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HARYANA VIDHAN SABHA

COMMITTEE
ON
PUBLIC UNDERTAKINGS
(2008-2009)
(ELEVENTH VIDHAN SABHA)
FIFTY–FIFTH REPORT
ON THE
REPORTS
OF THE

COMPTROLLER & AUDITOR GENERAL OF INDIA
FOR THE YEARS
2003-2004, 2004-2005 & 2005-2006
(COMMERCIAL)

(Presented to the House on 20th February, 2009)

HARYANA VIDHAN SABHA SECRETARIAT, CHANDIGARH
FEBRUARY, 2009

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COMPOSITION

OF

THE COMMITTEE ON PUBLIC UNDERTAKINGS
(2008-2009)

CHAIRPERSON

1 Shri Anand Singh Dangi, MLA

MEMBERS

2	Shri Shadi Lal Batra, MLA	Member
3	Shri Sher Singh, MLA	Member
4	Shri Jitender Singh Malik, MLA	Member
5	Shri Somvir Singh, MLA	Member
6	Shri Bhupinder Chaudhary, MLA	Member
7	Shri Naresh Kumar Sharma, MLA	Member
8	Shri Arjan Singh, MLA	Member
9	Shri Randhir Singh, MLA	Member

SECRETARIAT

1 Shri Sumit Kumar, Secretary

2 Shri Rajinder Kumar Nandal, Deputy Secretary

INTRODUCTION

I, the Chairperson of the Committee on Public Undertakings, having been authorized by the Committee in this behalf present this Fifty-Fifth Report of the Committee on the Reports of the Comptroller and Auditor General of India for the Years 2003-2004 (Haryana Power General Corporation Limited) 2004-2005 (Uttar Haryana Bijli Vitran Nigam Limited and Dakshin Haryana Bijli Vitran Nigam Limited (Review) & Haryana Warehousing Corporation) 2005-2006 (Haryana Warehousing Corporation (Review) and Haryana Roads & Bridges Development Corporation Limited)

The Committee for the year 2008-2009 undertook the unfinished work of the previous Committee(s) and also orally examined the representatives of the Government/Public Sector Undertakings/Boards where necessary A brief record of the proceedings of the various meetings and own its inspection/spot-study has been kept in the Haryana Vidhan Sabha Secretariat

The Committee are thankful to the Accountant General(Audit), Haryana and his staff for his valuable assistance and guidance in completing this Report The Committee are also thankful to the Financial Commissioner and Principal Secretary to Government, Haryana, Finance Department including his representatives and representatives of Departments/Corporations/Boards concerned who appeared before the Committee from time to time The Committee are also thankful to the Secretary, Deputy Secretary, the dealing officer and the staff of the Haryana Vidhan Sabha for the whole hearted co-operation and unstinted assistance given in preparing this report

Dated Chandigarh .
The 29th January, 2009.

ANAND SINGH DANGI
CHAIRPERSON

REPORT

REPORT OF THE COMPTROLLER AND AUDITOR GENERAL OF INDIA FOR THE YEAR 2003-2004

Haryana Power Generation Corporation Limited

3.15 Performance of internal audit

3.15.9 Internal audit of UHBVNL pointed out under assessment of revenue of Rs 9 47 crore during 2003-04, of which Rs 8 22 crore was recovered Similarly, internal audit of DHBVNL pointed out under assessment of revenue of Rs 13 49 crore during 2002-03, of which Rs 9 92 crore was recovered

In their written reply, the State Government/Company stated as under :—

UHBVNL—

Year	Progress				
	Revenue Audit	Works Audit	Total	Realization of U/A of revenue	% realization of (only) revenue audit observations (5/2*100)
			Rs in lacs		
1	2	3	4	5	6
2000-01	910.73	18 02	928 75	619 93	68 07
2001-02	1043 21	324 75	1367 96	845 50	81 50
2002-03	1016 35	264 63	1280 98	1109 32	109 15
2003-04	947 38	659 87	1607 25	821 55	86 72
2004-05	943.27	865 74	1809 01	999.22	105.93
Total of above	**4860.94**	**2133.01**	**6993.95**		

The above would show that inspite of continued shortage of staff in field as well at HQ the quantum of under assessment detected has shown good position Besides in works audit also the irregularities are being pointed out.

DHBVNL—This para contains only statement of facts. In the absence of the audit observations, no comments are offered However, detection of under-assessment by the audit and its recovery to the extent of 74% itself support the high performance level of the audit

During the course of oral examination, the Committee discussed this para in details, the Nigams representatives informed the Committee that about 44 crore rupees out of 48 crore 60 lacs have been recovered. Therefore, the Committee recommends that sincere step be taken by the UHBVNL and

DHBVNL to recover the remaining amount and the Committee be informed accordingly.

Delay in issue of inspection reports and inadequate follow-up

3.15.10 Inspection Reports (IRs) approved by the Chief Auditors of the respective companies are to be issued within 30 days of the completion of audit as per norms fixed by the companies. Audit observed that IRs were not issued within the prescribed period A test check of 124# files relating to internal audit conducted during September 1999 to 31 March 2004 revealed that 44 IRs were issued after a delay ranging from one to 501 days.

In their written reply, the State Government/Company stated as under —

HVPNL—As regards the delay of issue of inspection reports in respect of HVPNL It is submitted that a new inspection report as pointed out in the para have been issued after a period from 1 to 132 days, as against the delay of 1 day to 501 days pointed out by the audit The delay exceeding 60 days was only in six cases which were under discussion & correspondence. Thus in the remaining cases the delay was marginal. The delay was due to inadequacy of staff in the internal audit wing of HVPNL However, efforts are being made to issue inspection reports in time inspite of the shortage of staff.

DHBVNL—Out of the total 124 reports, 34 reports relates to DHBVNL Out of 34 reports, 23 reports were issued within a prescribed period of one month Thus 69% reports were issued in time The delay in the issue of remaining reports can be attributed to the fact that there is only one works audit party and this party has to be deputed for some time for urgent work at different places. Further, there is acute shortage of manpower as already observed in the previous Para and the same is increasing every year This is another cause for the delay in issue of the Inspection Reports

UHBVNL—The practice and the procedure in the erstwhile HSEB has been that there had been an officer who regularly visited the filled auditee officers and not only discuss and finalize the audit reports there and then but also pursues checked for the replies It was when strength of the officers was as per sanction But in UHBVNL, at present against four posts of officers, only two are posted looking after revenue, works, administration and AG/COPU matters So the time availability for the officer to visit field officers has come down drastically.

However, in order to keep reasonable pace with the work, the procedure that has been adopted is that audit report prepared by Audit Party is finalized after the observations are discussed with the Audit Party either during the visit of the Chief Auditor SAO-WA to Division office or at HQ during the course of conducting the audit itself. This facility not only making only correct observations but also ensures timely quickly bringing the observations to the notice of auditee office A copy of the finalized audit report it left by the head of the audit party with the auditee office under proper acknowledgement and the reply is further perused from the HQ So the last

HPGCL three, HVPNL 59, UHBVNL 28, DHBVNL 34

day of conclusion of the audit is deemed to be the date of submission/issue of audit report to the auditee office So far as UHBVNL is concerned, 31 nos inspection report (IRS) have been issued from september 1999 to 31 st March, 2004

HPGCL—At present no internal audit report is pending for issue

During the course of oral examination of the representatives of the Nigams, the Committee observed that there was abnormal delay in issue of inspection report. Therefore, the Committee recommended that inspection report may be issued well-in-time in future.

Deferment of internal audit

3.15.11 The internal audit of the following units of HPGCL was deferred (August 2001) due to shortage of staff by the management

Sl No.	Name of Unit	Period of deferred audit
1	Tau Devi Lal Thermal Power Station, Panipat	April 1989 to March 1990 April 1991 to March 2000
2	Faridabad Thermal Power Station, Faridabad	April 1988 to March 2000
3	Hydel Project, Yamuna Nagar	April 1995 to March 2000
4	Thermal Design, Panchkula	August 1998 to March 2000

The deferred audit had not been planned so far (June 2004) Prolonged deferment of audit had defeated the very purpose of internal audit

In their written reply, the State Government/Company stated as under —

HPGCL—As already stated due to shortage of staff in the audit wing, the audit of the units have been deferred and the audit of said the units for the deferred period shall be taken in hand immediately after recruitment and posting of the staff in the audit wing & shall be completed in the shortest possible period

The Committee recommends that the internal audit of all the four companies for the deferred period be taken into hand immediately by posting required staff in the audit wing.

Arrears of internal audit

3.15.12 The audit of revenue transactions (relating to operation sub-divisions of distribution companies) was to be conducted on month-to-month basis and works audit on yearly basis. Audit observed that as on 31 March 2004, out of 150[$] units, works audit of 109[@] units was in arrears for the period ranging between one and four years Average arrears of revenue audit, as on 31 March 2004 worked out to 25.06 months The management attributed accumulation of arrears to shortage of staff

In their written reply, the State Government/Company stated as under —

HVPNL—In respect of HVPNL no arrears of internal audit exists The pending audit of one unit (Chief Engineer/D&P) as pointed out in the audit para was got conducted

HPGCL—there is no arrear of internal audit of revenue is pending

DHBVNL—The works audit of the accounting unit is undertaken on test basis after the completion of the financial year This is being done regularly To tackle the problem of arrear of revenue audit, a comprehensive programme was chalked out and a substantial progress has been made in this regard The audit of revenue accounts for the year 2001-02 was completed by 30-6-2004 & internal audit for the year 2003-04 was completed by 31-5-2005

UHBVNL—The arrear in audit has always due to shortage of staff

UHBVNL inherited arrears of audit from erstwhile HSEB/HVPNL The position of arrear over period of time has been as under .—

S No	Period ending	Arrear in No of months	Increase/decrease over last period	Staff position average	
REVENUE AUDIT				SO/RA	UDC
7	31-3-2000 (inherited from HSEB)	2208	—	40	53
8.	31-3-2001	2694	486	38	55
9	31-3-2002	3095	401	38	53
10	31-3-2003	3174	79	42	60
11.	31-3-2004	3158	(–)16	33	42
12.	31-3-2005	3367	209	39	45
WORKS AUDIT					
8.	1-7-99 (inherited from HSEB)	2736	—	—	—
9.	31-3-2000	3210	474	—	—
10	31-3-2001	3869	659	—	—
11	31-3-2002	4121	252	1	1
12	31-3-2003	4313	192	1	1
13.	31-3-2004	4637	324	1	1
14	31-3-2005	4904	267	1	1

The position in respect of Revenue audit was reviewed in 1-11-2001 and in view of the shortage of staff and still to expenditure the clearance of arrear control the like increase in area it was decided to reduce the percentage checking and also reduced number of days allotted for conduting the audit of one office

To expedite clearance of arrear of audit a proposal for outstanding the internal and under consideration

The Committee recommended that the arrears in the internal audit of all the four companies be cleared.

Delay in submission of reply to Internal Audit Reports

3.15.13 The auditee units were to submit the first reply within six weeks of the issue of IRs Audit observed that out of 139* IRs issued between September 2000 and March 2004, first reply of 55** IRs were received (upto 31 March, 2004) after a delay of one to 108[&] weeks No reply was furnished to the remaining 84[&&] IRs Audit further observed that 1,121 audit observations pertaining to 139 IRs were still outstanding as on 31 March, 2004

This indicates that there was poor response from auditee units for compliance of audit observations The companies had not formulated any monitoring system to review the position of outstanding paras

The matter was referred to the Government and companies in June, 2004, reply had only been received from HVPNL (endorsed by the Government) in August, 2004 Reply from other companies was still awaited (September, 2004)

In their written reply, the State Government/Company stated as under —

HVPNL—In the para, it has been indicated that the 1st reply of 42 No inspection reports in respect of HVPNL has not been recieved upto 31st March, 2004 In this connection, it is intimated that out of the 42 No inspection report, the 1st reply of 34 No. Inspection reports pertaining to the year 2001-02 & 2002-03 has been received and now reply of 8 No inspection reports (Annexure-'I') are awaited. A circular has been issued to the field offices *vide* Chief Accounts Officer (Audit Wing) Memo No 574-824/CA-8/Audit dated 04 04 2003, wherein it has been stressed that 1st reply of the inspection report should invariably be sent to the Chief Accounts Officer/Audit within the stipulated period of 6 weeks Remainders are being sent regularly to the concerned offices for submission of replies

HPGCL—No Internal Audit report is pending for reply

UHBVNL—There has been delay in submission of reply by the audittee offices However, the office of Chief Auditor, UHBVNL, regularly pursues for the submission of the reply.

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* HPGCL three, HVPNL 72, UHBVNL 30 and DHBVNL 34

** HVPNL : 30, UHBVNL 4, and DHBVNL 21

[&] HVPNL one to 72 weeks, UHBVNL seven to 85 weeks, and DHBVNL 10 to 108 weeks

[&&] HPGCL three, UHBVNL 26, HVPNL 42 and DHBVNL 13

As a metter of practice, the WAP as and when visits the audit office again the pending paras/reports of prior periods are brought to the notice of head of office and this is also incorporated in the current audit report.

DHBVNL—Out of 139 inspection reports, only 34 No inspection reports relates to DHBVNL. Out of these 34 reports the first reply to 23 inspection reports has since been recived As regards the reply to remaining inspection reports reminders are being issued to the concerned offices for submission of the replies

The Committee recommends that the Corporation/Nigams should ensure that timely reply may be supplied withtin the stipulated period in futher.

REPORT OF THE COMPTROLLER AND AUDITOR GENERAL OF INDIA FOR THE YEAR 2004-2005

2.2 Uttar Haryana Bijli Vitran Nigam Limited and Dakshin Haryana Bijli Vitran Nigam Limited (Review)

Installation of LT capacitor banks

2.2.19 Capacitor banks are installed to minimise reactive* Power drawn from the system, improve voltage/power factor of the load and save energy loss.

The companies got sanctioned (July/August 2000) two schemes each from REC for installation of LT capacitors on all the operation circlles at estimated cost of 11.20 crore The schemes envisaged annual reducation in energy loss of 29.2 MUs (value. Rs. 8 56 crore) DHBVNL placed (20 December 2000) a purchase order on GVR Electro Techniques Pvt Ltd. Secunderabad for supply installation and commissioning of 79,756 capacitors of 3 KVAR (25,314); 9 KVAR (34,025) and 18 KVAR (20,417) on DTs of all 13 operation circles of the companies at a total cost of Rs 7 38 crore

Terms and conditions of the purchase order provided that the firm was liable to repair/replace all defects in capacitors noticed within 12 months from the dated of their receipt free of cost for which security deposit/bank guarantee was teken from the firm. The firm completed supply of the capacitors up to August 2002, warranty of which expired during August 2003. The firm installed 76,839 capacitors up to October 2003 at a cost of Rs 7 15 crore.

The Executive Engineer, operation division, Sirsa reported (July 2001) that deu to defective design, 382 capacitors installed in operation circle Sirsa got damaged and caused damage to the DTS. A committee of two SEs each of operation and construction circle and other officers of the Company confirmed (July 2001) that there was design defect, which needed rectification. SE (Construction) of the Company further pointed out (November 2001) that all the 817 capacitors (cost Rs. 7.60 lakh) installed by the firm were not in working condition or connected in the circuit.

UHBVNL also observed (November 2004) that a larg number of capacitors damaged during warranty period had not been replaced by the firm. This indicates that the performance of the capacitors was not satisfactory. Audit observed that ignoring the defects pointed out by field offices in working of the capacitors and without obtaining report on the capacitors damaged during warranty period from field offices, the Company released (July 2004) Rs 63.98 lakh performance security. Thus, the Company did not utilise the benefit of warranty clause mentioned in the contract. The companies had also not assessed the extent to which benefit of envisaged in energy loss was derived.

* Reactive power is part of current flow in the system used by electro-magnetic curcuits of motors, transormers etc

In the ARCPSE meeting, Director (Projects) admitted that the companies had not assessed the number of damaged capacitors for their replacement

In their written reply, The State Government/Company Stated as under :—

A. UHBVN

LTCapacitors of rating 3KVAR, 9KVAR and 18KVAR installed in (OP) Circles, Karnal, Yamuna Nagar, Ambala, Kurukshetra, Rohtak, Sonepat and Jind are as under please —

S. No.	Name of Circle	3KVAR	9KVAR	18KVAR
1	Karnal	4274	4680	3157
2	Y. Nagar	1848	2598	1779
3.	Ambala	1604	1929	1271
4	Kurukshetra	4784	5741	1207
5.	Rohtak	600	1600	1540
6.	Sonepat	776	1117	1794
7.	Jind	1531	1837	1442
	Total	**15415**	**19502**	**12190**

It has been informed by all SE's 'OP' Circles (except 'OP' Circle, Sonepat that LT capacitors found defective during warranty period have been repaired/ replaced by the firm. In 'OP' Circle, Sonepat 1322 LT capacitors (212 No.s 3 KVAR, 335 Nos. 9 KVAR & 775 Nos 18 KVAR) found defective were not replaced by the firm

Show cause notice to Sh V.K Tandon, SDO and Shri Dharm Singh JE in the Operation Circle, Sonepat have been issued who have not got the defective LT capacitors repaired expeditiously from the firm.

Also the show cause notices to Shri J K. Jain the then Xens/Central Store, Panipat alongwith Shri Sarv Mitter Electrician holding the charge of JE in C/ Store, Panipat have been issued who have issued NDC in favvvour of the firm inspite of the fact that the firm had not repaired 1322 No defective LT Capacitors in (OP) Circle, Sonepat.

Moreover, DHBVNL released the B.G of the firm without getting NDC from the office of Chief Engineer/MM UHBVN Panchkula

B. DHBVN

A Purchase order No. DH-14/QD-3/XEN/MM-I dated 20-12-2000 was placed on M/s GVR, Electro techniques Pvt , Ltd , Secunderabad for supply, installation & commissioning of 3 KVAR (25,314), 9 KVAR (34,025) and 18 KVAR

(20,417) capacitors on Distribution transformers falling under all operational Circles of DHBVN & UHBVN. The firm had supplied the whole quantity i e 79756 of LT Capacitors and out of this 76839 Nos installed in the field as per Nigam wise detail given below :—

Description of material	Ordered Qty (Nos)	Supplied Qty (Nos)	Installed (Nos)	Balance (Nos.)
3KVAR DHBVN (i)	9314	9314	9032	282
UHBVN (ii)	16000	16000	15210	790
Total	**25314**	**25314**	**24242**	**1072**
9 KVAR DHBVN (i)	13358	13358	13065	293
UHBVN (ii)	20667	20667	19297	1370
Total	**34025**	**34025**	**32362**	**1663**
18KVAR DHBVN (i)	8417	8417	8355	62
UHBVN (ii)	12000	12000	11880	120
Total	20417	20417	20235	182
Grand Total	**79756**	**79756**	**76839**	**2917**

The payment of 76839 No capacitors of various capacities were released after receipt of report of their installation from the field offices The payment of 2917 capacitors supplied by the firm were not released due to non-installation in the field and undertaking was given by the supplier that the firm shall neither claim any payment for un-installed portion of the material nor they will take back the material left un-installed as a good-will gesture. The warranty for supply of material and installation had already been expired and firm had requested to release the withheld amount equal to 10% of contract value on A/cc of performance guarantee. After receipt of the consolidated NDCs (July 2004) from the concerned authorities of DHBVN COS, DHBVN, Hisar and UHBVN (SE/Store & work shop, UHBVN, Dhulkote), in which no adverse report regarding performance of material with in the warranty period was mentioned, so the out of withheld amount of Rs. 63.98 Lacs net amount Rs. 59.82 Lacs was released vide Cheque No. 203514 dated 23-7-04, as per decision taken by SPC in its meeting held on 12-5-2004.

With regard to defective design of 382 Nos. Cap installed in OP Circle, Sirsa, it is submitted that as per report of committee of SE 'OP', SE/Const. and other officers dated 17.07.2001, out of total 382 Nos Cap., installed by the firm M/ s GVR Electrotechnique, 16 Nos LT fixed Cap. were damaged and which lead to

damage of 5 Nos. D.Ts. due to defective design (Copy of report attached). The committee suggested for rectification of the design As per latest report dated 10 08.2007 of GM, OP Circle, Sirsa, the firm rectified 388 Nos. LT Cap including 382 Nos as referred above, as well as 50 Nos LT Cap. were got replaced by the firm (july 2002) which were found defective/damaged, under Sub Urban S/Divn. Sirsa A total of 853 Nos. L T Cap. (788 No. + 65 Nos) have been installed by the firm in S/ U S/Divn Sirsa, as per installation certificate issued by concerned SDO 'OP', which include 388 Nos. Cap. rectified and 50 Nos. replaced by the firm as per report of S.E 'OP'.

