitted the BG to the issuing bank for verification; the issuing bank confirmed that the BG submitted by the contractor was fake. This work was suspended for the last 3 years due to litigation on the matter of fake

bank guarantee submitted by the contractor. Thus, non-adherence to the CVC guideline by NPCCL resulted in delay in completion of the work.

- **Delay in submission of Performance Guarantee (PG)**

MoU concluded between AR and the PWOs stipulated that the general conditions of contract as specified in the agreements concluded by CPWD would be followed. The agreement of CPWD works stipulated forfeiture of Earnest Money Deposit (EMD) in the event of failure of the contractor to furnish Performance Guarantee (PG) within 15 days of issue of letter of intent (LOI). Examination in audit revealed that in 26 cases despite average delay of 5.8 months in furnishing the PG, the PWOs did not forfeit the EMD to tune of ₹ 2.15 crore (**Annex-7.4**). AR did not initiate any action to impress upon the PWOs the need for strict compliance with the safeguard clauses contained in the Agreement.

7.5 STATUTORY RECOVERIES

At the time of releasing payments of work to the contractor, CAPFs/executing agencies are required to deduct the statutory recoveries viz. Works Contract Tax (WCT), Worker's Welfare Cess, Royalty, TDS, VAT/Sales Tax, etc. from their running account/final bills as per laid down provisions. However, following instances were noticed where irregularities in recovery of statutory dues were found:

- Works Contract Tax (WCT) was to be deducted at the rate of 4 *per cent* of the total value of work done. However it was noticed that in 5 works (**Annex-7.5**), irregularities amounting to ₹ 14.33 lakh were noticed due to short / excess/ non-recovery of WCT from the contractors and excess deposit of WCT to state government.

In reply, Assam Rifles admitted the audit observation by stating that the variation in deduction of WCT was due to late receipt of WCT notification from respective State Governments.

- Audit found that in six works (**Annex-7.6**) relating to AR executed in Assam between August 2008 and October 2010, NPCCL / EPIL instead of the applicable rate of 4 *per cent* paid WCT at 9.375 *per cent* of the total value of the work to Assam Government. Consequently, there was excess payment of ₹ 82.00 lakh to the State Government. Neither AR nor NPCCL/EPIL furnished any reason for such excess payment.

In its reply (April 2015), EPIL stated that 4 *per cent* could not be applied as none of the contractors had submitted their registration certificate, owing to absence of such a provision in their contract. The contention of EPIL was not tenable as the rates quoted by the contractors were exclusive of WCT and AR who were directly depositing the WCT to the state government could have regulated the payment at 4 *per cent* immediately on notification by the State government. Moreover, AR

before making payment of WCT at higher rate of 9.375 *per cent* did not verify whether the contractor had registered with the state government and were not availing financial benefit by way of refund of 5.375 *per cent* (9.375 – 4) of WCT from the state government.

- As per the provisions of ‘Building and other works’ Cess Act, 1996, the labour cess @ 1 *per cent* was to be deducted from the payment of contractor for construction work and amount was to be deposited with the Board. However, it was noticed that in 112 works (**Annex-1.3**), labour cess amounting to ₹ 2.17 crore was not deducted and deposited.
CRPF and SSB in their reply (June 2015) accepted the observation by stating that labour cess at the rate of 1 *per cent*, which was paid to the NBCC had already been recovered by the PAO. In the case of CPWD, labour cess was being recovered. BSF in its reply (June 2015) stated that the departmental work in which labour cess was not deducted were those works which were awarded prior to order for deduction of labour cess. Reply was not acceptable as work contract tax was applicable since September 1996. Further, DG BSF admitted the audit contention by saying that necessary instruction had been issued to the concerned Frontier Hqrs. to deduct the WCT and labour Welfare Cess at the rate applicable in the state.
- As per clause 37(II) of General Condition of Contract “The contractor shall deposit royalty and obtain necessary permit for supply of the red bajri, stone, kankar, etc. from local authorities. As per Rajasthan state government rules, 1 *per cent* of bill value from October 2008 and 2 *per cent* of bill value from 15 November 2011 should be deducted from contractor’s bill. However in 24 works (**Annex-7.7**), royalty amounting ₹ 67.48 lakh was not recovered and deposited with state government.
- As per Sec.194 (J) of the Income Tax Act, 1961, Income Tax @ 10 *per cent* of the gross value of the work is required to be deducted at source from the Consultants and Professionals and under Section 194(c) of the Act any person responsible for paying any sum to any resident contractor/sub-contractors is required to deduct Income-Tax, at source, at the rate of two *per cent* /one *per cent* respectively from any sum credited or paid in pursuance of any contract. Audit scrutiny of records revealed that in 2 works of CRPF (**Annex-7.8**), TDS amounting ₹ 44.26 lakh was not deducted by CPWD & NBCC and deposited with the concerned authorities. CPWD/NBCC did not offer their comments.
- As per Rajasthan Value Added Tax Act 2003, at the time of making payment 3 *per cent* of bill value and in case of exemption 1.50 *per cent* of bill value should be deducted from contractors. Audit noticed that in 3 works of BSF and CISF, VAT amounting ₹ 0.78 lakh was not deducted by CPWD (**Annexe-7.8**). CPWD did not offer their comments.

