

Status report on implementation of Hon'ble Supreme Court order dated October 9, 2015 regarding pollution by commercial traffic via Delhi and imposition of 'Environment Compensation Charge' on such vehicles

Environment Pollution (Prevention and Control) Authority for NCR

November 16, 2015

A. Background

The Hon'ble Supreme Court had issued directions on October 9, 2015 to impose 'Environment Compensation Charge' on commercial vehicles entering Delhi. This charge was additional to the MCD toll as it was necessary to equalise the difference in cost in travelling through alternative routes.

It was directed that the charge would be collected by toll operators without any deduction and handed over to the Delhi government on every Friday.

The order would be operative for a period of four months, starting from November 1, 2015 to February 29, 2016 on an experimental basis. It was also directed that this order would override any order to the contrary by any authority.

On October 26, 2015, through their advocate, SMYR Consortium LLP, through its partner Mr Kishore P Agarwal, has filed an IA in the matter. It has prayed for modification of order in so far as it directs the applicant by implication as the Toll Operator or the Toll Collector, to collect ECC without any deduction and hand over to the Delhi Government and as it requires the applicant to install RFID system at all the entry points by November 30, 2015 and to declare that the notification dated 20.10.2015 is in operative qua the Applicant.

It also prayed that the Hon'ble Court to pass an ex parte ad-interim order staying the operation of the order dated October 9, 2015.

On October 30, 2015, the Hon'ble Supreme Court heard the matter and did not pass an ex parte ad-interim stay. It has posted the matter for hearing on November 16, 2015.

On midnight of November 1-2, EPCA had visited the toll collection post at Rajokari and had found that the order of the Hon'ble SC was not being complied with.

On late evening of October 31, 2015 M/s SMYR Consortium LLP, the toll tax concessaire of SDMC issued a legal notice citing grounds for inability to implement the court order and also seeking replies to certain queries.

On November 4, 2015, EPCA after meeting with representatives of the Delhi government and MCD clarified the queries raised by the toll tax concessionaire M/s SMRY Consortium LLP.

On November 6, 2015, SMYR Consortium responded to SDMC and informed them that they had 'convinced their staff to collect the ECC' without prejudice to their rights and contentions till the matter is resolved by the Hon'ble SC on November 16, 2015. They have maintained that they are not contractually or statutorily liable to collect the ECC and would be doing so in deference to the orders pass by the Hon'ble Supreme Court.

B. Status of implementation and compliance with directions of Hon'ble Supreme Court

1. Delhi government has issued a notification dated 20.10.2015 levying ECC on commercial vehicles.
2. Delhi government has issued advertisements in 9 newspapers – English, Hindi, Punjabi, Urdu -- on October 27, 31st, November 1, and 2 regarding the directions. It has assured EPCA that it will continue to issue advertisements through the month of November as well.
3. MCD has directed the toll operator vide its letter of October 9 and 14, 2015 to comply with the directions of the Hon'ble Supreme Court and that wilful defiance of the said orders would be liable to contempt of court.
4. Haryana government has given wide publicity to the order through newspapers and pamphlets. It has also installed billboards at the exit points towards alternative highways to inform commercial traffic of diversions.
5. The UP government has informed EPCA that they are in the process of installing billboards pointing to alternative highways.
6. The Delhi government has already installed notice boards regarding ECC at 20 toll booths/collection points. It is in the process of installing larger size billboards at all toll collection points to further inform incoming traffic of the ECC and exemptions.
7. EPCA has identified highways, which would help to bypass commercial traffic. It is in the process of further consultations with NHAI and state governments to seek improvements as necessary in the road infrastructure (see map).
8. EPCA's physical inspection on midnight of Friday, November 13, 2015 at Badarpur, Rajokri, Apsara and Sahadara toll collection found that the operator was charging trucks ECC and issuing a physical receipt.
9. Delhi government has contracted an agency, namely M/s Elcosta Security System India to set up the CCTV cameras at all locations. It has informed EPCA that this work is in progress and being expedited. As per the schedule provided, the agency will install CCTV cameras and software, which will be able to accurately enumerate and categorise the commercial vehicles at 9 locations in 15 days from 16.11.2015.
10. On November 13, 2015, SMYR Consortium has submitted data on the collection of ECC from November 6 to November 12. A total of Rs 4,32,97,600 has been collected in 6 days.