As regards to 817 Nos LT Cap reported defective/non working by SE/ Const. of the Company (Nov. 2001) it is intimated that these Cap. were partaining to 'OP' Sub Divn. Kosli (389 Nos.), Kanina 275 Nos. and Mohindergarh Sub Divn (153 Nos.) as reported by the then xen/Const. Gurgaon to SE/Const. of the company However, as per report now collected from DGM 'OP' Rewari, vide Memo. No. 321/ LT Cap. dated 23.11 2007, & No. Spl-I/LT Cap dated 9 1.2008,. these 389 Nos. LT Cap. were re-installed on dated 01 12.2001 after rectification by the firm and same were initially installed/commissioned during the month of October, 2001 in 'OP' Sub Divn., Kosli and date of further damage of these 389 Nos cap. is as under —

Date of damage	No. of Cap.
30.12.2002	85 Nos.
09.10 2003	105 Nos.
10.11 2004	80 Nos.
30 12.2004	119 Nos.
Total	**389 Nos.**

From above it is concluded that these 389 Nos. Cap. were damaged after warranty period of one year

Further DGM 'O' Divn. Mohindergarh has now reported vide his memo No. Nil/DR-4, dated 09.01.2008 that the L.T Capacitors were installed under 'OP' Divn. Mohindergarh during the period June, 2001 to January, 2002 and during inspection of 10/2001 the above referred 428 Nos. LT Capacitors (i.e. 153 Nos. Cap. at Mohindergarh City S/Divn and 275 Nos. Kanina 'OP' Sub Divn.) were found defective/ damaged within the period of three months and were not replaced by the firm, costing Rs. 4,02,965/-. There were 637 Nos. uninstalled LT capacitors available with DHBVN costing Rs. 5,19,340/- of which payment was not claimed and made to the firm.

Further as per undertaking submitted by the firm, neither payment of un-installed 2917 Nos capacitors valuing Rs 19,15,735/- was claimed nor lifted back by the firm and this material remained with the Nigams without paying any amount against 1750 Nos. defective LT capacitor costing Rs 18,95,890/- (DHBVN 428 Nos

+ UHBVN 1322 Nos.) to be replaced, as such there is no financial loss to the Nigam Also the show cause notices have been issued to the following officers, responsible for not safe-guarding the interest of the Nigam :—

Sr.No.	Name & Designation of the officer	Show Cause Notice No & date
1	Sh S P Singh Virk, DGM(Now Retd.)	SCN No 3/Conf/DVN-1829, dt 22.05 2008
2	Sh. Ved Bharat Kumar, AGM(Now Retd)	SCN No 3/Conf/DVN-1830, dt 22 05.2008
3	Sh. A.K. Bhanot, AGM	SCN No. 3/Conf/DVN-1831, dt 22 05 2008
4	Sh. R C Saini, AGM(Now Retd)	SCN No 3/Conf/DVN-1832, dt 22 05 2008
5	Sh D.P.S Yadav, AGM(Now Retd.)	SCN No 3/Conf/DVN-1833, dt 22.05.2008
6	Sh O.P Aggarwal, AGM(Now Retd)	SCN No 3/Conf/DVN-1834, dt 22.05 2008

The explanation by UHBVNL that "DHBNVL released the B G. of the firm without getting NDC from the office of Chief Engineer/MM UHBVNL Panchkula". is not agreed as the B G of the firm was released only after receipt of NDC from SE/ Stroe & workship, UHBVN, Dhulkote

During the course of oral examination and the reply furnished by the Nigams the Committee was not satisfied and records that an enquiry may be initiated and responsibilities may be fixed in this case against the officer/offcials. The Committee also desired that the Nigams should complete the enquiry within one month and the Committee be informed about the result of the enquiry report.

Maintenance of sub-stations and lines

Excessive damage of distribution transformers

2.2.20 Mention regarding excessive damage of DTs was made in paragraph 2B, 6.1 2 of the Report of the Comptroller and Auditor General of India for the year ended 31 March, 2002 (Commercial), Government of Haryana. As against the norm of 10 percent fixed (April 1983) by the erstwhile Board, percentage of damage of transformers to the installed transformers exceeded the norms as detailed below :

Year	Average number of transformers installed	Number of transformers damaged	Damage as per norms (Nos)	Damage in excess of norm (Nos)	Percentage of damaged transformers	Average repair charges per transformer (Rupees)	Expenditure in excess of norms (Rupees in crore)
UHBVNL							
2002-03	69,462	9,721	6,946	2,775	13 99	14,728	4.09
2003-04	73,456	10,817	7,346	3,471	14 73	15,407	5.35
2004-05	79,083	11,433	7,908	3,525	14 46	18,000	6.35
Total							**15.79**
DHBVNL							
2002-03	51,873	8,619	5,187	3,432	16 62	14,728	5.05
2003-04	56,416	9,102	5,642	3,460	16 13	15,407	5.33
2004-05	61,334	9,783	6,133	3,650	15 95	18,000	6.57
Total							**16.95**
Grand Total							**32.75**

Thus, the companies had to bear heavy financial burden of Rs. 32.74 crore on repair of transformers damaged in excess of the norms during 2002-05.

. Audit observed that while damage rate in operation circle Ambala was ranging between 9.14 and 10.40 percent during 2002-05, damage rate in remaining 12 operation circles of UHBVNL and DHBVNL ranged between 10.74 and 20.30 percent during 2002-05.

UHBVNL attributed (August 2005) the excessive damage rate to overloading of transformers due to unauthorised extension of load by agricultural consumers, two phase supply causing imbalance and low system voltage during peak tubewell load months. During ARCPSE meeting, the Director (Project) stated that in order to overcome these problems, the Company was making efforts for separating the agricultural and domestic loads in rural area. Outcome of these efforts would be awaited in audit.

In their written reply, the State Government/Company stated as under :—

UHBVNL: The norms of 10% in damage rate of distribution transformers was sketched upon by the Board of Directors so as to bring down the same to this level. Every sincere effort has been made by the Nigam to up keep the distribution transformers

The reason, for higher rate of damage distribution transformer is un-authorised use of motors by the agriculture consumers as well as by other category of consumers. Nigam has introduced Voluntary Disclosure Scheme w e f 1 5 2005 to 15.9 2005, 1.1 2006 to 28 2 2006 and 1 8 2006 to 31.8.2006. The position in this regard is as under :

Period 1.5.2005 to 15.9.2005

Sr. No.	Consumer category	No. of applications	Extension of load (KW)	Amount received (Rs. in lacs)
1	DS	14631	30812	19.50
2	NDS	1708	7318	38 60
3.	AP	40073	130891	53.14
	Total	**56412**	**169021**	**111.24**

In addition to above, 583202 No consumers have declared 158 9 MW of an-authorised load during the voluntary Disclosure Scheme from 1.1.2006 to 28.2 2006 and 1.8 2006 to 31 8.2006

In order to meet with the problem of overloading, 4174 new transformers were added during the period 2005-06 and 3993 no. during 2006-07 (upto 9/2006).

Consequent to above, the damage rate of distribution transformers has been reduced to 13.66% during the year 2005-06 and 8.82% for the year 2006-07 (upto 9/2006) Efforts are still being made to reduce the damage rate of distribution transformers.

Further, Nigam has also under-taken the work of separating the agriculture and domestic load in rural area. In this regard the work of 259 feeders covering 1326 villages has already been allotted and the work thereof is in progress. The NIT for balance 293 feeders is under process.

DHBVNL : It is submitted that the excessive damage rate of distribution transformer is due to unauthorized extension of load by agriculture consumer, low system volate during peak tube well load and two phase supply leading to imbalance load on transformer. It is further added that Nigam is making efforts to separate the agriculture and domestic load in rural areas which will reduce the damage rate in the coming years. The NIT of 350 Nos. 11 KV feeder for segregation of domestic load from agriculture load has alreaay been floated.

The Committee desired that the one year record of the Companies which carried out the repair of the transofrmers be furnished to the Committee within three months. The Department/Nigams furnished the information as required by the Committee. The Committee recommends that the sincere steps be taken to reduce the damaged rate of distribution transformers in future.

Haryana Warehousing Corporation

3.16 Loss due to improper storage

Improper storage and belated decision to recondition stock of wheat led to a loss of Rs. 53.14 lakh to the Corporation.

The Corporation keeps wheat stock procured by State agencies for Food Corporation of India (FCI) in covered godowns as well as on open plinth till delivery to FCI The terms and conditions of storage tariff, *inter alia,* provide that staff deployed by the Corporation would exercise reasonable care and diligence required by law for keeping the goods in good condition.

The Haryana State Federation of Consumers Co-operative Wholesale Stores Ltd (CONFED) deposited 87,697.12 quintal of wheat during April-May 1998 and the Corporation kept these stocks on open plinth at its Nissing godown. During March, 1999 to July, 2000, CONFED arranged delivery of 62,531.33 quintal of FCI leaving a balance stock of 25,165 79 quintal wheat. The Manager, Nissing centre intimated (August, 2000) its head office that the stocks stored on the open plinth was damaged and required segregation and improvement On joint inspection (March 2001) by the Corporation and CONFED, it was seen that the texture of the gunnies of peripheral layers, top and bottom layer bags was poor and some bags were water affected requiring segregation/salvaging and improvement to get the stock dispatched to FCI. The Nissing centre reconditioned (January, 2002) some bags (3500) but the FCI rejected (February 2002) the wheat stocks as the percentage of damage and weevilling* were beyond the permissible limits.

Thereupon, the entire stock was sorted/reconditioned (December 2002) by the Corporation at a cost of Rs 4 49 lakh. The stock worth Rs. 54 34 lakh was damaged which was disposed off at Rs. 18.91 lakh, desides, there was storage loss of 2,279 quintal valuing Rs: 13 22 lakh Balance stock of 17,908.90 quintal was delivered to FCI.

The Corporation suffered a loss of Rs. 53.14 lakh (loss on damaged stock: Rs. 35.43 lakh, storage loss . Rs 13 22 lakh and expenditure on reconditioning of stock . Rs. 4.49 lakh).

Thus, belated decision to recondition entire stock led to a loss of Rs. 53.14 lakh to the Corporation.

The matter was referred to Government and the Company in March, 2005; their replies had not been received (August 2005).

In their written reply, the State Government/Company stated as under :—

> It is admitted that the Corporation accepts wheat stocks procured by the State agencies for Central Pool and storage in covered as well as open plinth and make all out efforts to maintain the health of the stocks till

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* grain eated by insects

its delivery However, it is a fact that storage on open plinth is short term storage arrangments and should be liquidated by giving priority over the stocks stored in covered godowns

It is confirmed that CONFED had deposited 87697.12 qtls. of their wheat on open plinth at State Warehouse, Nissing during April, 1998 These stocks were accepted for storage for three months only as recorded on the Warehouse Receipt issued to Confed in token of receipt of these stocks

After a series of requests by Manager, SWH, Nissing, Confed initiated action for despatches of wheat in March, 1999 and dispatched 62531.33 qtls of wheat till 7/2000 But at the same time left a large number of cut & torn scattered bags, half built stacks and loose grains & failed to redress these despite verbal & written requests As per terms & conditions of storage, the charges for any extra services or damages caused to the gunnies are to be borne by the despositor. Therefore, the redressal work of left over and cut/torn bags, their replacement, etc was required to be done by Confed, but they insisted HWC to bear the expenditure. In fact the delay in redressal of the stocks on the part of Confed led to deterioration. Confed did not budge despite protracted correspondence and did not take action for reconditioning of stocks and replacement of gunnies. Audit itself has appreciated that the matter remained in correspondence with Confed, but when their response was not positive, the Corporation had no other option, but to undertake reconditioning of stocks. Consequently with the permission of Board of Directors, 4977.89 qtls. of damaged wheat of Confed was disposed of through tenders As per the provisions of Rule 34 to 37 of Punjab Warehouses Rules, 1958, which read as under, the Corporation is liable to pass on the sale proceeds to the depositors after retaining its dues:—

Rule 34. In case of the deterioration of goods, the warehousman shall serve the depositor with a notice to remove the goods within a period of one week from the date of receipt of the said notice.

Rule 35. On failure of the depositor to remove the goods, within the period fixed under rule 34, the warehouseman shall proceed to sell the good by public auction

Rule 36. The public auction shall take place in front of the warehouse or in the regulated market as may be deemed fit by the warehouseman. The warehouseman shall cause to proclaim the fact of auction by beat of drum at least two days prior to the auction at the place where auction is to take place.

Rule 37. Every warehouseman shall be bound to render to the depositor correct accounts and tender to him payment of the sale proceeds of goods realized after deducting all charges legally due to him including all

responsible charge for the removal of goods and sale by public auction, within a period not exceeding fifteen days from the date of such sale He shall make such payment to the depositor on surrender by him of the receipt duly discharged

Accordingly Rs 18,91,040/- received as sale proceeds of 4977 89 qtls would be passed on to Confed

The details of deposit of wheat by Confed and delivery of stocks to them vis-a-vis the financial implications in this case are given below :—

1.	Total qty of wheat stocks deposited by Confed at SWH. Nissing	87697 12 qtls.
2	Total qty. of wheat delivered to Confed (excluding storage gain of 833 16 qtls)	80439.72 qtls.
3	Balance undelivered qty	7257.40 qtls
4	Demaged qty disposed of through tenders by HWC	4977.89 qtls.
5.	Net balance qty not delivered to Confed (3-4)	2279.51 qtls.
6	Cost of 2279 51 qtls @ Rs. 580/- per qtl as per value mentioned on WHR	Rs. 13,22,115.80

Further Rs 4,48,882/- are recoverable from Confed on account of labour charges incurred on reconditioning and cost of gunnies used by HWC for replacement The figures of loss given in the audit para are, therefore, denied on the basis of details given above

On the score of above, it is vehemently denied that Corporation did not parsue the matter with Confed. In fact, the damage was caused due to prolonged storage in open and delay in arranging delivery and redressal of stocks on the part of Confed. Nevertheless disciplinary action has been initiated against the concerned official for deterioration in the stocks

During the course of oral examination the Committee observed that only one person cannot be held responsible, therefore, case may be examined against by fixing of the responsibility of other concerned officers/ officials in the matter and details thereof be supplied to the committee within fifteen days.

3.17 Misappropriation of rice

Delivery of paddy without adequate security led to misappropriation of rice and loss of Rs. 55.93 lakh.

The Corporation procures paddy for Central pool and provides the same to millers, who deliver rice to the Food Corporation of India (FCI) after milling The milling agreements entered (September and October 2003) with millers, *inter-alia*, provided that the millers would take delivery of paddy for milling purposes either against bank guarantees or delivery of advance rice to FCI equivalent to the cost of paddy handed over to them. The millers would be responsible for safe custody of paddy till delivery of rice and submit fortnightly reports indicating stock position of milled/unmilled paddy In the event of default in delivery of rice, the millers were liable to pay the rice of undelivered rice at the rates fixed by Government of India plus interest at cash credit rate

Audit observed (February 2005) that the Corporation, without obtaining bank guarantees or ensuring advance delivery of rice to FCI as per terms of agreement, allowed the millers to take delivery of paddy. The Corporation delivered 9809.17 MT paddy to four** miller for milling during October/November, 2003 to February, 2004. The millers, in turn, delivered 5991.14 MT rice to FCI during October, 2003 to May, 2005 against 6572 14 MT rice due, leaving an undelivered balance of 581$ MT rice valuing Rs 62.45 lakh The amount recoverable from millers after adjusting security of Rs 2 25 lakh and amount deposited thereafter (Rs. 4.27 lakh) was Rs. 55 93 lakh (August 2005). The Corporation did not initiate any action against the millers.

Thus, failure of the Corporation to obtain bank guarantee or ensuring delivery of advance rice by the millers to the FCI before delivering paddy to the millers facilitated misappropriation of rice by the millers and resulted in loss of Rs. 55.93 lakh

The management's reply endorsed by the State Government stated (August, 2005) that FIR had been lodged against the millers

In their written reply, the State Government/Company stated as under.—

> The Corporation is one of the State agency to procure paddy and get it milled through millers who deliver Custom Milled Rice (CMR) to FCI for Central Pool as per the instructions of State Government. During Kharif, 2003, the condition of the agreement to obtain Bank guarantee equivalent to cost of 72 MTs of rice was relaxed by the Government and it was decided to accept 3 consignment of rice in lieu of bank guarantee. Accordingly milling of paddy was got done from the millers after retaining paddy equivalent to 3 consignment of rice in lieu of bank guarantee. But

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** Jagdamba Rice Mill (1,690 85 MT), Shiva Food (2,095.87 MT), Shakumbhra Devi Rice Mill (2,615.55 MT) and Sethi Rice Mill (3,406 90 MT).

$ Jagdamba Rice Mill (60 MT), Shiva Food (271 MT), Shakumbhra Rice Mill (79 MT) and Sethi Rice Mill (171 MT)

despite regular persuation and intervention of District Administration, delivery of 581 MTs of CMR amounting to Rs 62 45 lakh was pending till May, 2005 in Kurukshetra and Yamuna Nagar Districts Against this, an amount of Rs 6 52 lakh (security Rs 2 25 lakh & Rs 4 27 lakh deposited by the millers) was available with the Corportion, reducing the net recoverable amount to Rs 55 93 lakh Since the millers failed to fulfill their contractual liability, FIRs were lodged against them However, after lodging of FIRs against the defaulter millers whereas M/s sethi Rice Mills, Pehowa as per direction of the Hon'ble Court, has deposited Rs 10 00 lakh with the Corporation, M/s Mata Shkumbri Rice Mills, Yamuna Nagar has cleared all the due and M/s Jagdamba Rice Mills, Yamuna Nagar has delivered two consignments of CMR to FCI Now the miller-wise position of balance CMR and maount deposited by them emerges as under —

Sr No	Name of Miller (M/s)	Balance CMR as reported in last reply	CMR delivered thereafter	Balance CMR (in MTs)	Amount deposited by the miller till now (in lakh Rs)	Security amount (in lakh Rs)
1	Shiva Food, Yamuna Nagar	271	0	271	2 00	0 50
2	Mata Shakumbri Devi RM, Yamuna Nagar	79	Account settled as the miller has cleared all the dues against him	0	0	0
3	Jagdamba Rice Mills, Y Nagar	60	50	10	0	0 50
4	Sethi Rice Mills, Pehowa	171	0	171	11 00	0 75
	Total	**581**	**50**	**452**	**13.00**	**1 75**

It is thus clear that continuous efforts are being made to get the balance CMR delivered or milling account settled by depositing cost of CMR from the concerned millers Now 452 MTs of CMR is pending The cost thereof works out to Rs 48 58 lakh against which Rs 14.75 lakh have been deposited by the millers reducing the net outstanding to Rs. 33.83 lakh The Corporation is hopeful of settlement of claim with the Millers.

The Departmental/Nigams representative intimated that the recovery remains to be effected from M/s jagdamba Rice Mill and M/s Shiva Foods, Yamuna Nagar. The Committee take it seriously and recommend that the action about the remaining recovery from both the firms be taken within a month and informed the Committee about the action taken.

REPORT
REPORT OF THE COMPTROLLER AND AUDITOR GENERAL OF INDIA FOR THE YEAR 2005-2006

3.1 Haryana Warehousing Corporation
(Review)

Outstanding dues

3.1.11 The storage tariff of the Corporation provided for recovery of storage charges in cash at the time of delivery of commodities or on monthly basis in the case of bulk depositors (viz FCI, FSD*, HAFED†, HAIC‡ and CONFED§) to whom credit facility was allowed. Details of agency wise outstanding storage charges as on 31st March, 2006 are as below

(Rupees in lakh)

Name of agency	Outstanding dues		
	From 1986-87 to 2000-01	From 2001-02 to 2005-06	Total
FCI	115 23	704 68	819 91
FSD	25 91	24 96	50 87
HAFED	21.91	20 59	42 50
HAIC	2 75	0 14	2 89
CONFED	41 02	64 24	105 26
Others	26.37	450 32	476 69
Total	**233 19**	**1264.93**	**1498.12**

Audit analysis revealed as under

- Though the COPU had recommended (March, 2003) for putting strenuous efforts for recovery from CONFED, HAFED and FSD, yet the outstanding amount from these agencies increased from Rs 1 53 crore (March 2003) to Rs 1 99 crore (March 2006)
- The total amount of Rs 8 20 crore recoverable from FCI included Rs 2 44 crore deducted by FCI during 1994-95 to 2005-06 on account of storage losses There were remote chances of recovery of this amount

The managment stated (July 2006) that all out efforts were being made for the recovery of the outstanding amount During the ARCPSE meeting, the management agreed

* Food and Supplies Department
† Haryana State Co-operative Supply and Marketing Federation Limited
‡ Haryana Agro-Industries Corporation Limited
§ Haryana State Federation of Consumers Co-operative Wholesale Stores Limited

to look into old cases and get the irrecoverable dues written off.