RECOMMENDATION:

CAPFs should impose penalty in case of defaults in utilizing the advance. CAPFs should put requisite checks in place to ensure deduction of statutory provision such as Works Contract Tax at prevailing rates.



7.6 SHORT-DEDUCTION OF SECURITY DEPOSITS

As per section 21.2 of CPWD, Manual, security deposit shall be collected by deductions from the running bill of the contractors. A sum @ 5 per cent of the gross amount of the bill shall be deducted from each running bill of the contractor, till the sum along with the sum already deposited as earnest money amounts to security deposit @ 5 per cent of the tendered amount of the work. Such deductions shall be made unless the contractor has deposited the amount of security at the rate mentioned in cash or Government securities or Fixed Deposit Receipts. This is in addition to the performance guarantee that the contractor is required to deposit as per para 21.1 (3) of CPWD works manual.

Audit noticed that security deposits to the tune of ₹ 1.60 crore was not deducted from bills of the contractors by executing agencies in 38 works (**Annex-7.9**). Less deduction of security deposit does not provide security of the work executed beyond agreement value.

CPWD/PWOs and CAPFs except SSB did not offer their comments. SSB (June 2015) accepted the observation and stated that now due care would be taken.

7.7 DIVERSION OF FUNDS

As per provision of sections 51.2(3) and 51.2(5) of CPWD Works Manual voted and charged portions of the budget, as also the revenue and capital sections of the grant/appropriation are distinct, and re-appropriation inter-se is not permissible, and an excess in any one portion or section is treated an excess in the grant or appropriation. Similarly, savings and surrender should also be avoided. Large savings are indicative of loose budgeting in the sense that these prove the inability of the department to spend usefully the funds to the extent anticipated.

In six works (**Annex-7.10**), it was noticed that an amount of ₹ 1.92 crore was diverted to works not forming part of the main works.

CPWD while admitting the diversion of funds stated that there was a provision of contingencies in each and every AA/ES under which miscellaneous related works were carried out and the expenditure was made towards other developmental works

complementary to the main work. The reply was not acceptable as expenditure from contingency of the work was well defined in the CPWD manual which prohibits such type of expenditure and as such saving of one work can not be utilized for other work.

7.8 OTHER IRREGULARITIES

• Non-deduction of void in earth filling

In three cases while making payment for earth filling work and stacking of stone metal, the mandatory 10 *per cent* and 7.5 *per cent* deduction respectively towards void was not made thereby extending undue benefit to the contractor to the tune of ₹ 5.37 lakh (**Annexure-7.8**).