In their written reply the State Government/Company stated as under —

An against outstanding amount of Rs 1 99 crore the Corporation has already realized/adjusted 0 09 crore during 2006-07 A provision of Rs 0 05 crore for bad and doubtful debts already exists against this outstanding amount Major outstanding amount of Rs 1 02 crore due from Confed is subject to the adjustment of payable amount on account of gunny bales taken on loan and other day to day payments related to business of the Corporation Efforts are being made to realize remaining outstanding amount of Rs 0.88 crore from other agencies i e Hafed and FSD

An against recoverable amount of Rs 8 20 crore from FCI the Corporation has recovered Rs 2 18 crore during the year 2006-07. It clearly indicates that the Corporation is making sincere efforts for the recovery of outstanding dues Further the Corporation has already made a provision of Rs 2 62 crore (Rs 2 40 crore on account of storage losses and Rs. 0 22 crore for others) as doubtful recovery

All out efforts are being made for the recovery of the outstanding amount

However, it is a continuous process of the transaction with sister concerns and Corporation is hopeful to recover the amount during the course of business of the Corporation

Gist of replies of COPU para no. 3.1.11.

- Sum of Rs 51 00 lakh, Rs 43 00 lakh and Rs 105.00 lakh was recoverable from F S.D., HAFED and CONFED respectively as on 31 3 2006.
- Corporation realized Rs 7 00 lakh, Rs 12 00 lakh and Rs. 8.00 lakh from these agencies, leaving outstanding amount of Rs 44 00 lakh, Rs 31 00 lakh and Rs 97 00 lakh respectively, as on 31 3 2008
- Being co-related business transactions, there are several claims/counter claims with these agencies, efforts are being made to reconcile the accounts so that the outstanding being shown is cleared However, the Corporation has made provisions for doubtful debts in respect of payment outstanding for more than five years i e Rs 29 00 lakh, Rs 13.00 lakh and Rs. 59 00 lakh respectively
- Total amount of Rs 820 00 lakh was outstanding against Food Corporation of India as on 31.3 2006. Out of this, the Corporation has realized/adjusted an amount of Rs 292 00 lakh, leaving Rs 528 00 lakh as recoverable as on 31.3 2008, which includes Rs 244 00 lakh on account of alleged abnormal losses in storage of rice/paddy
- F.C I is being contested with reference to arbitrary deductions made on account of abnormal losses with the request to consider and reopen even our old cases settled on the pettern of their old norms which were not based on moisture loss in rice/paddy The cases are being contested on case to case basis

51
43
105.0
199.0

1.99
2.7
1.72

- However, the Corporation has made a provision for said amount Besides, provision of Rs 174 00 lakh has also been made in respect of storage charges outstanding for more than five years in the accounts of 2007-08 to depict true and fair accounts

Para : 3.1.11 - Outstanding dues

Name of Agency	OUtstanding as on 31 3 06 (Rs in lakhs)	Amount realized	Outstanding as on 31 3 08	Remarks
FSD	50 87	6 52	44 35	Provision of Rs 29 00 lacs made for doubtful debts for outstanding upto 31 3 2003 in respect of payments outstanding for more than 5 years
Hafed	42 50	11 76	30 74	Provision of Rs 59.53 lacs made -do- -do-
Confed	105 26	7 68	97 58	Provision of Rs 59 53 lacs made -do- -do- Rs 78 00 lacs is payable to Confed as per accounts of 2007-08 on account of gunny bales subject to reconciliation
Total	**198 63**	**25 96**	**172.67**	
FCI	820 00	292 00	528 00	Provision for abnormal storage losses and outstanding storage charges of Rs 244 00 lacs and Rs 174 00 lacs has been made

The Committee decided to kept this para pending and recommends that the Committee be informed about the progress of the recovery.

Loss of revenue due to deductions by FCI

3.1.15 For construction of warehouses, various specifications have been laid down viz construction of an office block, lavatory block, boundary wall, proper electrification, inner roads, separate water supply etc. Audit Scrutiny revealed that, after taking over warehouses, FCI deducted an amount of Rs 96 02 lakh from the storage bill of six* warehouses as these warehouses were not constructed as per the prescribed specifications Thus, failure of the Corporation to construct the warehouses as per specifications resulted in loss of Rs 96 02 lakh

The management stated (July 2006) that no condition for imposing such cuts was ever made by FCI while taking over the warehouses However, deficiencies wherever observed had since been rectified and FCI had been informed of the latest position with a request to refund the amount deducted The fact remains that the Corporation failed to construct the warehouses as per the requirements

In their written reply, the State Government/Company stated as under :—

FCI imposed cuts on account of non provision of separate office, boundary, lav block lesser width of roads and wire mesh shutters

In this regard, it is informed that as per consent letter of FCI, godowns were to be constructed as per HWC specifications and no mention was made about separate office, Lav block Boundary etc These facilities already existed in all the compuses as the godowns were mostly constructed in existing campuses where these facilities already existed The roads were constructed as per HWC specifications and FCI has not suffered any loss due to specifications or width of roads Further in their consent letter, FCI has mentioned nothing about the cuts to be imposed, Hence these cuts were totally arbitrary The Corporation is, however, vigorously pursuing the case with higher authorities of FCI

The Committee decided to kept the para pending to watch recovery and further recommended that warehouses should be constructed nearby all new grain markets of the State.

* Barwala, Ellenabad, Hansi, Jakhal, Pipli and Tohana

Farmers Extension Service Scheme (FESS)

3 1.16 GOI introduced in 1978-79, Farmers Extension Service Scheme (FESS) with a view to attract more primary producers, Implementation of this scheme was assigned to the Corporation The scheme envisaged assistance to the farmers in obtaining bank loans against the security of their warehoused goods, propagation of the benefit of scientific storage of foodgrains and safeguarding foodgrains from rodents and insects

Under the scheme, the Corporation visited villages and educated 17,144 farmers in 2,230 villages during the last five years up to 2005-06 The capacity utilisation by farmers, however, constituted only 0 19 to 2 65 per cent during the last five years The management attributed (July 2006) low utilisation by the farmers to higher procurement of wheat/paddy by the Government agencies and low retention of foodgrain stock at farmer's level

Had the scheme been implemented effectively over the years, the Corporation could have increased awareness among primary producers and motivated them to store their produce in the warehouses of the Corporation thereby expanding its customers base During the ARCPSE meeting, the management agreed to make wide publicity to popularise the scheme amongst the farmers

In their written reply, the State Government/Company stated as under —

In this connection, it is submitted that the Corporation is a farmer's friendly organization To cater to the needs of the farmers, efforts are made for setting up warehouses even at the remotest rural areas The Corporation is also running a Farmers Extension service Scheme in which the Teh Personnel of HWC visit the nearby villages to acquaint the farmers about benefits of scientific storage and various techniques of disinfestation of stocks During the last 5 years 17144 farmers (as detailed below) were contacted and educated about the scientific storage in the warehouses

Year	Number of farmers educated
2001-02	2586
2002-03	2476
2003-04	4424
2004-05	3922
2005-06	3736
Total	**17144**

The Corporation also launched mass contact programme in 124 villages during the year 2004-05 and 2005-06 In these programme functions and activities of the Corporation and benefits of scientific storage were explained

However, to popularize & implemet this scheme more efficiently among the farmers/traders and other prospective customers, all the DCs of 20 Districts in the State have been requested to involve the Government functioners at various level viz SDOs, BDPOs, Patwaries and Sarpanches in launching "Mass Awareness Programme" at village level and to promote this scheme

The Corporation also participated in 7 National and International exhibitions during the year 2006-07

In addition to this farmer/s traders were motivated by way of allowing rebate from time to time over the normal tariff in storage charges As a result, farmers availed warehousing facilities and had deposited 1264613 std bags (as detailed below) during the year 2001-02 to 2005-06 However, due to fast deliveries of these stocks the average utilization remained low

Statement showing deposits/withdrawals of farmers stocks

(In std. bags)

Sr No.	Year	Opening Balance	Deposits	Withdrawals	Closing Balance
1	2001-02	71982	68610	118661	21931
2	2002-03	21931	73451	73969	21413
3	2003-04	21413	145939	135218	32134
4	2004-05	32134	510879	408475	134538
5.	2005-06	134538	465731	481684	118588
	Total		**1264613**	**1281007**	

It is pertinent to mention here that the preference is always given to the farmers for deposit of stocks over the other depositors but at the same time it is also pertinent to add that wheat & paddy are the major cash crops of the State and the farmers generally intends to make fast buck thereof and do not prefer to hold these crops with them except a nominal quantity for their own consumption, feed and seed etc Furthermore fragmentation of land holding has taken to such as extent that land holdings with the farmers are very small As such small quantity of foodgrain is retained by the farmers at their own level for day to day consumption. Moreover, the scientific facilities in the form of storage bins are also available with the farmers at subsidized rates

The reason of low utilization of warehousing capacity by the farmers is also attributed to higher procurement of wheat/paddy by the Government agencies leading to lesser retention of foodgrain stocks at farmer's level, which consequently affected the farmers business in the warehouses Moreover, the majority of the farmers are marginal one, who are not having holding capacity as most of the farmers are under the burden of heavy debts, they are bound to sell out the crops to the arhtyas,

except for the seed and nominal quantity for their own consumption The following figures of procurement of wheat and paddy are given in support of above situation

Year	Procurement (Lakh MTs)	
	Wheat	Paddy
2001-2002	63 99	15 75
2002-2003	58 88	15 41
2003-2004	51 39	10 21
2004-2005	51 16	15 17
2005-2006	45.90	23 54

However effort are being made as suggested by the Audit in ARCPSE meeting for wide publicity in reural areas of the facilities being provided by HWC

During the oral examination of the representatives of the Corporation, the Committee recommends that the details of number of farmers educated under the said scheme during the year 2007-08 and the profit accrued to the farmers and Corporation due to the scientific storage be supplied to the Committee.

The Committee further recommends that the scheme should be reached to the more and more peoples of various areas instead of few villages and action may be taken in this regard and the Committee be informed within three months.

Avoidable loss of carry over charges

3.1.26 FCI intimated (August 2004) the Corporation that stock for the year 2002-03 may be delivered to FCI by 30 September, 2004 after proper segregation failing which it would not reimburse the carry over charges for the quantities accepted thereafter The Corporation failed to adhere to this schedule and despatched 2110 MT wheat during October 2004 to March 2006 for which FCI did not make payment of carry over charges of Rs 13 21 lakh Better coordination and timely delivery of stock could have avoided the loss

The management stated (July 2006) that action for delay or negligence on the part of staff in giving timely delivery of FCI shall be taken after examination.

In their written reply, the State Government/Company stated as under :—

It is correct that FCI had advised *vide* its letter dated 25.08.2004 to liquidate the wheat stocks of Rabi, 2002-03 at the earliest not only to the Corporation but to all the State procuring agencies A perusal of FCI's letter would reveal that there were only 977 MTs wheat stocks pertaining to the Corporation were identified as non-issuable at 3550 MT wheat stock for segregation and upgradation On the request of the State Government the Government of India/FCI had extended the delivery period upto 31 03 2005

It is mentioned that the delivery of wheat in Central Pool is entirely regulated by FCI and stocks had been delivered as and when asked for by FCI It is also for the FCI to decide priority for despatches of wheat on "FIFO" basis Non-observance of "FIFO" policy by FCI the agencies had to store wheat stocks for much longer period The Hon'ble High Court of Punjab & Haryana has also laid down the policy that stocks stored in open would be liquated by FCI within a period of six months The condition of the stocks as mentioned in FCI letter dated 25 08 2004 clearly shows that the stocks had already lived over 2 years storage in CAP storage for which the Corporation cannot be held responsible and for these reasons, restrict the carry over charges upto 31.03 2004 despite extending the acceptance date is totally arbitrary The Corporation has all along been persuading FCI for despatches to stocks stored in open

The following position would, however show the pace of liquidation of HWC wheat of 2002-03 —

(Fig. in MTs)

Sr. No.	Stocks procured by HWC during Rabi, 2002	Issued to FCI			Left over at the end of 2004-05
		2002-03	2003-04	2004-05	
1	5 48 lakh MTs	1.85 (34%)	3 38 (62%)	0 22 (4%)	0.02 (0.4%)

Apparently 96% stocks were delivered to FCI upto 31 03 2004 leaving behind a meager quantity of 4% due to non-liquidation of stocks by FCI despite our regular persuation This matter was also taken up by us with Director, Food & Supplies, Haryana *vide* latter dated 30 12 2004 It is, therefore, clear that Corporation made all out efforts for liquidation of wheat stocks of crop year 2002-03 As on 31 03 2005 only 2377 MT wheat stocks which constitutes only 0 4% of the total stocks of Rabi, 2002 were left with the Corporation and out of that quantity also 311 MTs were identified by FCI as issuable but delivery thereof was not taken by them for the reasons best known to them & as such had to be liquidated by the Corporation at its own The partially damaged/jointly categorized wheat stocks of all State procurement agencies (including HWC) have been disposed of through tenders at the level of State level

In view of above, it is clear that the delay in disposal of wheat stocks by FCI has resulted into down gradation of wheat which had to be disposed of against tenders The case is being examined as to whether there was any delay or negligence on the part of Corporation's staff in giving the delivery of wheat stocks of FCI which has led to the deterioration in stocks If any negligence is established on the part of any official, necessary action will be taken against them

The Committee feels that this is a serious lapse on the part of the officers/officials of the Corporation and fix the responsibility of the persons who-so-ever responsible for this lapse and informed the Committee by 31st January, 2009. Information not recieved till the finalization of the report (29th January, 2009).

Haryana Roads and Bridges Development Corporation Limited

4 3 Loss due to irregular/hasty forfeiture of security deposit.

Defective agreement and hasty decision to forfeit security before terminating the agreement put the Company to a loss of Rs 1 17 crore.

The Company issued (7 February, 2003) letter of acceptance for collection of toll tax at Uttar Pradesh border (Sonepat-Gohana Road) to Wazir Singh and Company, Hisar for a contract price of Rs 14 58 crore for two years The terms and conditions of the letter of acceptance provided that

- the contractor would deposit security of Rs 2 19 crore and first instalment of Rs 60 75 lakh within 15 days from the date of issue of the letter of acceptance and the remaining 23 instalments of Rs 60 75 lack each by 15 of every calender month,
- in case of default to pay any instalment by the due date, the same could be paid within the next 30 days alongwith interest at the rate of 0.05 per cent of the due amount of each day of delay If any instalment was not paid within 30 days of the due date alongwith interest, the contract will be terminated and security deposit and instalments laid would stand forfeited, and
- the decision of the Managing Director (MD) of the Company as regards interpretation of any of the conditions of the contract would be final and, in case of disagreement, the Contractor may request for appointment of any arbitrator for adjudication of dispute

The Contractor deposit the requisite bank gurantee (Rs 2 19 crore) and first instalment of Rs 60 75 lakh on 19 February, 2003 The contract came into force from 20 February, 2003 for two years

The Company asked (10 April, 2003) the contractor to deposit the second instalment due on 15 March, 2003 alongwith interest on delayed payment of instalment The Contractor contested (15 April, 2003) the due date and stated that the due date worked out to 15 April, 2003 as the first instalment was paid on 19 February, 2003 for the period from 20 February to 19 March, 2003 and that he would make the payment of the second instalment by 15 May, 2003 with interest in accordance with the provisions of the agreement The Company did not accept the verson of the contract and forfeited (9 May, 2003) the security and cancelled the authorisation of toll collection The Company started toll collector departmentally from 10 May, 2003 The contractor termed the forfeiture without termination of contract as illegal and requested (5 June, 2003) for appointment of an arbitrator for adjudication of the dispute The Arbitrator was appointed on 14 September, 2004

The arbitrator while upholding (11 October, 2004) the interpretation of the contractor also held the forfeiture of security before termination of the contract as arbitrary, illegal and against the provisions of the agreement A refund of Rs 1 17

crore with simple interest at the rate of 10 percent per annum was made out of the forfeited security after adjusting Rs 1 02 crore being the toll fee payable by the contractor from 20 February to 9 May, 2003 in terms of the agreement The Legal Rememberancer and Advocate General of the State held (December 2004) that the case was not fit for appeal against the award of the arbitrator The Company released (March 2005) payment of Rs 1.38 crore to the contractor (inclusive of interest of Rs 21 lakh) Mandatory tax deduction at source of Rs 2 10 lakh on the interest component was, however, not made

The Company worked out the loss of toll tax at Rs 6 02 crore due to short collection for the remaining period of the rate contract (10 May 2003 to 19 February 2005). Professional handling of the situation could have reduced the loss by Rs 1 17 crore

Thus, not recording the specific dates for payment of instalments in the agreement and hasty forfeiture of security without terminating the contract first had put the Company to a loss of Rs 1.17 crore.

The management stated (March 2006) that the Company had acted prudently and with a sense of financial discipline in the best interest of the Company. As regards non-deduction of TDS, the lapse occurred inadvertently and the Company was making efforts to recover this amount The reply is not tenable, as the Company should have acted in line with legal procedures to avoid the loss sustained

The matter was referred to the Government in March 2006, the reply had not been received (September 2006)

In the written reply, The State Government/Company stated as under —

It is submitted that Haryana State Roads & Bridges Development Corporation Ltd entered into contract for collection of toll at UP Border-Sonipat-Gohana road for a period of two years w e f 20 02.2003 at 0 00 hours upto 19.02 2005 at 24 00 hours with M/s Wazir Singh & Co on 19 02 2003 The agency deposited 1st instalment on 19 02.2003 and in terms of contract, above agreement and also of even date, committed to pay monthly instalments in advance on or before 15th of every calender month In the considered opinion of the concerned officials of the Company and in accordance with the intent of advance payments, 2nd instalment fell due on 15 03 2003, when the agency failed to pay 2nd instalment by 15 03 2003, the Company reminded the agency *vide* letter No. HSRDC/244, dated 10 04.2003 to deposit the instalment till 14 04 2003 with the interest in terms of the contract agreement On receiving conflicting responses from the agency, the Company again write to the agency *vide* letter No HSRDC/282, dated 22 04 2003 (Annexure-II), from the above, it would be seen that due opportunities were given to the agency and the procedures were followed considering the due date for 2nd instalment as 15 03 2003. But the agency failed to deposit the amount of instalment Accordingly, the Bank Gurantee of the agency was forfeited and the authorization issued *vide* No 188, dated 19 02 2003 was cancelled *vide* letter

No 354, dated 09 05 2003 (Annexure-III) However, the Arbitrator, appointed subsequent to the termination of the contract agreement on 09 05.2003, upheld the contention of the agency as regards due date for 2nd instalment

It is brought out that by accepting the contention of the claimant that the due date of 2nd instalment was 15 04 2003 instead of 15 03 2003, the Arbitrator ignored clause 2 of the contract agreement that the agency had agreed to pay installments due on due dates in advance If due date of 2nd instalment is taken as 15 04 2003, then the due date of the last instalment becomes 15 02 2005 with interest, whereas, the contract agreement was valid upto 19 02 2005 So, the decision of the Arbitrator implies that the agency could pay the instalment even after the expiry of the contract agreement which is a contradiction in itself As per the contract agreement, the instalments were required to be deposited in advance and agency could not be expected to pay the instalment even after the expiry of the contract agreement.

On receipt of the adverse reward from the Arbitrator on 11 10 2004 (copy enclosed) the Company approached LR and Secretary to Government of Haryana for seeking his expert view/opinion in the matter and legal resources available as regard appeal against the award Though, office of LR and Secretary to Government of Haryana in its advice dated 20 12 2004 did not say anything about merits of the award given by the Arbitrator, it opined that no case of misconduct could be made out against the Arbitrator and thus, the case was not fit for filing an appeal against the award Further, on the advice of LR and Secretary to Government of Haryana, the opinion of the Advocate General, Haryana was also solicited, who too opined on 30.12 2004 that it was not a fit case for filing appeal under Section 34 of the Arbitration and Conciliation Act, 1996

The contractor deposited the Bank Guarantee of Rs 2.19 crore and first instalment of Rs 60 75 lacs on 19th February, 2003 and the contract came into force from 20th February, 2003

It was further stated that the security deposit was refundable either on the completion/termination of the agreement Due to non deposit of the second instalment by the contractor, the Corporation forfeited the security. The toll plaza was operated by the contractor from 20.02.2003 to 09 05 2003. From 10 05 2003, the Corporation has taken over the charge of the toll plaza.

The Corporation has adjusted the proportionate of amount of instalment from 20 02.2003 to 09.05.2003 from the amount of security and after adjusting the amount of instalments upto 09 05 2003, the balance amount was Rs. 1 17 crore This amount of security deposit was refunded along with interest of Rs 21 00 lacs, making total of Rs 1 38 crore Therefore, there was no actual loss but it was merely a refund of security deposit alongwith interest as per the terms of the agreement

The above submission clearly show that the Company had acted prudently and with a sense of financial discipline in the best interest of the Company The acts of the Company should not be viewed in light of final outcome *i e* the arbitration award, which incidentally supported the agency ignoring the intent of the terms of the contract in this regard Therefore, it is requested that the charge of causing loss due to irregular/hasty termination of the contract agreement may please be dropped

As regard, non deduction of TDS of interest part of the award, it is humbly submitted that no loss should have been considered to be caused to the State Exchequer only because of non deduction of TDS, as the payments were made under an award by way of account payee cheque and the agency must have included the same into its taxable income and paid taxes accordingly.

During the course of oral examination, the Committee feels that T.DS. was not deducted by the Corporation.

The Committee feels that it is a serious lapse on the part of the Corporation and would like to know the reasons of this lapse.

The Committee also recommends that such like lapse be avoided in future, the Committee further also recommends that immediate action may be taken against the officers/officials who are responsible for these lapse and the Committee be informed about the action taken.

ANNEXURE - I

(Para 3 15 13)

HARYANA VIDYUT PRASARAN NIGAM LIMITED

From

Chief Accounts Officer,
(Audit Wing), HVPNL,
Panchkula

To

1 All Superintending Engineers (Field Offices), HVPNL

2 All Executive Engineers (Field Offices), HVPNL.

3 All SDOs (Field Offices), HVPNL

Memo No 574-824/CA-86/AUDIT
Dated 04-04-2003

Subject : Common irregularities observed by Internal Audit Wing due to non-observance of Rules, Regulations & Instructions issued from time to time.

While conducting the audit of the field offices it has been observed that the audit parties have pointed out some common irregularities These irregularities are of serious nature These irregularities are being occurred due to non observance of Rules/Regulations and Instructions issued from time to time

In order to ensure strict compliance of codal Rules/Regulations and to curb the tendency of laxity on the part of the supervisory staff, some of the prescribed instructions which have been found breached by Internal Audit parties in several field offices are re-iterated hereunder in brienf which should be observed meticulously by all concerned For details, the relevant Rules/Regulations/Instructions mentioned hereunder in this circular should be consulted

1. **Execution of works without sanctioned estimates.**

Rule 2 89 of PWD Code lays down that no work should be taken in hand unless the detailed technical estimate has been sanctioned or necessary sanction of the competent authority to start the work in anticipation of sanction of estimate has been obtained

During the course of audit it has been observed that a large no of works costing lacs of rupees have been taken in hand without proper sanction of the detailed estimates To avoid complication at a later stage, the execution of works need to be commenced only after detailed estimate has been sanctioned It has become a practice in the Nigam that in some divisions the works are taken in hand in anticipation of the sanction of estimate and that too without formal approval of competent authority to start the work It is emphasised that the codal instructions as mentioned above

need to be adhered to by the field offices strictly failing which disciplinary action can be taken against the delinquents

2. Incurring of expenditure over and above the sanctioned estimate

Rule 2 117 of PWD Code lays down that a revised estimate must be submitted when the sanction estimate is likely to be exceeded by more than 5% either becuase the revised rates are found to be insufficient or due to any other cause whatsoever It is incumbent upon the divisional officer to watch carefully the progress of the expenditure and to see that revised estimate is invariably prepared and submitted as soon as the necessity for the same arises

During the course of audit of the some of the divisions it has been seen that the expenditure is being incurred over and above the sanctioned estimate The progress of expenditure during the execution of work is not being watched and no steps are being made by the field offices for timely sanction of the revised estimates

In order to maintain financial discipline it is necessary that the field offices must follow the codal instructions as mentioned above

3. Purchase of material worth lacs of rupees prior to the issue of Purchase Orders and without recording the reasons of emergency in writing.

In accordance with the Delegation of Powers 28(c) the committee of Executive Engineer and SDO are entitled to purchase material upto Rs 2500/- for each item by hand quotation, in the case of emergency. In such emergency purchases, the following is required to be recorded in writings

(a) Reasons which cause the embergency

(b) Steps taken to avoid emergency together with the reasons to which these steps did not succeed

(c) Steps to avoid such emergency in future

During the audit of the divisions it has been observed that electrical material worth lacs of rupees has been purchased by the field offices without recording in writings the cause of emergency as required under the Delegation of Power as mentioned above. In none of the case which caused emergency for the purchase of material is being mentioned Further, the steps taken by them to avoid emergency have also not found recorded. Moreover, the purchase orders are not being got pre-audited from the Divisional Accountant in some cases.

It has also been seen that in most of the cases the material is being purchased prior to issue of the Purchase Order However, the field offices are simply recording a certificate on the voucher that the material has been purchased in emergency This blanket certificate cannot serve the purpose when a clear cut instructions have been laid down in the Delegatin of Power as mentioned above

The instruction sare framed so that no purchase agency should play any foul play while making purchases If the instructions are not followed in letter and

spirit by the field offices the very purpose of framing the instruction is defeated This has been viewed with concern by the management and it is emphasised that the instructions for purchase of material in emergency as mentioned in the Delegation of Power as well as in Purchase Regulation should be followed strictly by the divisions

4. **Incurring of expenditure of lacs of rupees on the engagement of labour through contractor without attaching the supporting document i.e. Form-10 and Form-14 (wages-cum-muster Roll) with the labour payment voucher of the contractor & compliance of other provisions of the Contract Labour (Regulation & Abolition) Act.**

According to the Nigam's Instructions it is the duty of the divisional officer to check that the labour payment released to the contractor has been fully utilised/ disbursed to the right person of the labour The payment needs to be made to be labour in the presence of JE/SDO and a certificate is to be recorded to this effect by the JE/SDO. Further, Form-10 and Form-14 (wages-cum-muster roll) are required to be attached with the voucher which is an essential document forming a part of the payment

Further Section 29 of the Contact Labour (Regulation and Abolition Act, 1978) circulated by the erstwhile Secretary HSEB, Panchkula to all the CEs/SEs/ XENs vide Memo No Ch-112/PKL-69/contract labour dated 25 09 1991 states as under —

1. Every principal employer and every contractor shall maintain such register and records giving such particulars of contract labour employed, the nature of work performed by the contract labour, the rates of wages paid to the contract labour and such other particulars in such form as may be prescribed

2 Every principal employer and every contractor shall keep exhibited in such manner as may be prescribed within the premises of the establishment where the contract labour is employed, notices in the prescribed form containing particulars about the hours of work, nature of duty and such other information as may be prescribed.

During the course of audit of the some of the divisions it has been noticed that labour from various contractors has been employed on the different electrical works under the division. On further scrutiny of vouchers of labour bills it has been seen that Form-10 and Form-14 are not attached with the bills of labour In the absence of supporting documents of the payment the authenticity of the payment cannot be checked. It is also not out of palce to mention here that as per Rule 2 10 of DFR Vol I, it is clear mentioned that a disbursing officer has to satisfy not only himself but also the audit department that a claim which has been accepted is valid, that a voucher is a complete proof of the payment which it supports and that an account is correct in all respects

In addition to above, it has been observed that while making payment to the contractor all the provisions of contract labour (Regulation and Abolition) Act as

circulated vide erstwhile Secretary, Board Memo No Ch-112/IRC-69/Contract Labour dated 25 09 1991 have been found complied with Moreover, daily progress register has also not been found maintained in some of the divisions

In order to maintain the financial discipline the instructions as mentioned above are required to be followed by the field offices strictly failing with it can lead to disciplinary action.

5. Purchase of stationery beyond competency

In accordance with the Delegation of Powers Sr. No 71, Executive Engineer is empowered to purchase stationery upto Rs 8000/- in a year and SDO upto Rs 1000/- in a year.

During the course of audit it has been observed that in contgravention of the above Delegation of Powers some of the divisions/Sub Divisions are incurring huge expenditure on the purchase of stationery beyond their competency as mentioned in the Delegation of Power

The very purpose of fixing the Delegation of Power for making purchases for various items by the Nigam is defeated if these are not followed by the delegated officers The power delegated to the offices in the Delegation of Power need to be followed strictly

6 Non recovery/adjustment of amount placed in the Misc. Advance of the employees.

According to the standing instructions of the Nigam the amount placed in the Misc Advances Group Head 28 401 of the employees either needs to be settled or the same is required to be recovered from the pay of the employees or got deposited from them

During the checking of the Schedule of Misc Advances of some of the Divisions it has been seen that huge amount of rupees is lying in the schedule which are still to be recovered/settled It has further been observed that some of the amount pertains to very old period. No efforts are being made by the divisional offices to recover/settle these amounts

Strenuous efforts needs to be made at the Executive Engineer level for settlement/recovery of the amount

7. Blockage of funds worth lacs of rupees due to drawal of material in excess of requirement/with requirement.

As per provisions contained in the Rules/Instructions issued from time to time no material should be drawn from the stores unless it is immediately required for the job On scrutiny of the records i e. Form-4 of JEs in some of the divisions it has been revealed that in contravention of the above provisions the material has been drawn from the stores which has not been utilised for 2-3 years and in some cases upto 5 years

The drawal of material without any requirement or in excess of the requirement is a serious lapse on the part of JE It also results in the unnecessary blockage of funds

It is emphasised that the aforesaid instructions need to be adhered to by the JEs strictly failing which disciplinary action should be taken against the delinquent

8. Incurring of expenditure in excess of budget grant.

According to latest instruction issued by the Chief Accounts Officer with the approval of Managing Director, HVPNL, Panchkula vide letter No 2562 dated 24 05.2001 no expenditure on any work or against any group head is incurred unless or until the bidget grant is allocated to the work/account head It has also been stated that the officer/official who incure expenditure against the budget grant will be personally held responsible for incurring of total amount

During the audit it has been seen that in some division the amount against some account head has been incurred in excess of budget grant In order to maintain financial discipline it is necessary that the field offices must follow the instruction issued by the Nigam in letter & spirit

9 Maintenance of Register of Measurement Book/Record used and more than 5 years measurement books

As per procedure detailed in Rules 7 16 (b) of DFR all the measurement books belonging to division should be numbered serially and register of these should be maintained in the Form DFR PW(21) in the divisional office showing the Sr No of each measurement book, the names of sub divisions to which issued, the date of issue and the date of its return so that its actual return to the division office may be watched

Rule 7 19 of DFR further provides that the sub divisional offices should be required to submit the measurement books in use to the divisional office from time to time atleast once a year for scrutiny and return

Similarly, as per instruction No 42 of MOI all measurement books more than five years old whether completed or used or not should be returned to the divisional office for record.

On scrutiny of the measurement book register by the audit parties it has been found that the above instruction are not being followed by the field offices with the result some of the measurement books are not producted to the audit on demand.

The above instructions needs to be followed strictly and all the measurement books as and when demanded by the audit party during the course of audit must be produced to them

10. Heavy Closing Balances

The field offices were instructed *vide* Chief Accounts Officer, HSEB, Chandigarh office circular Memo No CAO CAC/1/85-200, dated 28 06 1982 that

drawing and disbursing officer should adjust their cash flow in such a manner that the balance of the cash in end at the close of the month is reduced to Nil

While checking the cash book of the division as well as of the sub divisions it has been found by the audit party that in contravention of the above instructions heavy cash balance are being kept in the chest at the end of each month without any cogent reason

In future, if these instructions are not complied with and cash balance are allowed to remain in the chest the office concerned will be held responsible for the loss sustained by the Nigam It is emphasised that no money should be drawn from the bank unless it is required for immediate disbursement and the cash balance at the close of the month should be reduced to Nil

11. Maintance of register of Plant and Machinery

Instruction No 218 of EB Manual of instruction provides that a register of Plant and machinery should be maintained in all the divisions to show the specifications, date of purchase, price paid and the works on which used When any plant or machinery is transferred to another division, an extract from the register should be forwarded to that division. These will facilitate their valuation and sale A column should also be opened in the register in which references to authority under which an article is either returned or is transferred to another division should be recorded

During the course of inspection of the various offices by the audit party, it has been observed that register of plant and machinery is not being maintained and where it is maintained the same is quite incomplete This is viewed with concern Maintenance of proper record of assets of the Nigam is most essential and as such steps should be taken to open such registers where these are not being maintained and the same should be brought up to date where these are already being maintained

12. Non preparation/incomplete preparation of T&P Return

According to paragraph 6 of MOI No. 216 a consolidated account of the receipts, issue and balances of tools or plants is required to be maintained in the sub divisional offices in Form DFR (PW) 14, register of T&P This account should be for 12 months ending March *i e* which should embrace transaction upto date on which the account of the sub division for that month are closed. It should be kept in three parts —

(a) For articles in hand

(b) For articles temporarilty lent or sent out

(c) For shortage awaiting adjustment

It is however been noticed by the audit parties that in most of the sub divisions T&P returns are not being prepared by the sub divisions properly and the

divisional officers are not perusing the SDOs to furnish the same Non preparation of T&P return can lead to mis-appropriation of T&P articles

The compliance of above instructions for preparation of T&P return must be ensured and if these are not followed by an offices, disciplinary action can be taken against the delinquent official.

13. Non preparation of MAS account

Instructions regarding responsibility and duties for preparation/completion/ settlement of MAS accounts of the officers/officials were imparted vide Chief Accounts Officer, Memo No CAO/CAC/A-3/3346-3546, dated 26 09 1996 and Memo No 1099-1300/A-3, dated 17 09 1999 wherein it was decided that no account is to be allowed to go into arrear for more than a period of three months from the date it is due and in forth month the pay of the responsible technical subordinate may be drawn but not to be disbursed until and unless the accounts are rendered/re-concealed

Similarly, if the SDOs fails to conduct check measurement since after the measurement are recorded by the JE and Executive Engineer of the division is satisfied that SDO is responsible, strict action including with holding his salary is to be initiated

During the course of audit it has been observed that in some of the division where the MAS account are pending the instructions for taking action against the delinquent official are not being taken for clearance of the MAS account. It is emphasised that strict compliance of the above instructions where the MAS account is not submitted by the delinquent officials may be taken

14. Theft of Nigam material - Pursuance thereof

Nigam's material is stolen from store/site, of works Proper pursuance to recover the lost of material is not being carried out by the field offices The theft cases remain undecided for a long time Due to non settlement of the theft cases in time, sometime the delinquent official is retired from the Nigam services and after retirement it becomes very difficult to recover the loss from the retiree

It is also not out of place to mention here that the progress regarding settlement of the theft cases is also to be shown to be Whole Time Directors half yearly The Whole Time Directors has also desired that the long outstanding theft cases needs to be decided early Strenuous efforts may be made to settle the long outstanding theft cases

15. Non production of record.

As per standing instructions of the Nigam that full cooperation should be afforded to the audit parties both from the offices of the RAO/Chief Auditor and all the records as demanded by them be made available to them without any loss of time. But from the reports it has been observed that tendency of non production of record is there The lapse on this account will be viewed seriously and concerned SDO/XEN will be held responsible

16. Non submission of 1st reply of the inspection report and further observations thereof.

As per Rule 2 35 of DFR the Executive Engineer is required to reply the inspection report within a period of six weeks from the date of its receipt through his Superintending Engineer, after giving full explanation in respect of each item and Superintending Engineer in turn is required to forward it to the audit office with his comments within one week from its receipt from the Executive Engineer.

It has been seen that the 1st reply is not received within specified period and in several cases it is not submitted for months together, even after issue of repeated reminders by this office

It may be ensured that 1st reply of the inspection report is invailably sent the Chief Accounts Officer (Audit Wing) office within above stipulated period and reply of futher observations be also sent promptly

This issues with the approval of Chief Accounts Officer (Audit), HVPNL, Panchkula

Sd/-

Sr Accounts Officer (Audit)
for Chief Accounts Officer,
HVPNL, Panchkula

Annexure-II

(Para 4.3)

From

Managing Director,
Haryana State Roads & Bridges,
Development Corporation Limited,
SCO No 23, Sector 7-C,
Madhya Marg, Chandigarh

To

M/s Wazir Singh & CO ,
67, Arya Samaj Market,
Raj Guru Market,
Hisar

Memo No HSRDC/282 dated 22 04 2003

Subject: **Collection of toll at toll point new Uttar Pradesh Border on U.P. Border-Sonipat-Gohana road (Contract No. HSRDC/Toll/14).**

Ref : Your letter dated 12 04 2003 on the above subject

2 In this connection, it is brought to your kind notice that as per letter of acceptance issued on 7 02 003, the first installment of Rs. 60,75,000/- was payable within 15 days from the date of issue of letter of acceptance i e by 21 2 2003 and the remaining 23 installments are to be deposited by 15th of every calendar month The agreement was executed with you on 19 02 2003 and as per contract agreement, the second monthly installment of Rs 60,75,000/- was due to be paid by you in the next calendar month i.e by 15th March, 2003 and not by 15th April as stated in your above said letter, which has not so far been deposited by you Therefore, interest @ 0 05% per day of delay is payable by you as per terms of the Agreement In case any installment alongwith interest is not paid within 30 days counted from the due date then the contract agreement will be terminated without any further notice and security deposited will be forfieted as provided in the contract Agreement

3 You are, accordingly, requested to pay the second installment due to be paid w e f 15 03.03 alongwith interest @ 0 05% per day immediately but not later than 30 04 2003 positively

4 It may also please be noted that the third monthly installment has also become due to be paid w e.f. 15 04 2003. The same may also be paid alongwith interest for the delayed period to the Corporation

You are, therefore, again requested to deposit the second monthly installment alongwith interest w.e.f. 15.03.2003 onwards till the date of payment by the above stipulated date with the Corporation to avoid any breach of contract. **This may be treated as Final notice.**

Sd/-
Executive Engineer,
For Managing Director,
Haryana State Roads & Bridges
Development Corporation Ltd ,
Chandigarh

Annexure-III

(Para 4 3)

From

Managing Director,
Haryana State Roads & Bridges,
Development Corporation Limited,
SCO No 23, Sector 7-C,
Madhya Marg, Chandigarh

To

M/s Wazir Singh & CO ,
67, Arya Samaj Market,
Raj Guru Market,
Hisar

Memo No 354/HSRDC dated 9th May, 2003

Subject: Agreement for collection of toll at Toll Point near UP Border on U.P. Border-Sonepat-Gohana Road (Contract No. HSRDC/Toll/14)

You were authorized to collect toll at Toll Point near Up Border on UP Border-Sonepal-Gohana road with effect from 20 02 2003 at 00 Hours for a period of two years The agreement for toll collection was signed on 19 02 2003 As per agreement, you were required to deposit monthly installment of Rs 60,75,000/- (Rupees Sixty lacs seventy five thousand only) on 15th of every calendar month The installment due on 15th March, 2003 was not deposited by you You were asked vide this officer letter No HSRDC/31/02/197-198 dated 24 03 2003 to pay the installment due to be paid on 15.03.2003 alongwith interest due at the rate of 0 05% per day of delay as provided in the agreement It was also made clear to you that in case any installment alongwith interest is not paid within 30 days counted from the due date, then the contract agreement will be terminated without any further notice and security deposit will be forfeited as provided in the agreement You were further reminded vide letter No. HSRDC/244-245, dated 10 4 2003 to deposit the installment due on 15.03 2003 alongwith interest. However, no installment was deposited by you. In the meantime, the next installment amounting to Rs 60,75,000/- became due on 15 04 2003 You were again asked vide this office memo N HSRDC/282, dated 22.04.2003 to deposit the installments alongwith interest.

2 As per agreement if any installment is not paid within 30 days after due date alongwith interest, the contract agreement will be terminated without any further notice and your security deposit, installment of contract amount paid by you will stand forfeited without any claim from you and authorization issued to you for collection of toll will stand cancelled and withdrawn and your entitlement to collect toll will cease

3 As you have failed to pay the second instalment due on 15 03 2003 within 30 days after due date alongwith interest, your security deposit amounting to Rs 2,18,70,000/- (Rs Two crores eighteen lacs & seventy thousand only) vide B.G No 07/2002-2003 of Oriental Bank of Commerce, Urban Estate, Hisar is hereby forfeited Also the advance payment in respect of first installment amounting to Rs 60,75,000/- is also hereby forfeited Further, the authorization issued to you vide No HSRDC/188, dated 19 02 2003 to collect toll is hereby cancelled and withdrawn with immediate effect and your entitlement to collect toll ceases with immediate effect.

Sd/-

(M K. Aggarwal)
Managing Director,
(For and on behalf of Haryana
State Roads & Bridges
Development Corporation Ltd.)