• No soil testing

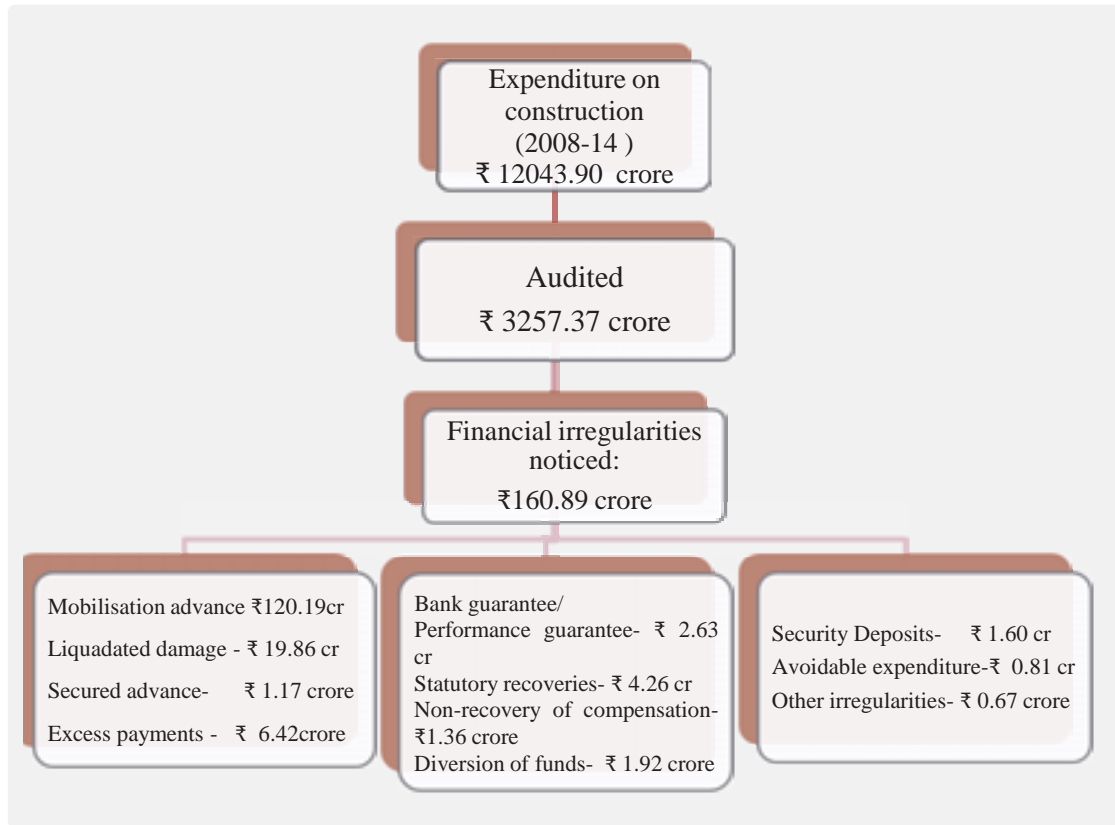
As per section of 2.7 of CPWD works manual, preparation of site/soil data was required to be done at pre-construction stage of execution of a work.

However, in 3 cases, NPCCL did not adhere to the above provision and awarded the work without soil testing. After soil testing, the design of the foundation was to be revised as per requirement of site which resulted in avoidable expenditure of ₹ 40.13 lakh in 2 works and expected minimum liability of ₹ 21.28 lakh in one work (**Annex-7.11**).

NPCCL in its reply stated that as per agreement any additional item, for which no rate is specified in contract, shall be worked out based on DSR. Reply was not tenable as had the soil testing been carried out prior to preparation of estimate, “Strip Footing” item would have been incorporated in the estimate; rate of which was less than the analysed rate of “Strip Footing”. Assam Rifles admitted (April 2015) the audit findings and further stated that soil testing would be ensured in the pre-construction stage by the agency.

7.9 CONCLUSION

Financial irregularities noticed during audit are depicted below:



It was noticed that there were irregularities in granting mobilization advance, non-maintenance of proper accounts, non-adjustment of mobilization advances, submission of fake bank guarantees and premature release of bank guarantees. Besides, cases of diversion of funds and excess payments were also noticed which showed improper monitoring on the part of CAPFs. The executing agencies were also not deducting the statutory recoveries. There is thus, a need for CAPFs to strengthen the mechanism of financial monitoring.