Endstt No 355-57/HSRDC Dated 9th May, 2003

Copy forwarded to :-

1 Deputy Commissioner, Sonepat for kind information and immediate necessary action He is requested that M/s Wazir Singh & Co should be stopped to collect toll with immediate effect This is in continuation to Endstt No HSRDC/189-91, dated 19.02 2003

2 Senior Superintendent of Police, Sonepat for kind information and immediate necessary action He is requested to provide necessary help to S E Karnal/E E Sonepat to take over the site of toll point from M/s Wazir Singh & Co

3 The Superintending Engineer, Karnal Circle, P W D B&R, Karnal He is hereby advised to take over the site of toll point from M/s Wazir Singh & Co with immediate effect and make alternative arrangement for collection of toll departmentally

Sd/-

(M K Aggarwal)

Managing Director.

ARBITRATION AWARD

By

R.P. Bansal, Sole Substituted Arbitrator-cum-Chief Engineer (Roads) Haryana PWD B&R, Branch Chandigarh

IN THE MATTER OF THE ARBITRATION AND RECONCILIATION ACT, 1996

AND

IN THE MATTER OF ARBITRATION REGARDING DISPUTE ARISING OUT OF THE CONTRACT FOR THE WORK OF COLLECTION OF TOLL AT TOLL POINT NEAR UTTAR PRADESH BORDER ON U.P. BORDER-SONIPAT-GOHANA ROAD

(CONTRACT NO. HSRDC/TOLL/14)

BETWEEN

M/s WAZIR SINGH & COMPANY,
67, Arya Samaj Complex,
Raj Guru Market, Hisar ("The Claimant")

And

The Managing Director,
Haryana State Roads & Bridges,
Development Corporation Limited,
SCO-23, Sector 7-C, Madhya Marg,
Chandigarh-160019. ("The Respondent")

ARBITRATION AWARD

Before R P Bansal (Sole Substituted Arbitrator)
Chief Engineer (Roads)
Haryana PWD B&R Branch,
Chandigarh

IN THE MATTER OF THE ARBITRATION AND RECONCILIATION ACT, 1996

AND

IN THE MATTER OF ARBITRATION REGARDING DISPUTE ARISING OUT OF THE CONTRACT FOR THE WORK OF COLLECTION OF TOLL AT TOLL POINT NEAR UTTAR PRADESH BORDER ON U P BORDER-SONIPAT-GOHANA ROAD (CONTRACT NO. HSRDC/TOLL/14)

BETWEEN

M/s WAZIR SINGH & COMPANY, "ENTREPRENEUR"
67, Arya Samaj Complex, herein after referred to as "The Claimant"
Raj Guru Market, Hisar

And

The Manging Director, MD HSRDC
Haryana State Roads herein after referred to as "The Respondent"
& Bridges Development Corporation Limited,
SCO-23, Sector 7-C, Madhya Marg,
Chandigarh-160019.

Where as in pursuance of the contract No HSRDC/Toll/14 executed between M/s Wazir Singh & Co , 67, Arya Samaj Complex, Raj Guru Market, Hisar and the Managing Director, Haryana State Roads & Bridges Development Corporation Limited, SCO-23, Sector-7, Madhya Marg, Chandigarh for the appointment of Arbitrator under Section 15(2) of the Arbitration and Reconciliation Act, 1996 and Clause 28 of the Agreement pertaining to the work for the collection of toll at toll point near Uttar Pradesh border on U.P. Border-Sonipat-Gohana Road (Contract No HSRDC/Toll/14) Engineer-in-Chief, Haryana PWD B&R, Chandigarh being the appointing authority in accordance with the provisions of the Agreement had initially appointed Sh. K K. Gupta, the then Chief Engineer, Haryana Housing Board Chandigarh as Sole Arbitrator vide his memo No. HHUP-II/489, dated 04 08.2003 and he conducted two hearings. Later on Sh. K K Gupta was appointed by the Haryana Government as Managing Director, Haryana State Roads & Bridges Development Corporation Limited (Respondent) as such on the request of Sh K.K Gupta, the Engineer-in-Chief, Haryana PWD B&R Chandigarh being the appointing authority in accordance with the provisions of the Agreement appointed Chief Engineer (NH), Haryana PWD B&R, Chandigarh as Sole Substituted Arbitrator

vide his memo no HHUP-II/701, dated 17 11 2003 Six hearings were conducted by Sh. R.C Mehndiratta, Chief Engineer (NH)-cum-Sole Substitued Arbitrator) Although Sh R.C Mehndiratta Chief Engineer (NH) retired from Haryana Government service on 30 6 2004 but Engineer-in-Chief, Haryana PWD B&R Chandigarh re-appointed Sh. R C Mehndiratta (by name) as Sole Substituted Arbitrator vide his memo No HHUP-II/273, dated 05 07 2004 and he conducted one hearing However, later on he suffered heart attack and resigned from his assignment He requested the appointing authority to appoint another substituted arbitrator Accordingly, Engineer-in-Chief, Haryana PWD B&R, Chandigarh appointed the undersigned as Substituted sole Arbitrator vide his memo No HHUP-II/344, dated 14 09.2004 for the settlement of dispute between the parties arising out of Contract No HSRDC/Toll/14

Accordingly both the parties were directed to attend the hearing along with all the documents and witnesses

Whereas I, R P Bansal, the Sole Substituted Arbitrator-cum-Chief Engineer (Roads) Haryana PWD B&R Branch, Chandigarh carefully considered the submission made in writing and orally as well as documents/evidence placed before me by both the parties After going through the documents produced before me, along with written and oral arguments made by the Representatives and Counsels of both the parties, I hereby make my award as follows —

History of the case

1 Haryana Government vide notification No 9/106/2001-3-B&R(Works) (Toll 14), dated 31 12 2002 — in exercise of the powers conferred by clause (f) of Section 2 of the Haryana Mechanical Vehicles (Levy of Tolls) Act, 1996 (Haryana Act 9 of 1996), notified the Section of Uttar Pradesah Border-Sonipat-Gohana Road (State Highway No 11) to be "toll facility" for the purpose of the said Act. Further in exercise of the powers conferred by Section 4 of the said Act, the Governor of Haryana had authorized Haryana State Roads and Bridges Development Corporation Limited to demand, collect and retain tolls from the said toll facility at toll point near Uttar Pradesh Border

2. Managing Director, Haryana State Roads & Bridges Development Corporation Limited invited bids for the collection of toll at this toll point vide Bid Notice No. HSRDC/14, dated 04.12.2002 Bids were received on 30 12.2002 and the Claimant had quoted the highest bid price of Rs. 14,58,00,000/- for two years to be deposited in 24 equal monthly installments

3 The Respondent awarded this work to the Claimant and issued Letter of Acceptance to the Claimant vide his memo no HSRDC 107, dated 07 02.2003 The Claimant deposited Security amounting to Rs. 2,18,70,000/- (Rupees Two crores eighteen lacs seventy thousand only) vide Bank Guarantee No 07/2002-2003, dated 18 02 2003 of Oriental Bank of Commerce, Urban Estate Hisar and also deposited advance

installment to the Respondent amounting to Rs 60,75,000/- through Bank draft in favour of the Managing Director, Haryana State Roads & Bridges Development Corporation Limited payable at Chandigarh Agreement was executed between the Claimant and the Respondent on 19 02 2003 vide Agreement No HSRDC/Toll/14 for a contract price of Rs 14,58,00,000/- to be deposited in 24 monthly installments of Rs 60,75,000/- each and accordingly the Claimant was issued Letter of Authorization by the Respondent vide Memo No HSRDC/188 dated 19 02 2003 authorizing the Claimant for collecting toll from the toll point for period of 2 years at the rates specified in the Schedule

4 As per provision of cluase 2 of the Agreement, the Claimant had agreed to deposit remaining 23 installments of Rs. 60,75,000/- each upto 15th of every calendar month and on default to pay any installment by the due date, the same will be paid along with the interest calculated @ 0 05% per day of the delay within 30 days counted from the due date

5 That the Claimant had deposited the first installment before entering into Agreement on 19 02 2003 and remaining 23 installments were to be deposited on 15th of every calender month failing in the period of installment The Claimant had deposited first installment on 19 02 2003 which was for the period from 20 02 2003 to 19 03 2003 and the period of 2nd installment was from 20 03 2003 to 19 04 2003 and this installment was to be deposited upto 15th of calendar month falling in the period of installment i e upto 15th April, 2003 without interest the respondent interpreted that the payment of second installment falls due on 15 03 2003 without interest and 14 04.2003 alongwith interest, where as the Claimant interpreted that the payment of second installment falls due on 15 04 03 without interest and upto 15 05 2003 alongwith interest and so on The Respondent in communication to the Claimant vide memo No. HSRDC/ 244, dated 10 04 2003, intimated that the next installments falls due on 15 03 2003 and the Claimant was advised by the Respondent to deposit next installment of toll The Claimant informed the respondent vide Letter dated 12 04 2003 and 15 04 2003 that payment of next installment falls due on 15.04 2003 without interest and upto 15.05 2003 along with interest. Therefore, the Claimant would be depositing the second installment upto 15 05 2003 alongwith the interest The Respondent after considering the contents of the above mentioned letters of the Claimant again intimated that the next payment of installment falls due on 15 03.2003 without interest and upto 15 04 2003 alongwith interest The Respondent further directed the Claimant to deposit the second installment latest by 30 04 2003 and also warned the Claimant that if the installment is not deposited by the Claimant upto 30 04 2003, the Agreement executed with the Claimant would be terminated and security deposit shall be forfeited

6 However, Claimant again intimated to the Respondent vide letter dated 29 04 2003 that interpretation of calculating the due date for depositing the second installment by the Respondent is totally contrary to the provisions of the Agreement because no where it is mentioned in the Agreement that the second installment is to deposited in the next month of the month of execution of Agreement However, the Claimant further conveyed his commitment vide letter dated 29 4 2003 for depositing the second installment along with interest upto 15 05 2003 in accordance with the provisions of the Agreement

7 Respondent without further notice to the Claimant forfeited the security deposit of the Claimant amounting to Rs 2,18,70,000/- vide letter no HSRDC/354, dated 09 05 2003 and also got the bank guarantee no 07/2002-2003 dated 18 02 2003 of Oriental Bank of Commerce, Urban Estate Hisar amounting to Rs 2,18,70,000/- encashed from the bank on 10 05 2003 The letter of authorization for the collection of toll issued to the Claimant vide memo HSRDC/188, dated 19 02 2003 was also withdrawn and cancelled by the Respondent through memo No HSRDC/ 354 dated 09 05 2003 Accordingly the Respondent also took over the possession of the toll point on 10 05 2003 and started the collection of toll departmentally with effect from 10.05 2003

8 The Claimant intimated to the respondent that the action of forfeiture of security deposit and withdrawal of authorization for the collection of toll on 09.05 2003 is illegal because the Claimant observed that the due date for depositing the second installment along with interest falls on 15 05.2003 where as the respondent considered the due date for depositing the second installment along with interest as 14 04.2003 Further more, the Claimant observed that the Respondent had forfeited the security deposit of the Claimant without terminating the Agreement which is contrary to the provisions of the Agreement and therefore, the Claimant sought arbitration for the adjudication of their disputes I have been appointed as Sole Substituted Arbitrator for adjudication of the disputes raised by the Claimant

The points/disputes raised by the Claimant have been dealt as under:—

Dispute nos. 3.1, 3.2 and 3.5:—

3.1 What would be the due date for deposting second installment without interest and with interest and what would be the due dates for depositing further installments without interest and with interest?

3 2 As intimated in para 3 1 above, if the due date for the payment of second installment without interest and with interest is considered as 15th April, 2003 and 15th May, 2003, then the action of the Relspondent in forfeiting the security deposit amounting to Rs 2,18,70,000/- vide letter no. HSRDC/354, dated 09 05 2003 is illegal and against the provisions of the Agreement?

3 5 Whether the Respondent was required to communicate his final decision to the Claimant on the letter dated 29 04 2003 of the Claimant before taking action by the respondent vide letter no HSRDC/354, dated 09 05 2003

In support of the claim, the Claimant has explained/brought out as under —

(i) The Claimant has brought that as per provisions of the Acceptance letter, first installment amounting to Rs 60,75,000/- was deposited with the Respondent on 19 02 2003 thourgh bank draft and accordingly the Agreement was executed by the Claimant with the Respondent on 19 02 2003 As per provision of clause 2 of the Agreement, the Claimant had agreed to deposit remaining 23 installments of Rs 60,75,000/- each upto 15th of every calendar month and on deafult to pay any of the installment by the due date, the same will be paid along with the interest calculated @ 0 05% per day of the delay within 30 days from the due date The Claimant had deposited the first installment before entering into Agreement on 19 02 2003 and the remaining 23 installments were to be deposited on 15th of every calendar month The Claimant further brought out that they had deposited the first installment which was for the period from 20 02 2003 to 19 03 2003 and the period of second installment was to be deposited upto 15th of the calendar month falling in the period of second installment without interest Therefore, payment of the second installment for the period from 20 03 2003 to 19.04 2003 was due to deposited by the claimant upto 15 04 2003 without interest and upto 15 05 2003 along with interest

(ii) The Claimant clearly informed the Respondent vide his letter dated 29 04 2003 that the interpretation of calculating the due date by the Respondent for depositing the installments is totally contrary to the provisions of the Agreement No where it is mentioned in the Agreement that the next installment is scheduled to be paid upto 15.03 2003. In fact, the Claimant had deposited the first installment on 19 02.2003 and thereafter the Agreement was signed As per provision of the Agreement, the Claimant was required to deposit remaining 23 installments upto 15th of every calendar month and if the Claimant was required to deposit the next installment on 15th of the calendar month falling in the next month of the execution of the Agreement, then the Claimant will have to deposit 24 remaining installments on 15th of every calendar month falling in the period of contract, where as the Claimant is required to deposit remaining 23 installments. The Claimant further conveyed his commitment to the Respondent vide his letter dated 29.04 2003 to deposit the second installment upto 15 05 2003 alongwith interest in accordance with the provisions of the Agreement The Claimant further intimated to the Respondent that any illegal/arbitrary action of terminating the Agreement in violation of the provisions of the Agreement will be the responsibility of the Respondent and they will claim full damages for the same.

(iii) The Claimant further brought out in their Rejoinder that the plea taken by the respondent that the Claimant had deposited the first installment in the month of February, 2003 and therefore the Claimant was required to deposit the second installment during the month of March, 2003 without interest i e upto 15 03 2003 is further proved hypothetical and imaginary because as per version of the Respondent, if any Entrepreneur deposits the first installment on 31st of any month, then he has to deposit the second installment on 15th of the next month i e after 15 days of depositing the first installment and if any Entrepreneur deposits the first installment on 1st of any month, then he has to deposit the second installment on 15th of the next month i e 45 days after depositing the first installment This shows that Entrepreneur depositing the first installment on 1st of any month is allowed 45 days for depositing the second installment, where as the Entrepreneur depositing first installment one day prior to 1st of the month is allowed only 15 days for depositing the second installment This is totally hypothetical and against the spirits of the Agreement where as the fact remains that the payment of second installment falls due on 15th of that calendar month falling in the period of installment and so on

(iv) To support the version about the interpretation of the due dates for depositing the second installment and subsequent installments, the Claimant has given reference of two other Agreements executed by the Respondent with other Entrepreneurs i e. Sh Kushal Singh of Sikar in respect of Agreement nos HSRDC/Toll/4 for the collection of toll at toll point in Km 4 1 near Palwal on Palwal-Sohna Road and HSRDC/Toll/13 for the collection of toll at toll point near UP Border on Kairana-Panipat Road In these two cases, the Entrepreneur had deposited first installment on 03 01 2003 which was for the period from 04 01 2003 to 03 01 2003 As per version of the Respondent taken in this case, the due date for depositing the second installment should have been 15th of January, 2003 whereas the Respondent in both these cases considered the due date for depositing the second installment as 15th February, 2003 i.e 15th of the calendar month falling in the period of installment from 04 02.2003 to 03.03 2003 Although the Respondent considered the due dates for depositing the second installment in the above two cases as 15th of the calendar month falling in the period of installment where as Respondent adopted different yardstick for calculating the date for depositing the second installment by the Claimant which is totally contrary to the provisions of the Agreement

(v) After depositing first installment on 19 02.2003 which was for the period from 20.02 2003 to 19 03 2003, claimant had undertaken to deposit the remaining 23 installments He could only think of depositing the second installment after the expiry of period of first installment i e after 20 03 2003 Since he had to deposit the installment on 15th of the

calendar month as such the due date for depositing second installment would automatically fall on 15 04 2003 i e 15th of the calendar month falling in the period of second installment Furthermore, the Agreement period is from 20 02 2003 to 19 02 2005 and 15th of every calendar month would fall 24 times during the period of Agreement, where as the claimant is required to deposit remaining 23 installments and not the remaining 24 installments Evidently the due date for depositing the second installment without interest would be 15 04 2003 and with interest as 15 05 2003.

(vi) Furthermore, as per provision of clause 6 of instructions to Bidders (Toll Remittance), the toll shall be collected by the Entrepreneur and remitted in the form of bank draft in favour of the Managing Director, HSRDC payable at Chandigarh on monthly basis by 15th of every calendar month As per provision of this clause, no where it is mentioned that advance installment has to be deposited The Entrepreneur is to collect the toll and thereafter remit the same to the Respondent But whatever the case may be, the due date for depositing second installment falls due on 15th April, 2003 without interest i e 15th of the calendar month falling in the period of second installment.

(vii) As per provision of clause 2 of the Agreement, it is clearly specified that in case any of the installment is not paid within 30 days counted from the due date, then the Contract Agreement will be terminated without any further notice As per version of the Respondent, if the due date for depositing the second installment without interest was 15th March, 2003 and upto 15th April, 2003 alongwith interest, then the Respondent should have terminated the Contract Agreement immediately after 15th April, 2003 thereby not allowing the Entrepreneur to collect further toll from the toll point beyond 15th April, 2003, but Respondent in this case without terminating the Agreement forfeited the security deposit of the Claimant on 09 05 2003 which clearly shows that he had the intention of considering the due date for depositing the second installment as 15th April, 2003 without interest and 15th May, 2003 alongwith interest and that is why kept on waiting after 15th April, 2003 and did not take any immediate action However, Respondent forfeited the security of the Claimant without terminating the Agreement on 09 05 2003 due to reasons best known to him However, the action of forfeiting the security deposit of the Claimant on 09 05 2003 which clearly shows that he had the intention of considering the due date for depositing the second installment as 15th April, 2003 without interest and 15th May, 2003 alongwith interest and that is why kept on waiting after 15th April, 2003 and did not take any immediate action However, Respondent forfeited the security of the Claimant without terminating the Agreement on 09 05 2003 due to reasons best known to him However, the action of forfeiting the security deposit of the Claimant before the expiry of due date for depositing the second installment

alongwith interest is totally contrary to the provisions of the Agreement.

(viii) It was the option of the Claimant to deposit installments in advance and the claimant would not claim any interest from the Respondent But if the installment is not paid in advance, then how the Respondent is entitled to claim interest for not paying the installment in advance However, the Respondent should only be entitled to charge interest from the Enterpreneur if he fails to pay the instalment after collecting the same for 30 days However, considering the due date for depositing the second installment without interest as 15th April, 2003, even this date is still 5 days prior to the expiry of period of second installment

(ix) The Claimant has claimed that due date for depositing the second installment without interest was 15th April, 2003 and alongwith interest as 15th May, 2003 Thus neither any action could be taken by the Respondent before 15th May, 2003 in accordance with the provisions of the Agreement nor was the Claimant actually liable for any action before 15th May, 2003

The Respondent has defended the dispute and explained as under :—

(a) That as per clause 2 of the Agreement, it has been made clear that claimant shall pay all the installments on due dates in advance and the claimant shall not claim any interest on these installments The Respondent reproduced the relevant para of the Agreement as under —

> **"Further the Enterpreneur/Agent hereby agrees that he will pay to the HSRDC all installments on due dates in advance as aforesaid and that further he will have no claim for interest on these installments paid in advance"**
>
> **"And whereas, of default to pay any installment by due date the same will be paid alongwith interest calculated @ 0.05% per day of delay. Further in case any installment along with interest is not paid within 30 days counted from the due date, then the contract agreement will be terminated without any further notice. In such event without prejudicing the rights and other remedies available to the Haryana State Roads & Bridges development Corporation Limited, the Security Deposit and all installments of contract amount already paid shall stand forfeited without any claim from the agency."**
>
> **"Further any authorization letter for collection of toll issued shall be treated as cancelled and withdrawn. Further more Haryana State Roads & Bridges development Corporation Limited will be at liberty to take over the site and start collection of toll as deemed fit."**

(b) The Respondent explained that as per provision of para 1 3 and 1 4 at page 7 of the Agreement and also para 3 & 4 at page 20 of the Agreement, the claimant had deposited first Installment on 19 02 2003 and also signed the Agreement on 19 2 2003, so the next installment became due to be deposited on 1 5th of the next calendar month i e March 2003 meaning thereby that second installment was due to be deposited up to 15th March, 2003 without interest However, as per Agreement, in case of default to pay any installment by the due date, the same can be paid in next 30 days but long with interest calculated 0 05% of the due amount for each day of delay Thus the second instfilment could be paid up to 15 3 2003 without interest and up to 14.4 2003 along with interest The plea taken by the Claimant that the second installment was for the period from 20.3 2003 to 19 4 2003 and the second installment could be deposited on 15th of the calendar month falling in the period of installment is not correct Rather the installments are to be deposited in advance and regularly before 15th of the calendar month after depositing the first Installment

The Respondent explained That the plea of the Claimant that he would have to deposit 24 remaining installments on 15 of every calendar month falling in the period of Agreement if he is asked to deposit the second installment on 15th March, 2003 is not correct because as per Agreement, the Claimant is only required to deposit 23 remaining Installments during the contract period starting from 15 3 2003

(c) As per para 6 of instructions to Bidder, the Claimant was required to remit the toll on monthly basis by 15th of every calendar month. Since the collection of toll commenced from 20,2 2003 as such the Claimant was required to pay the second installment on 15 3 2003 after collecting the same from the toll point

(d) The Respondent had clearly conveyed to the Claimant vide his letter no. HSRDC/31/02/282 dated 22 04 2003 that the second installment is due to deposited up to 15.3 2003 with out interest and up to 14 4 2003 along with interest However, the Respondent after taking lenient view further advised the Claimant to deposit the second installment even up to 30.4 2003 along with interest failing which the Agreement shall be terminated and security deposit shall be forfeited

(f) The Claimant had laid stress on the provisions of Clause 4(IV) of the Agreement but this clause would not help the Claimant and would help the Respondent. The clause is reproduced below

4(iv) "In the event of any default on the part of the Entrepreneur/ Agent to comply with any of the terms of this contract or in the event of termination of the contract by the HSRDC under any provision, the HSRDC shall have the right to forfeit the

entire or part amount of Security Deposit, furnished by the Entrepreneur/Agent and to appropriate the Security Deposit or any part thereof in or towards the satisfaction of any claim of the HSRDC any or damage, losses, costs charges of expenses, or otherwise however. The decision of Managing Director HSRDC shall be final in respect of such damages, losses, costs, charges or expenses or otherwise however shall be final binding on the Entrepreneur/Agent."

4(viii)**"Except where otherwise provided or specified in the contract and subject also to, such power as may be delegated to him from time to time by the government, the decision of the Managing Director, HSRDC for the time being in charge of the said Toll facility on all questions and matter whatsoever arising out of or in relation to or in connection with this contract or as to the interpretation of any of its provisions or clause/s either during the subsistence of this contract or at any time thereafter shall be final and binding on the parties to this contract"**

As per these provisions of the Agreement, all the questions in respect of the clauses of the contract would be interpreted by the managing Director during the currency of the contract or any time thereafter and the same would be final and binding on both the parties However, the Claimant had no authority to interpret the clauses on its own and if the Claimant did not want to agree with the interpretations of the Respondent, then he should have firstly deposited the second installment on the due date as interpreted by the Respondent and thereafter could have sought arbitration against the decision of the Respondent in accordance with the provisions of cluase 28 and 29 of the Agreement which are also reproduced below —

Clause 28. **"In the event the Entrepreneur/Agent disagreeing, with the decision mentioned in the provision of above, he may request the Managing Director, HSRDC, for appointment of an Arbitrator for adjudication of the dispute. On receipt of request from the Entrepreneur/Agent for appointment of Arbitrator, Engineer-in-Chief, Haryana PWD B&R will appoint an Arbitrator for adjudication of the dispute. The arbitrator so appointed shall conduct the arbitration proceedings in accordance with the provision of the contract agreement. Fee of the Arbitrator shall be paid by the party who will seek the arbitration."**

Clause 29. **"Pending appointment of Arbitrator or resolution of the dispute by Arbitrator, the Entrepreneur/Agent will continue to remit the agreed installment of money to the Managing Director, HSRDC."**

(g) the respondent had taken lenient view and had given full opportunity to the Claimant for depositing the second installment even up to 30 4.2003 alongwith interest but the Claimant failed to deposit the second installment and therefore violated the provisions of the Agreement as such orders dated 9 5 2003 passed by the Respondent are perfectly legal and in accordance with the provisions of the Agreement

After considering written arguments and after heaiing oral arguments of both the parties, the dispute is adjudicated /decided as unde

(i) **Para 2 of the Agreement provides as Under:—**

"AND WHEREAS, the Entrepreneur/Agent in pursuance to the terms and condition of the contract has deposited the first installment of Rs.60,75,000/- (Rupees Sixty lacs seventy five thousand only). Where as the Entrepreneur/Agent do hereby agree to pay regularly the following installments as given under by the specified due dates".

Number of remaining installments	Amount of each installment	Due date of payment
23 Monthly	Rs 60,75,000/- (Rupees Six lacs seventy five thousand only)	To be deposited upto 15 of every calendar month

"AND WHEREAS, the Entrepreneur/Agent hereby agrees that all the above mentioned installments, shall be paid in the shape of demand draft drawn on any Nationalized Bank/ICICI/HDFC/UTI/IDBI Bank, payable at Chandigarh, in favour of Managing Director, Haryana State Roads & Bridges development Corporation Limited"

"Further the Entrepreneur/Agent hereby agrees that he will pay to the HSRDC all installments on due dates in advance as aforesaid and that further he will have no claim for interest on these installments paid in advance".

"And whereas, of default to pay any installment by due date the same will be paid along with Interest calculated @ 0 05% per day of delay. Further In case any installment along with interest is not paid within 30 days counted from the due date, then the contract agreement will be terminated without any further notice. In such event without prejudicing the rights and other remedies available, to the Haryana State Roads & Bridges development Corporation Limited, the Security Deposit and all installments of contract amount already paid shall stand forfeited without any claim from the agency"

"Further any authorization letter for collection of toll issued shall be treated as cancelled and withdrawn. Further more Haryana State Roads & Bridges development Corporation Limited will be at liberty to take over the site and start collection of toll as deemed fit."

The Claimant deposited the first instalment on 12 2 2003 and thereafter the Agreement was executed between both the parties on 19 02.2003 The Agreement period is from 20 2.2003 to 19.02 2005. The Claimant had deposited the first installment in advance which was for the period from 20 2 2003 to 19.3 2003. Although the Claimant had to deposit the installments in advance but the Respondent can neither ask the Claimant nor has any right to demand the second installment before the expiry of period of first installment i.e. up to 19.3.2003. Therefore, the Claimant was required to deposit the second installment after 19 3.2003 but the Agreement provides for depositing the remaining 23 installments up to 15th of of every calendar month. Thus 15th of the calendar month falling after 19 3 2003 is 15 4.2003 and therefore, this date i.e 15 4.2003 will have to considered due date for depositing the second Installment without interest and 15 05 2003 along with interest

(ii) The Claimant had undertaken to deposit the remaining 23 installments upto 15th of every calendar month. The question of depositing second installment would only arise after the expiry of period of first installment i e 19.03.2003 otherwise, how could the Claimant can be asked to deposit the second installment in advance when the first installment period for which he has deposited the first installment in advance had not expired Furthermore, the contract period is from 20.2 2003 to 19 2 2005 and if the payment of remaining 23 installments is to commence on 15 3.2003, then the claimant would have to deposit 24 remaining installments because 15th of calendar month would fall 24 times during the period of contract starting from 15.3.2003.

(iii) The Respondent had brought out that the Claimant is required to deposit the next installment on 15th of next calendar month following the month of execution of Agreement but it has been found that there is no such provision in the Agreement that the Claimant is required to deposit the second installment on 15th of the next month of the execution of Agreement. However, as explained by the Claimant if any Entrepreneur deposits the first installment on 31st of any month and executes the Agreement on the same day, then he is required to deposit the second installment on 15th of the next month i.e. after 15 days of depositing the first installment and if any Entrepreneur deposits the first installment on 1st of any month and executes the Agreement on the same day, then he is required to deposit the second installment on 15th, of the next month i.e after 45 days of depositing the first installment. This shows that any Entrepreneur depositing the first installment one day prior to

1st month is allowed 15 days for depositing the second installment where as the Entrepreneur depositing the first installment on 1st of any month is allowed 45 days for depositing the second installment. This is totally hypothetical and contrary to the provisions of the Agreement and also against the principle of natural justice Claimant further explained that Respondent has now inserted special clause in the new Agreement (Agreement No. HSRDC/Toll/13-R) where in it is provided as under:—

> **"Irrespective of the date of signing of the Agreement and deposit of first installment during any month, the second installment shall be deposited by the Entrepreneur by 15th of the following month"**

Evidently the Respondent had incorporated this, clause in the new Agreement for depositing the second installment by 15th of the following month of executing the Agreement where as no such clause exist in this Agreement and these provisions can not be made applicable in respect of the dispute in question.

(iv) The Claimant has given reference of two other Agreements executed by the Respondent in the case of Sh Kushal Singh Sikar Entrepreneur in respect of Agreement nos HSRDC/Toll/4 for the Collection of toll at toll point in Km 4.1 near Palwal on Palwal-Sohna Road and HSRDC/Toll/13 for the Collection of toll at toll point near UP Border on Kairana-PanipatRoad In these two cases, the Entrepreneur had deposited first installment on 3rd January, 2003 which was for the period from 4 1.2003 to 3 2.2003 and second installment was for the period from 4.2 2003 to 3.3.2003 As per provisions of those Agreements, if the second installment was to be deposited on 15th of the calendar month, then the due date for depositing the second installments in these two cases should have been 15.1 2003, where as the Respondent in both these cases considered the due date for depositing the second installment as 15th February i e 15th of the calendar month falling after the expiry of period of first installment. In view of the above, the due date for depositing the second installment in these two cases had been considered by the respondent as 15th of the calendar month falling after the expiry of period of first installment where as this yardstick was not adopted by the Respondent in this particular case under dispute and therefore, the claim of the Claimant considering the due date for depositing the second installment on 15.4.2003 with out interest can not be ignored.

(v) Although the Claimant has claimed that due date for depositing the installment should only be considered after the Claimant had collected the toll for one month and if he fails to deposit the same on this date, then he is bound to pay interest on this installment otherwise, how could the Respondent claim interest from the Claimant if he had not

collected the toll for one month Although the plea of the Claimant appears to be genuine but we are now bound by the provisions of the Agreement which provides for depositing the remaining 23 installments up to 15th of every calendar month which is the due date for depositing the remaining installments with out interest

(vi) The Respondent considered the due date for depositing the second installment as 15.3.2003 without interest and 14 4 2003 alongwith interest. The Respondent has brought out that although the Claimant had not deposited the second installment along with interest up to 14 4.2003 but he had taken the lenient view and did not take action against the Claimant immediately after that date and another opportunity was given to the Claimant to pay the second installment up to 30.4.2003 along with interest but the Claimant failed to deposit the second installment even up to 9.5 2003 as such the security deposit of the claimant had been forfeited in accordance with the provisions of the Agreement. It has been observed that there is no such provision in the Agreement empowering the Respondent to extend the date of depositing the second installment along with interest after the expiry of 30 days from the due date. It appears that the Respondent was not sure about the due date for depositing the second installment and that is why kept on waiting and did not take action against the Claimant immediately after 15.4.2003 or one or two days after this date knowing fully well that the Claimant has not deposited the second installment so far. However, if in the opinion of the Respondent, the second installment was required to be deposited along with interest up to 14.4.2003, then he should have taken action against the Claimant imediately after 15 4 2003 Allowing the Claimant to charge toll from 15.4 2003 to 9 5 2003 itself proves the uncertainty/ ambiguity in the mind of respondent about the due date for depositing the second installment.

(vii) Respondent has explained that as per provision of para 4(viii) of the Agreement, the decision of the Managing Director, HSRDC for the time being in charge of the toll facility on all questions and matters whatsoever arising of or in relation to or in connection with this contract or as to the interpretation of any of its provisions or clauses either during the subsistence of the contract or at any time thereafter shall be final and binding on both the parties However, if the Claimant did not agree with the decision of the Respondent, then after depositing the second installment on the duo date, the Claimant could have sought arbitration under clauses 28 and 29 of the Agreement which are reproduced below.-

Clause 28 **"In the event the Entrepreneur/Agent disagreeing, with the decision mentioned in the provision of above, he may request the Managing Director, HSIDC, for appointment of an Arbitrator for adjudication of the dispute. On receipt of request from the Entrepreneur/Agent for appointment of Arbitrator, Engineer-in-Chief, Haryana PWD B&R will appoint an**

Arbitrator for adjudication of the dispute. The arbitrator so appointed shall conduct the arbitration proceedings in accordance with the provision of the contract agreement. Fee of the Arbitrator shall be paid by the party who will seek the arbitration".

Clause 29. **"Pending appointment of Arbitrator or resolution of the dispute by Arbitrator, the Entrepreneur/Agent will continue to remit the agreed installment of money to the Managing Director, HSRDC."**

From the above plea of the Respondent, it is evident that he had full authority to interpret the provision of clauses and on all questions/matters and his decision is final and binding on both the parties. Since the Respondent had interpreted the due date for depositing the second installment a 15.3 2003 without interest and 14.4 2003 alongwith interest as such there had been no other alternative with the Claimant except to refer the matter to the Arbitrator for adjudication of the dispute as per provision of clause 28 of the Agreement and the Claimant should have continued the payment of installments pending the appointment/decision of the Arbitrator as per provision of clause 29 of the Agreement but there is no provision in these clauses that the respondent can terminate the Agreement or forfeit the security deposit of the claimant on the basis of his own interpretation of the clauses or due, date for depositing the second installment However, the Claimant had certified to the Respondent that he will be depositing the second installment on 15.5 2003 along with interest. Since the Respondent did not take action against the Claimant immediately after 15 4.2003 and action was taken on 9.5.2003 as such the Respondent could have easily waited for another 6 days i e up to 15.5.2003 and if the Claimant had failed to deposit the second installment up to 15 5 2003 as certified by him, then action should have been taken against the Claimant thereby leaving no scope for the Claimant to raise any dispute.

In view of the facts explained above, the Dispute no 3.1 is answered in favour of the Claimant meaning thereby that the due date for depositing the second installment with out Interest would be 15.4.2003 and along with Interest as 15.05.2003. Accordingly Dispute No. 3.2 is also decided in favour of the Claimant Regarding Dispute no 3.5, although as per provision of clause 2 of the Agreement, the Respondent had full authority to take action against the Claimant for not paying the second installment along with Interest with in 30 days from the due date but the interpretation of the due dates had been made by the Respondent on its own which was being disputed by the Claimant as such the Claimant should have been informed about the proposed action and advice in accordance with the provisions of clause 28 and 29 of the Agreement.

Dispute Nos. 3.3 and 3.4 :—

3.3 Whether the Respondent had any authority to forfeit the security deposit of the Claimant amounting to Rs. 2,18,70,000/- and withdraw the authorization for the collection of toll without terminating the Agreement in accordance with the provisions of Clause 2 of the Agreement and whether the action of Respondent of forfeiting the security deposit of the claimant without terminating the Agreement was illegal and contrary to the provisions of the Agreement?

3.4 Whether the Respondent had any authority to withdraw the authorization for the collection of toll from the Claimant without terminating the agreement in accordance with the provisions of clause 2 of the Agreement?

In support Of the claim, the Claimant has explainedl brought out as under:—

(i) As per provision of clause 2 of the Agreement, the Claimant had agreed to pay to HSRDC all the installments on due dates and of default to pay any of the installments by the due date, the same will be paid along with interest calculated @ 0.05% per day of the delay. Further in case, any installment along with the interest is not paid within 30 days counted from the due date, then the Contract Agreement will be terminated without any further notice In such event without prejudicing the rights and other remedies available to the Haryana State Roads & Bridges Development Corporation Limited, the security deposit and all installments of the contract amount already paid shall stand forfeited with out any claim from the agency Further any authorization letter issued to the Entrepreneur for the collection of toll shall be treated as cancelled and withdrawn Further more, Haryana State Roads & Bridges Development Corporation Limited will be at liberty to take over the site and start collection of toll as deemed fit As per these provisions, the Respondent was fully entitled to terminate the Agreement if the Claimant had failed to deposit the next installment along with interest with in 30 days from the due date and after the termination of the Contract agreement the security deposit of the Claimant could be forfeited. The Respotdent had not terminated the Agreement but had forfeited the security deposit of the Claimant amounting to Rs 2,18,70,000/- vide letter no HSRDC/354 dated 9.5.2003 and also got the Bank Guarantee No 07/2002-2003 dated 18 2.2003 of Oriental Bank of Commerce, Urban Estate Hisar encashed from the Bank on 10.5.2003.

(ii) There is no provision in the Agreement to forfeit the security deposit of the Claimant with out terminating the Agreement Security deposit can only be forfeited if the Agreement is first terminated. Thus forfeiture of security deposit amounting to Rs 2,18,70,000/- by the Respondent vide his letter no HSRDC/354 dated 9.5 2003 without terminating the

Agreement is totally illegal, arbitrary and against the provisions of Agreement Since no event of termination of Agreement occurred such there was no reason for forfeiting the security deposit of Claimant without terminating the Agreement Claimant further explained that the Respondent had terminated another Agreement No HSRDC/Toll/2 and thereafter forfeited the security deposit and withdrawn the authorization for the collection of toll but in this case the Agreement had not been terminated.

(iii) As per provision of the Agreement, the letter of authorization for the collection of toll issued to the Claimant could only be withdrawn and cancelled after the termination of the agreement Since the Agreement had not been terminated by the Respondent as such letter of authorization issued to the Claimant the collection of toll withdrawn by the Respondent vide letter no HSRDC/354 dated 9 5.2003 is totally illegal. The Claimant was forced to vacate the site for the collection of toll with the help of police without official intimation to the Claimant Even the staff of the claimant had been threatened of dire consequences.

The Respondent has defended the disputes as under:

(a) The Respondent explained that the operating part of clause of the Agreement to terminate the Agreement had been reproduced in para 2 of letter no HSRDC/354 dated 9 5 2003 i e order of forfeiting the security deposit and withdrawal of authorization for the collection of toll. Moreover, the forfeiture of the security deposit and withdrawal of authorization for the collection of toll automatically means the termination of the Agreement Thus the version of the Claimant that Agreement has not been terminated is wrong and denied.

(b) The Claimant had failed to deposit the second installment along with interest after the expiry of 30 days counted from the due date as such the Claimant had become liable for the forfeiture of the security deposit in accordance with the provisions of clause 2 of the Agreement Since the Respondent had cancelled and withdrawn the authorization for the collection of toll issued to the Claimant by virtue of which he had been authorized to collect toll from the toll point Thus for all purposes, the Agreement stands terminated even if the word "termination" is used or not

(c) The Claimant failed to deposit the second installment and violated the provisions of the Agreement as such the order no HSRDC/354 dated 9.5 2003 passed by the Respondent is perfectly legal and in accordance with the clauses of the Agreement

After consideringt written arguments and after hearing oral arguments of both the parties, the dispute is adjudicated/decided as under :—

Para 2 of the Agreement provides as under :—

"AND WHEREAS, the Entrepreneur/Agent hereby agrees that all the above mentioned installments, shall be paid in the shape of demand drafts drawn on any Nationalized Bank/ICICI/HDFC/UTI/IDBI Bank, payable at Chandigarh, in favour of Managing Director, Haryana State Roads & Bridges development Corporation Limited."

"Further the Entrepreneur/Agent hereby agrees that he will pay to the HSRDC all installments on due dates in advance as aforesaid and that further he will have no claim for interest on these installments paid in advance".

"And whereas, of default to pay any installment by due dates the same will be paid alongwith interest calculated @ 0.05% per day of delay. Further in case any installment along with interest is not paid within 30 days counted from the due date, then the contract agreement will be terminated without any further notice. In such event without prejudicing the rights and other remedies available to the Haryana State Roads & Bridges development Corporation Limited, the Security Deposit and all installments of contract amount already paid shall stand forfeited without any claim from the agency."

"Further any authorization letter for collection of toll issued shall be treated as cancelled and withdrawn. Further more Haryana State Roads & Bridges development Corporation Limited will be at liberty to take over the site and start collection of toll as deemed fit."

From the above provisions, it is clear that in case the Entrepreneur fails to deposit any of the installment within 30 days counted from the due date alongwith interest, then his Agreement shall be terminated and in such event all other actions i.e. forfeiture of the security deposit and withdrawal of authorization for the collection of toll could be taken. If the Respondent had observed that the Claimant has failed to deposit the second installment along with interest within 30 days from the due date, then first course of action was to terminate the contract Agreement in accordance with the provisions of clause 2 of the Agreement and should have taken action for the withdrawal of authorization for the collection of toll Although technically speaking, the version of the respondent that the forfeiture of the security deposit and withdrawal of authorization for the collection of toll automatically means the termination of Agreement but legally the Agreement should have been firstly terminated and thereafter the action of forfeiting the security deposit should have been taken. Although in the opinion of the respondent, event of termination of the Agreement had arisen due to failure on the part of the Claimant to deposit the second installment alongwith interest within 30 days from the due date but the action of forfeiture of security deposit and withdrawal of authorization for the collection of toll could only be taken after the termination of Agreement The fact remains

that the respondent had not terminated the Agreement though the provisions of Clause 2 of the Agreement were mentioned in the letter No. HSRDC/354 dated 09 05 2003 Furthermore, if the Respondent could terminate another Agreement No. HSRDC/Toll/2 before forfeiting the security deposit as such the Respondent should have terminated this Agreement before forfeiting the security deposit of the Claimant

As explained above, dispute nos. 3.3 and 3.4 are decided in favour of the Claimant because the Respondent should have fist terminated the Agreement in accordance with the provisions of the Agreement and thereafter was entitled to forfeit the security deposit of the Claimant and withdrawal of authorization for the collection of toll.

Dispute Nos. 3.6 :—

Whether the Respondent had taken illegal action on war footing for encashing the Bank Guarantee of the Claimant with malafide motive with the reasons best known to the respondent and whether the action of the respondent in taking over the possession of the toll site forcibly from the Claimant with the help of police without any intimation to the Claimant was legally valid ?

In support Of the claim, the Claimant has explainedl brought out as under·—

(I) Claimant has explained that the Respondent's letter no. HSRDC/354, dated 9-5-2003 indicating the forfeiture of the security deposit of the Claimant and withdrawing the authorization for the collection of toll from the Claimant was dispatched to the Claimant through registered speed post on 10-5-2003 at 10 30 AM from Chandigarh which was received by the Claimant on 13-5-2003 where as the officers of the Respondent approached Manager, Oriental Bank of Commerce Urban Estate Hisar on 10-5-2003 at 10 00 AM for getting the Bank Guarantee of Rs. 2,18,70,000/- enchashed from the bank. Evidently the Respondent had taken advance action of encashing the bank guarantee of the claimant before informing the claimant about the same.

(II) The letter dated 9-5-2003 of the respondent was received by the Claimant on 13-5-2003 where as the staff of the Respondent had taken the possession of the toll site on 10-5-2003 in the morning itself with the help of police without informing the Claimant. This hasty action of the Respondent clearly proves his malafide motive against the Claimant.

The Respondent has not explained any thing in respect of this dispute but has certified that the action of the Respondent was quite legal and in accordance with the provisions of the Agreement

After consideringt written arguments and after hearing oral arguments of both the parties, the dispute is adjudicated/decided as under :—

Although from the perusal of the envelope submitted by the Claimant, it is evident that letter dated 9-5-2003 was got dispatched to the Claimant through registered speed post from Chandigarh on 10-5-2003 at 10.30 AM and the security deposit of the Claimant had also been got enchased from the bank on the same day at Hisar. Even the possession of the toll site was taken from the Claimant on 10-5-2003 itself. Although the Respondent had passed the order on 9-5-2003 for forfeiting the security deposit of the Claimant and had also passed order withdrawing the authorization for the collection of toll but the intimation for the same was sent to the Claimant through speed post from Chandigarh on 10-5-2003 at 10.30 AM which was received by the Claimant on 13-5-2003. Thus it is evident that immediate/hasty action had been taken by the Respondent in getting the bank guarantee enchased from the bank on 10-5-2003 and taking over the possession of toll point with the help of police on 10-5-2003 but this hasty action on the part of the Respondent can not be treated/termed as malafide in view of absence of any specific evidence/reasons. Thus this dispute raised by the Claimant is rejected and answered in favour of the Respondent.

Dispute Nos. 3.7 :—

Whether the Claimant is entitled for the rebate in the payment of toll due to nation wide strike of the trucks from 14-4-2003 to 23-4-2003.

In support Of the claim, the Claimant has explainedl brought out as under:—

(i) Claimant had intimated to the Respondent *vide* letter dated 14-4-2003 that due to nation wide strike of the trucks with effect from 14-4-2003; there has been no collection of toll through the toll point from 14-4-2003. It was further intimated to the Respondent *vide* letter dated 24-4-2003 that this 10 days nation wide strike of the trucks has been called off by the All India Motor Transport Congress on 23-4-2003. Accordingly the trucks have started passing through the toll point with effect from 24-4-2003. However, it was also intimated that collection of toll will remain affected for the next few days till the situation becomes normal. Although Respondent *vide* letter no HSRDC/31/02/284, dated 22-4-2003 had intimated to the Claimant that strike of the trucks is incidental and can not be treated as closure of the toll facility or toll point but the Claimant again informed the respondent that as per provision of clause 4(iii) of the Agreement, neither party is liable to the other party for any loss or damage occurred/caused by or arising out of the acts of God and in particular unprecedented floods resulting in disruption of traffic on the road, volcanic eruption, earth quake or other convulsions of the nature and other acts, such as but not restricted to invasion, the act of foreign countries, hostilities or war like operation before or after the declaration of rebellion,

military operation which prevent the performance of the contract and which would not have been forseen or avoided by the prudent person and in such cases, the decision of the Managing Director, HSRDC shall be final. It was further indicated by the Claimant that as per provision of clause 5 of the Agreement, in case of closure of toll facility to motor vehicle traffic due to any reason, Entrepreneur/Agent may be granted rebate @ 1/30 of the installment amount for each day for the number of days of admitted closure as certified by the Managing Director, HSRDC

(ii) It was intimated by the Claimant that this 10 day nation wide strike by the trucks could not be forseen by any prudent person at the time of submission of bids and furthermore, due to this strike, toll could not be collected from the toll point for which Claimant has to be compensated for the loss of toll in accordance with the provisions of clause 5 of the Agreement Thus the Claimant is entitled for the exemption from the payment of toll for the strike period as principle of natural justice.

The Respondent has defended the disputes as under:

The Respondent has explained that neither there had been any interruption in the traffic during the strike period nor the toll facility or toll point had been closed to traffic in accordance with the provisions of clause 5 of the Agreement Strike by the Trucks could not be treated as closure of toll facility or toll point and therefore such type of eventualities are incidental and no cognizance of the same can be taken in accordnce with the provisions of the Agreement

The disputes is decided as under:

Although as a principle of natural justice, the Trucker's strike could not have been forseen by the Claimant at the time of submission of bids and he had definitely suffered loss in the toll collection on account of this strike but the matter has to be decided in accordance with the provisions of Agreement There is no specific provision in the Agreement to deal with such type of eventualities. Concession of toll to the Claimant for the affected days could only be admissible, had the toll facility or the toll point had been totally closed in accordance with the provisions of clause 5 of the Agreement but the fact remains that the toll facility or the toll point had not been totally closed to traffic during the strike period and other category of vehicles continued to pass though the toll point during the strike period as such as dispute raised by the Claimant is decided in favour of the Respondent.

CLAIM NO. 4.1 (CLAIM NO. 1)

The Complaint filed claim for Rs. 1,21,50,000/- on account of illegaly forfeiting the security deposit of the Claimant

Sr.No.	Particulars		Amount of claim
1	Security deposit which has been illegally forfeited and got cashed from the bank i e	**Rs. 2,18,70,000/-**	
	Less amount of installment which was to be paid for the period from 20 3 2003 to 9 5 2003 (1 month and 18 days) i.e	**Rs. 97,20,000/-**	
	Net Claim	**Rs. 1,21,50,000/-**	**Rs. 1,21,50,000/-**

Claimant explained that the payment of second installment for the priod from 20.3 2003 to 19 4.2003 was due to be deposited by the Claimant up to 15.4.2003 with out interest up to 15 5.2003 along with interest Failure on the part of the Claimant to deposit the second installment up to 15 5 2003 along with interest, then only the respondent could have terminated the Agreement and could hae forfeited the second deposit of the Claimant. As per provision of Clause 2 of the Agreement, the cause of action for terminating the Agreement and could have forfeited the security deposit could only arise on 15.5.2003 if the claimant had failed to deposit the second installment up to 15.5.2003. Furthermore, as explained in para 3 3, security deposit coult only be forfeited after terminating the Agreement Since the Agreement had not been terminated as such security deposit of the Claimant could not have been forfeited In view of these facts, forfeiture of the security deposit amounting to Rs 2,18,70,000/- by the respondent vide his letter no HSRDC/354 dated 0 5.2003 with out terminating the Agreement is totally arbitrary, illegal and against the provisions of Agreement. The Claimant has raised claim for a sum of Rs 1,21,50,000/- in this regard.

Respondent has explained that the Claimant was required to deposit the second installment upto 15 3.2003 without interest and up to 14.4.2003 along with interest but the Claimant failed to deposit the second installment with in 30 days counted from the due date along with interest as such the respondent had full authority to terminate the Agreement, forfeit the security deposit of the Claimant and withdraw the authorization for the collection of toll from the Claimant in accordance with the provisions of Clause 2 of the Agreement. Even otherwise, the Claimant had been given two notices i e vide letter dated 10.4.2003 and 22.3.2003 before passing the order of forfeiting the security deposit. The Respondent further argued that the Claimant was required to deposit 23 remaining instalments and not 24 remaining installments as is being explained by him Furthermore, clause 28 and 29 of the Agreement makes it abundantly clear that in case the claimant disagrees with the interpretation of the provisions/clauses of the agreement by the

Respondent in accordance with the provision of clause 4(viii) of the Agreement, then the Claimand through written submissin could have requested requested the Managing Director HSRDC for the appointment of the Arbitrator for the adjudication of the dispute Furhtermore, as per provision of clause 29 of the Agreement, pending apoointment of the Arbitrator or resolution of dispute by the Arbitrator, the Claimant was required to deposit the installments on the due dates as interpreted by the Respondent. The provision of this clause of the Agreement leaves no room for the Claimant to interpret to clauses on its own and start acting accordingly Furthermore, even as per provision of clause-6 of the Instructions to Bidders, the Claimant was to collect toll from the tol point and thereafter remit the same to the respondent Since he had paid the first installment in advance and thereafter was required to deposit the remaining installments in advance after collecting toll in accordance with the provision of clause 2 of the Agreement and no interest was payable Regarding clause 10 (b) or Aggrement, although no notice was required to be given to the Claimant in this regard in accordance with the provision of clause 2 of the agreement, but even then two notices were given by the respondent to the Claimant on 10 4 2003 and 22.4.2003 in this regard. Furthermore, as per provision of clause 4(iv) of the Agreement, in the event of any default, the Respondent had the right to forfeit the entire or part of the security deposit and the decision of Managing Director, HSRDC shall be final in respect of such damages, losses, costs and expenses shall be binding on the Entrepreneur Thus the action of the respondent in forfeiting the security deposit of the Claimant is unquestionable particularly when the Claimant had committeed the breach of contract by not paying the installment in spite of issue of notices and therefore the claim is not maintainable

Thus claim is decided as under:

As decided in dispute nos 3 1 and 3.2 above that the due date for depositing second installment with out interest would be upto 15.4.2003 and along with interest upto 15.5.2003 as such Respondent could have waited upto 15 5.2003 If the Respondent could wait for 25 days for taking action against the Claimant, then he could have easily waited for another 6 days. Heaven was not going to fall in those 6 days. Had the Respondent taken action against the Claimant immediately after 15.5.2003, there would have been no scope for the claimant to raise the claim.

It has also been decided under dispute nos 3 3 and 3.4 that before forfeiting the security deposit of the Claimant and also before withdrawing the authorization for the collection of toll from the Claimant, the Agreement should have been terminated clearly in accordance with the provision of clause 2 of the Agreement hereby creating an event of making the Claimant liable for the forfeiture of security deposit and withdrawal of authorization for the collection of toll

As per provision of clause 10 of the Agreement, the Managing Director, HSRDC shall be entitled to terminate the Agreement at any time

(a) Without assigning any reason thereof after giving to the Entrepreneur/Ageny fifteen days prior notice in writing and in that event the Entrepreneus/Agent shall not be entitled to claim, recover or receive from the government any compensation whatsoever on account of such premature termination.

(b) By giving 7 days notice in writing to Entrepreneur/Agent for breach or non observance by Entrepreneur/Agent any terms or conditons of this agreement for which no specific provision is available separately.

In the happening of such an event and agreement being terminated, Entrepreneur/Ageny will be liable to pay to Managing Director, HSRDC money proportionately calculated @ 1/30 of the monthly instalment for each day, the agreement remained in force.

Further in case of the agreement having been terminated under clause (b) above, the Tnerepreneur/Agent will further be liable to pay to HSRDC, out of his security deposit any amount or portion thereof of Security Deposit as deemed appropriated by the Managing Director, HSRDC whose decision will be final and binding upon the Entrepreneur/Agent

Since the authorization for the collection of toll had been withdrawn from the Claimant on 9.5.2003 and thereafter the Respondent started the collection of toll from the toll point with effect from 10.5.2003 and also the work for the collection of toll as this toll point has been re-allotted to another agency as such continuation of this Agreement by the Claimant at this stage is not feasible. However, the Claimant had not deposited any further installment after depositing the first installment as such the Claimant is liable to make payment to the Respondent proportionate installment calculated @ 1/30 of the monthly installment for the number of days the claimant continued to collect toll after the expiry of period of first installment. Although full amount of security deposit amounting to Rs. 2,18,70,000/- of the Claimant had been forfeited by the Respondent but the claimant is liable to pay a sum of Rs. 1,01,97,900/- to the Respondent is detailed below:-

Sr. No.	Particular	Amount to be paid by the Claimant to the Respondnet
1	(i) Amount of installment which was to be paid for the period from 20.3 2003 to 19 4 2003 (1 month)	Rs 60,75,000/-
	(ii) Amount of installment which was to be paid for the period from 20 4 2003 to 9.5 2003 (20 days)	Rs 40,50,000/-

(iii) Interest on second installment of Rs, 60,75,000/- @ 0 05% per day for the period from 16 4 2003 to 9 5 2003 (24 days)	Rs 72,900/-
Total amount to be paid by the Claimant	Rs 1,01,97,000/-

Thus the Claimant is entitled for the refund of balance amount of Rs, 1,16,72,100/- against the claim of Rs. 1,21,50,000/- raised by the Claimant. I hereby award claim of Rs, 1,16,72,100/- (Rupees one crore sixteen lacs seventy two thosand only) to the claimant in respect of this claim.

CLAIM NO. 4.2 (CLAIM NO. 2)

The Claimant has raised claim of Rs, 20,25,000/- on acount of loss of toll collection on account of strike of the trucks from 14.4.2003 to 23.4.2003 (10 days)

The Claimant has explained in dispute no 3 7 that he is entitled to the rebate in the toll installment for the number of days there had been strike of the trucks

The Respondent explained that as per provision of clause 5 of the Agreement, the Claimant is entitled for the rebate @ 1/30 per day of the monthly installment if the toll facility or the toll point is closed for the traffic In this case during the strike of trucks, the toll facility or the toll point did not remain closed. Furthermore, the claimant was supposed to furnish details of his intended claim for the rebate by 10th of the following month and by not doing so, the Claimant is not entitled for any rebate.

This claim is decided as under:-

It has already been decided in dispute no 3 7 that as a principal of natural justice, the Trucker's strike could not have been foreseen by the Claimant at the time of submission of bids and he had definitely suffered loss in the toll collection on account of this strike but the matter has to be decided in accordance with the provisions of Agreement. There is no specific provision in the Agreement to deal with such type of eventualities. Concession of toll to the Claimant for the affected days could only be admissible, had the toll facility or the such type of eventualities. Concession of toll to the Claimant for the affected days could only be admissible, had the toll facility or the toll point had been totally closed in accordance with the provisions of clause 5 of the Agreement. Although the Claimant had not been given an opportunity to submit claim for the rebate by 10th of the following month because authorization for the collection of toll had been withdrawn from him on 9 5 2003, but whatever the case may be, the fact remains that the toll facility or the toll point had not been totally closed to traffic during the stricke period and other category of vehicles continued to pass through the toll point during the strike period and thus the claim raised by the Claimant is rejected.

CLAIM NO. 4.3 (CLAIM NO. 3)

The Claimant had raised claim for Rs, 8,10,000/- on account of loss of collection of toll on account after effects of the trucker's strike from 14 4.2003 to 23 4.2003

This claim is related to claim no 4 2 (Claim no. 2) Since the dispute no 3 7 has not been decided in favour of the Claimant and furthermore, the claim no 4.2 (Claim no 2) raised by the Claimant has been rejected as such this claim of the claimant is also rejected.

CLAIM NO. 4.4 (CLAIM NO. 4)

The Claimant has raised claim for Rs. 1,30,00,500/- on account of loss of profit due to reduction in the turn over of the Claimant on account of illegal withdrawal off authorization for the collection of toll from the Claimant on 9 5 2003.

The Claimant has explained the facts as under:-

(i) The work for the collection of toll at toll point near UP border on UP border-Sonipat-Gohana Road was awarded to the Claimant for Rs 14,58,00,000/- to be deposited in 24 monthly installments. The Agreement was executed by the Claimnat with the Respondent on 19.2.2003 This Agreement was for the period of two years from 20.2 2003 to 19 2.2005.

(ii) The work for the collection of toll was for 24 months and the Claimant had planned to carry out the work accordingly in 24 months and had made all agreements It was planned that the turn over of the Claimant would be Rs 14 58 crores for the period of two years and he would be able to earn reasonable profit on the turn over during the currency of the contract. Due to illegal forfeiture of the security deposit of the Claimant and due to withdrawal of authorization for the collection of toll from the Claimant on 9.5 2003, the turn over of the Claimant has been restricted to Rs. 1,57,95,000/- against the planned turn over of Rs. 14,58,00,000/- Thus the Claimant had been deprived of the turn over of Rs 13,00,05,000/- during the period from 10 5.2003 to 19.2.2005 As pr judgement of the Hon'ble Supreme Court of India, the Claimant is entitled to the profit for the remaining period of the Agreement.

Claim is as under

Sr. No.	Particulars	Amount of Claim
1	(i) Total amount of Agreement = Rs. 14,58,00,000/-	
	(ii) Amount of turn over from 20.02.2003 to 09.05.2003 = Rs. 1,57,95,000/-	

(iii) Amount of loss of turn over

= Rs. 13,00,05,000/-

(iv) Loss of profit on turn over i.e. 10% of the anticipated turn over

= Rs 1,30,00,500/- Rs 1,30,00,500/-

The Respondent has refuted the claim and explained the same facts which have been explained in Claim No. 4 1 (Claim No. 1) However, the respondent has further brought out that in this case the breach of contract has been caused by the Claimant by not depositing the second installment on the due date or even after 30 days from the due date alongwith interest. The judgment clearly stipulates that the party who causes the breach of contract is liable to compensate the other party and the judgment is in favour of the Respondent Thus what to talk of claim compensation, the respondent has suffered loss of Rs 4,84,32,435/- which should be compensated by the Claimant

The Claim is decided as under :—

The work for the collection of toll at toll point near UP Border on UP Border-Sonipat-Gohana Road was awarded to the Claimant for Rs 14,58,00,000/- to be deposited in 24 monthly installments The Agreement was executed by the Claimant with the Respondent on 19.02.2003 This Agreement was for the period of two years from 20 02.2003 to 19.02.2005. The authorization for the collection of toll was withdrawn from the claimant on 09.05.2003 Since the work for the collection of toll has been re-allotted to another agency at much lower rate i.e. for about Rs 8 crores for the period of two years against this Agreement amount of Rs 14.58 crores allotted to the Claimant. Evidently the Claimant might have been incurring huge loss in this work Thus the Claimant is not entitled to any profit for the remaining period of the Agreement and therefore, the Claim of the Claimant is rejected

Claim No. 4.5 (Claim No. 5) :—

The Claimant has raised for Rs 3,28,326/- on account of loss of expenses incurred for establishing toll plaza, loss of wages of the contracted persons, additional administrative expenses, additional bank charges and idling of equipment and machinery arranged for the collection of toll.

The Claimant has explained as under :—

Due to illegal forfeiture of the security deposit of the Claimant and illegal withdrawal of the authorization for the collection of toll on 09.05.2003, the Claimant suffered loss in respect of the arrangements which he had already made for running the toll point for the entire period of two years The Claimant had even paid advance for the fulfillment of the Agreement The arrangement made for the erection of toll plaza had gone waste due to premature withdrawal of authorization Thus the Claimant suffered huge loss of this accounts as detailed below which should be compensated .—

Sr. No.	Particulars		Amount of Claim
1	(i)	Loss of arrangement made for establishing/erection of toll plaza Rs. 1,00,000/- x 13/14 58	89,163/-
	(ii)	Loss ofwages of contracted persons 1,00,000/- x 13/14 58	89,163/-
	(iii)	Additional administrative expenses	50,000/-
	(iv)	Additonal bank charges and loss of bank commission paid for getting the bank guarantees	50,000/-
	(v)	Loss on account of idle equipment and machinery	50,000/-
		Total Claim	**Rs. 3,28,326/-**

The Respondent has refuted the claim. He has explained that the Claimant has not constructed the toll plaza which was to be constructed by the Claimant as per the design approved from the Respondent in accordance with the provisions of clause 20 of the agreement. This Toll plaza was to be handed over to the respondent after the expiry of the Agreement period In fact, the respondent has suffered loss of Rs. 10 lacs for the construction of toll plaza which should be compensated by the Claimant.

The Claim is decided as under :—

There is no specific provision in the Agreement where in the Respondent is liable to pay any such charges to the Claimant in case of withdrawal of authorization for the collection of toll from the claimant. In view of the above, the claim of the Claimant in this regard is rejected

Claim No. 4.6 (Claim No. 6)

The Claimant has raised claim of Rs. 2,18,70,000/- on account of compensation and damages on account of illegal action of the HSRDC for forfeiture of security deposit of the Claimant without terminating the Agreement and on account of illegal withdrawal of authorization for the collectio of toll from the Claimant on 09.05.2003

The Claimant has explained the facts as under :—

Forfeiture of security deposit of the Claimant amounting to Rs. 2,18,70,000/- and withdrawing the authorization for the collection of toll from the Claimant vide letter No. HSRDC/354, dated 09.05 2003 was totally illegal and contrary to the provisions of Agreement This illegal action on the poart of the Respondent has caused considerable/immense damage to the reputation of the Claimant in the eyes

of the other departments, banks and public, Although loss of reputation cannot be compensated, yet the Respondent is liable to pay damages amounting to Rs 2,18,70,000/- equal to the amount of the security deposit which had been illegally forfeited by the respondent

The respondent has refuted the claim of the Claimant He has explained that action against the Claimant was taken in accordance with the provision of clause 2 of the Agreement and therefore the action taken by the Respondent was fully valid and legal. This claim is neither based on any contractual provision nor has any logic and legal justification

The Claim is decided as under :—

There is no specific provision in the Agreement for claiming such type of damages. As observed in Claim No 3.4, the Claimant may not have been earning any profit but would have been incurring huge losses in running the toll point. Evidently the hasty action taken by the Respondent in violation of the provisions of the Agreement proved to be blessing in disguise to the Claimant Since the claim raised by the Claimant is not supported with any contractual provisions and seems to be hypothetical as such the claim of the claimant is therefore rejected.

Claim No. 4.7 (Claim No. 7)

The Claimant has raised the claim for the payment of interest on Rs. 1,49,85,000/- (Claim No 4.1 to 4 3) from the date of illegal forfeiture of bank guarantee to the date of payment @ 18% per annum as per section 31 sub section 7(a) and 7(b) of the Arbitration and Reconciliation Act, 1996

The Claimant has explained about this claim as under :—

(i) After comming into force, the Indian Contgract Act, 1978, interest has become payable on all payments which are either delayed or due to be paid but not paid in time. In this case, forfeiture of the security deposit of the claimant amounting to Rs 2,18,70,000/- by the respondent vide letter No. HSRDC/354, dated 09.05 2003 was totally illegal and contrary to the provisions of the Agreement.

(ii) It is trade practice in the industry to charge interest at the rate of 18 percent per annum on the due payments. Even according to the provision of Section 31(7) of the Arbitration and Reconciliation Act, 1996, 18 percent interest has been allowed for future payment s

(iii) As per provision of cluase 2 of the Agreement, if there is delay on the part of the Entrepreneur in depositing the installment, then interest @ 0.05% per day or 18% per annum is payable by the Entrepreneur as such same rate of interest @ 18% per annum should be awarded on the security deposit amount which has been illegally forfeited.

(iv) The Claimant is entitled to the payment of interest on Rs. 1,49,85,000/- (amount of claim nos. 4.1 to 4 3) from the date of illegal

forfeiture of the security deposit i.e from 10.05.2003 till the date of payment The learned Arbitrator is entitled to award interest @ 18 percent per annum from the date on which the cause of action arose till the date of payment

The Respondent has refuted the claim The demand of the interest by the Claimant is absolutely unfounded and without any basis because the claims of the claimant have not been substantiated by any reasons particularly when the Claimant had committed breach of contract Rather it is the Respondent who had suffered losses.

The Claim is decided as under :—

As per Cluase No 4.1 (Claim No. 1), as sum of Rs. 1,16,72,100/- has been awarded to the Claimant and he is entitled to the interest on this amount from the date of forfeiture of security deposit i.e from 10.05.2003 till the date of payment to the Claimant. Although as per provision of the Agreement, the Caimant is liable to pay interest @ 18% for the delay in depositing the installments from the due dates and furthermore, as per trade practice, interest @ 18% per annum is applicable but due to softer interest regime, interest @ 18% per annum is on higher side. Since the Prime Lending rates of the leading banks is around 10 to 11 percent as such I hereby award interest @ 10% per annum in favour of the Claimant on Rs. 1,16,72,100/- from the date of forfeiture of security deposit i.e. from 10.05 2003 till the date of announcement of the award and also @ 10% per annum from the next day of date of announcement of the award till the payment is actually made to the Claimant.

Claim No. 4.8 (Claim No. 8)

The Claimant has raised claim of Rs. 1,00,000/- per cost for reference to the Arbitrator.

The Claimant has explained as under :—

The Respondent has openly committed breach of contract by illegally forfeiting the security deposit of the Claimant and had also illegally withdrawn the authorization for the collection of toll from the Claimant There was no other alternative for the Claimant except to seek adjudication of the dispute through the Arbitrator in accordance with the provisions of clause 28 of the Agreement.

The Respondent has refuted the claim. He has explained that in fact, the Claimant has committed the breach of contract and heavy loss has been caused by the Claimant to the Respondent. The action taken by the Respondent in respect of forfeiture of security deposit of the Claimant and withdrawal of authorization for the collection of toll was strictly in accordance with the provisions of the Agreement as such the Claimant has entered into unnecessary litigation. Since the arbitration has been sought by the Claimant as such the cost has to be borne by him in accordance with the provisions of the Agreement.

The Claim is decided as under :—

> Clause 28 of the Agreement provides that - In the event the Entrepreneur/ Agent disagreeing, with the decision mentioned in the provision of above, he may request the Managing Director, HSRDC, for appointment of an Arbitrator for adjudication of the dispute The arbitrator so appointed shall conduct the for adjudication of the dispute On receipt of request from the Enterpreneur/ Agent for appointment of Arbitrator, Engineer-in-Chief, Haryana PWD B&R will apoint an Arbitratorarbitration proceedings in accordance with the provision of the contract agreement Fee of the Arbitrator shall be paid by the party who will seek the arbitration

From the above provisions, it is evident that the arbitration has been sought by the Claimant as such the fee of Arbitrator is to be borne by the Claimant. Furthermore, the Claimant has not attached any evidence/proof in support of the claim but had made general claim Thus the Claim of the claimant is rejected

Counter Claim from the Respondnet

Counter Claim No. 1

The Respondent has raised counter claim amounting to Rs 10,00,000/- on account of non construction of the toll plaza by the Claimant The respondent explained that the Claimant was bound to construct Toll Plaza at the site of toll at his own cost. However, no such toll plaza was constructed by the Claimant at Km 2 4 of the toll barrier The claimant then backed out from the contract and the department shall have to construct the toll plaza and other amenties by spending Rs 10 lacs at the time of running the toll point. Thus the Claimant should pay Rs. 10 lacs alongwith interest @ 18 percent interest from 30 07.2003 till the realization of this amount.

The Claimant explained as under :—

Although the Claimant was required to construct toll plaza in accordance with the design approved by the HSRDC but neither any design for the construction of toll plaza was supplied by the respondent nor any such design had been approved by the respondent. In fact, the Claimant had constructed temporary structure for facilitating the collection of toll which was duly approved by the Respondent. Executive Engineer in charge of the toll point and other officials of the respondent Corporation had been inspecting the toll point very frequently and also on regular intervals. They had never raised this issue of erecting temporary structure for the collection of toll and for all purposes the structure erected by the Claimant for the collection of toll was considered by the Respondent as Toll Plaza. It is incorrect that the Claimant had backed out from the contract. In fact, the respondent had taken illegal action of forfeiting the security deposit of the Claimant and withdrawal of authorization for the collection of toll Actually the Respondent from the very beginning had started threatening the Claimant on one protext or the other However, the claim should be

rejected

The Counter claim is decided as under :—

The Respondent has not raised the counter claim properly It appears that the claim related to some other Agreement because neither the Claimant was required to construct the toll plaza in Km 2 4 i.e site of the toll barrier nor the Claimant had backed out form the Contract Furthermore, the Respondent has not supported his claim with the evidence i.e vouchers, bills/estimate for the construction of toll plaza.

The work was awarded to the Claimant on 19 02 2003 where as Respondent had withdrawn the authorization for the collection of toll from the Claimant on 09.05 2003. Evidently the Claimant had been allowed to run the toll plaza from 20 02 2003 to 09.05 2003 The Respondent has failed to show any evidence directing the Respondent was satisfied about the structure put up by the Claimant for facilitating the collection of toll Furthermore, the respondent has not supplied any evidence indicating the supply of standard drawing to the Claimant for the construction of toll plaza or had accorded approval for the construction of toll plaza In view of these facts, the counter claim raised by the Respondent against the Claimant is hereby rejected.

Counter Claim No. 2

The respondent has furnished counter claim No. 2 in respect of loss amounting of Rs. 4,84,32,435/- suffered by the respondent due to the breach of contract by the Claimant as detailed below :—

(x)	Unpaid amount for the period from 20.3.2003 to 9 5.2003 (for the period toll point remained with the Claimant (1 month 20 days) i e. 5/3 months @ Rs. 60,75,000/- per month)	**Rs. 1,01,25,000/- (x)**
(y)	**loss in toll collection by the department from 10.5.2003 to 12.12.2003**	
	(i) Amount of toll collected departmentally from 10.05 2003 to 12.12.2003 **= 2,44,72,850/-**	
	(ii) less 10% collection and supervision charges **= 24,47,285/-**	
	Net toll collection **= 2,20,25,565/-**	
	Amount due from the Claimant for the period from 10.5.2003 to 12 12.2003 **= 4,31,32,500/-**	
	Loss on account of less collection = 2,11,06,935/-	**(y) Rs. 2,11,06,935**

(z)	**Loss of Toll Collection through the new Entrepreneur from 13.12.2003 to 19.2.2005**			
	(i)	Total contract amount of the Claimant for two years -	Rs. 14,58,00,000/-	
	(ii)	Anticipated toll collection by the new Entrepreneur M/s Prince Toll Associates from 13 12 2003 to 12.12 2005	**Rs. 7,98,20,000/-**	
	(iii)	Loss of toll	**Rs. 6,58,80,000/-**	
	(iv)	Loss due to less toll for the period from 13.12 2003 to 19.02 2005 i e 14.7/30 months	**Rs. 3,90,70,500/-**	
	Loss on account of less collection =		**Rs. 3,90,70,500/-**	**(z) Rs. 3,90,70,500/-**
	Total recoverable amount from M/s Wazir Singh & Co.			**Rs. 7,03,02,435/-**
	Security deposit of the Claimant forfeited			**Rs. 2,18,70,000/-**
	Balance amount recoverable from the Claimant			**Rs. 4,84,32,435/-**

There is provision in the Agreement aunder clause 4(v), that balance recoverable amount shall be paid by the Entrepreneur forthwith to HSRDC on demand and the Corporation has to be right to recover the recoverable amount from the land reveune of the Entreprener in accordance with the provision of clause 4(vii) of the Agreement. Ther respondent further stated taht this counter claim amounting to Rs 4,84,32,435/- may be considered and accepted as counter claim No 2 in terms of provisoions of Section 23 of the Arbitration and Reconciliation Act, 1996.

The Claimant explained that no such facts were mentioned by the Respondent in his letter dated 09.05.2003 at the time of withdrawing the authorization for the collection of toll from the Claimant Furthermore, this issue was never raised by the Respondent during arguments and therefore the counterclaim made now on 27.09.2004 is after thought and should not be entertained. Furtheremore, the submissions made in the counter claim can not be considered as counter claim because there is no such provision is the Agreement itself that the Respondent Corporation can file counter claims.

This counter claim in decided as under:—

(i) The Respondent had not mentioned about the additional losses, damages or counterclaims in his letter date 9.5 2003 to the Claimant while withdrawing the authorization for the collection of toll from the claimant.

(ii) The Respondend had raised the counter claim no-2 only on 27 9 2004 when the matter was already under arguments

(iii) Although as per provision of clause 28 of the Agreement, the aggrieved person canseek arbitration and there is no provision in the Agreement indicating that the Respondent can raise the counter claim but the fact remains that as per provision in the Arbitration and Reconcillation Act, 1996, the other party i e Respondent is entitled to submit counter claims before the Arbitrator even if he had not sought the arbitration originally

(iv) The Respondent has made the counter claim in three parts i.e. (i) loss due to unpaid installments which were required to be deposited by the Claimant for the period toll point remained with him (ii) loss due to less collection of toll collected departmentally (iii) loss due to less toll collection collected through another agency. The claim to the extent of Rs 1,01,25,000/- is admitted to the fact that the Claimant had run the toll point from 20.2.2003 to 9.5.2003 but had paid the first installment for the period from 20 2 2003 to 19.3.2003 where as the Claimant is required to deposit the remaining amount for the period from 20.3.2003 to 9 5 2003 amounting to Rs 1,01,25,000/- This amount is due to the Respondent and accordingly credit for Rs. 1,01,25,000/- has been given to the Respondent while deciding Claim No 4 1 (Claim No. 1) and thus after the adjustment of Rs 1,01,97,900/- including interest from the security deposit of the Claimant, there would be no claim of the Respondent on this account Regarding the other parts of the losses claimed by the Respondent, the Claimant can not beheld liable for any short collection or excess collection of toll after the authorization for the collection of toll is withdrawn from him. There is no provision in the Agreement for carrying out the work of collection of toll from any other agency at the risk and cost of the original agency. Had the anticipated/future toll collection been more than the amount of installments of the Claimant, then whether the Respondent would have paid the excess amount so collected to the Claimant This part of the claim of the Respondent is hypothetical and the same is rejected

Conclusion

Now, I R P Bansal, the Sole Substituted Arbitrator-cum-Chief Engineer (Roads) Haryana PWD B&R Branch, Chandigarh having duly/carefully considered the whole matter submitted before me by the both the parties, do hereby announce the award I, accordingly award a sum of Rs 1,16,72,100/- (Rs one crore sixteen lacs seventy two thousand one hundred only) to the Claimant i e M/s WAZIR SINGH & COMPANY, 67, Arya Samaj Complex, Raj Guru Market, Hisar to be paid by the Respondent i e Managing Director, Haryana State Roads & Bridges Development Corporation Limited The Claimant is further entitled for the simple interest @ 10 % per annum on Rs 1,16,72,100/- (amount of award) from the date of forfeiture of security deposti i e from 10.5 2003 up to the date of announcement of award i.e up to 11.10 2004 (1 year 155 days) and I award a sum of Rs 16,62,874/- (Rs. Sixteen lacs sixty two thousand eight hundred seveny four only) to the Claimant (amount matter of calculation) Furthermore, the Claimant is also entitled simple interest @ 10 % per annum on Rs. 1,16,72,100/- (principal amount only) from 12.10.2004 (amount matter of calculation) till the date of actual pyment of the award to the Claimant and I award the same to the Claimant.

Both the parties will bear their own cost for contesting the arbitration case.

The non judicial papers for writing the award were supplied by the Claimant for writing the award.

In witness thereof, I R P Bansal acting as Sole Substituted Arbirator have signed this on the day of 11th October, 2004 at Chandigarh

Sd/-
(R.P Bansal)
Sole Substituted Arbitrator
-cum Chief Engineer (Roads)
Haryana PWD B&R Branch, Chandigarh

Place · Chandigarh
Date The 11th October, 2004

This is with reference to the observations of LR Office vide note dated 10.12.2004 at NP-6.

In this connection, it is brought out that the comments/objection of the Corporation regarding award were given under para 12 and 13 on NP-5ante. It is to be seen as to whether the decision of the Arbitrator regarding dispute No 3.3 & 3 4 in particular stand to the test of legal scrutiny in view of the provisions of contract and arguments submitted before the Arbitrator. The Arbitrator has decided w r.t d dispute No 3 1 that the due date of 2nd instalment was 15 4 2003 instead of 15 3 2003 ignoring Clause 2 of the agreement view which the agency agreed to pay instalment on due dates in advance. As explained under para 12 on NP-5 this decisin of Arbitrator implies that the agency could pay the instalment even after expiry of the agreement which is a contradiction in itself.

Regarding dispute No. 3 3 ^ 3 4, the Arbitrator has decided that the respondent i.e. the Corporation should have first terminated the agreement and thereafter was entitled to forfeit the security deposit of the claimant whereas withdrawal of authorization for collection of toll from the agency and forfeiture of security was not at all connected with the termination of agreement under any provision of the agreement.

The other disputes and claims decided by Arbitrator are as a consequence of the decision of above three dispures primarily. So these three disputes are to be seen from legal angle in particular

In view of above case is submitted for orders/decision as solicited under para 15 on NP-16, please

Sd/-
(R K Verma)
EE, HSRDC

SE (WBP-I)

Sd/-
(Mahabir Singh)
SE (WBP-I)

MD (HSRDC)

Sd/-
(H.S. Chahal)
MD, HSRDC

CPW

Sd/-
(S.C. Chaudhary)

Sd/-
CPW

L R.

Law and Legislative department Haryana

Pursual of the facts of the case reveals that the disputes as pointed by the administrative department on which the A.D wants to file objections under section 34 the arbitration and conciliation act 1996 are as under.—

3 1 What would be the due date for depositing second installment without interest and with interest and what would be the due dates for depositing further installments without interest and with interest

3 2 Whether the respondent had any authority to forfeit the security deposit of the claimant amounting to Rs 15,01,200/- and withdraw the authorization for the collection of toll without terminating the agreement in accordance with the provisions of clause 2 of the Agreement and whether the action of respondent of forfeiting the security deposit of the claimant with out terminating the agreement was illegal and contrary to the provisions of the Agreement?

3 3 Whether the Respondent had any authority to withdraw the authorization for collection of toll from the claimant with out terminating the agreement in accordance with the provisions of clause 2 of the agreement.

The above disputes were decided by the Arbitrater in favour of M/s Wazier Singh & Company, Claimant, within the terms of reference, in accrodance with the agreement of parties It is admitted by the Administrative department that there seems to be no point which speaks of the misconduct on the part of the Arbitrater in his verdict It is also pointed out in the reference made by the Administrative Department that Legal Cell of the Head Office had also agreed with the opion ion of the Superintending Engineer, Karnal, in this regard and opined that it is not a fit case for filling objections/appeal agains the Award. The Administrative department availed reasonable opportunity to represent its case with regard to the above disputes before the arbitrator. No ground, as mentioned in sectin 34 of the Arbitration and conciliation act, 1996 against the Arbitral Award is made out. It is, Therefore, not a fit case for filling application under section 34 of the Arbitration and conciliation act, 1996 for setting aside the Arbitral Award, It the Administrative Department so desires it may obtain the opinion of the Advocate General Haryana.

Sd/-
20.12.04
A.L.R. (Idt.)
For Legal Remembrance & Secretary
To Government, Haryana

Subject : Arbitration award inthe matter of arbitration regarding dispute arising out of the contract for the work of collection of toll at toll point near Uttar Pradesh Border on UP Border-Gohana road (Contract No. HSRDC (Toll-15).

Kindly refer N P 1 to 9 for detailed history of the case The advice of LR and Secretary to Govt. Haryana is available at NP 8 to 9

The advice of Advocate General, Haryana is solicited, w. r.t Suggestion of LR in the matter in view of the comments of the corporation under Para 12 to 13 on NP 5 ante and at NP 7 ante as to whethere it is a fit case or not filing objections under Section 34 of the Asbitration and Conciliation Act, 1996 for Setting aside the award

Sd/-
23.12 2004
Mahabir Singh
SE/WBP-I

Sd/-
24 12 2004
H.S. Chahal
MD/ HSRDC

Sd/-
S.C. Chaudhary
CPW

45381—H V S —H G P , Chd

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