C. EPCA's observations on the IA dated October 26, of SMYR

1) Whether the installation of RFID is within the scope of the agreement

The Hon'ble SC in its order of October 9, 2015 has instructed that toll collectors will put in place Radio Frequency Identification Device (RFID) at their own cost at 9 main entry points in the city by November 30, 2015 and by January 31st 2016 at all the remaining 118 entry points to the city, failing which the contractors will be treated as being in breach of their obligations.

As per Contractor's Obligations (*clause 7.2 (a), (b) and Schedule 7.2) (Clause 3.2.2, #19 of SDMC RFP Volume II*), the Contractor has to computerise all toll posts/plaza to enable the contractor to collect the toll tax on the basis of RFID. The exercise of converting the manual toll plaza to computerised toll posts would be carried out in a timebound and phased manner. The contract specifies that the preferred bidder/developer shall install RFID at all the 10 existing computerised toll plaza/posts. This exercise what all carried out not later than 6 months from the date of award of the tender. All all manually operated toll posts (111 in number), toll tax would be collected through hand-held-devices. Radio Frequency install and commission RFID and ensure toll collection through the same on at least the 10 computerised locations within 6 months from the start date of the Contract..

In letter dated 6.11.2015, SMYR Consortium that "they are contractually obliged to install the RFID receivers at 9 toll plazas."

Thus, the Contractor's obligations under the present Contract provide for installation of RFIDs and collection of toll thereof without any additional charges.

2) Whether the ECC Collection is in scope of Contract

Under the current Contract, the Contractor is obligated to:

- Comply with the orders of the Hon'ble SC in Writ Petition (Civil) No. 13029/85 (As per clause 8.1 (h) that non-destined vehicles will not be allowed to enter Delhi and shall be returned back. For doing this, the Contractor is obligated to check relevant documents of each vehicle entering Delhi.
This is a cumbersome procedure and in fact, as pointed out in EPCA report of October 2015 that only 0.1 per cent trucks were turned back as they were non-destined. The Hon'ble SC order of December 6, 2001 was not being complied with.
- It is also required to confirm and implement all Central and State statutes, rules and regulations **and other judicial orders** issued from time to time in all respect, as per clause 8.1 (g)

3) In the matter of criminal liability pertaining to collection of ECC Charges

The Contractor's obligations under the present Contract provide for strict compliance of Hon'ble SC orders pertaining to non-destined vehicles (clause 8.1(h)). In collection of ECC Charges, no additional obligations are being imposed upon the Contractor.

4) In the matter of checking of vehicles on account of exemptions allowed by the Hon'ble Court

The Contractor's obligations under the present Contract (clause 8.1(h)) provide for checking of all documents pertaining to the destination of each vehicle. After checking the documents, the vehicles are required to be turned back. The additional obligations on the Contractor for checking of vehicles on account of exemptions are far less than the original obligations provided for in the Contract. The exemptions are for vehicles carrying "raw vegetables, fruits, grains, milk and tankers carrying petroleum products." These are therefore limited and these vehicles are easy to identify.

5) In the matter of monthly passes

EPCA has already informed the Toll Concessionaire, through SDMC vide its letter dated November 4, 2015 that vehicles with monthly passes will have to pass through the toll lanes and pay applicable ECC for every entry as no provision. The matter of inconvenience and congestion will be resolved through the installation of the RFID system.

D. EPCA's observations regarding revenue loss because of diversion of traffic

In its letter to SDMC dated November 6, 2015, SMYR Consortium has said that there has been a drastic drop in collection of municipal toll tax (from November 2-5, 2015). This is because they say that many of the state police have "blindly resorted to diverting all truck traffic" to bypass road. Under the circumstances, they add, "as the collection has dropped by 30 per cent of what was the average collection in the past few months, we request you to agree for an immediate re-negotiation of the contract so as to factor in the reduction."

It has followed up this with another letter dated November 9, 2015 saying that the act "of the neighbouring states are totally illogical, illegal and against the spirit of the Hon'ble Supreme Court order and putting us in great trouble as traffic counts are coming down day by day."

It then goes on to say that "we will not be able to comply with the terms of RFP and make payments even 70 per cent of the original amount."

EPCA has been informed by SDMC that SMYR Consortium has not paid them the full contracted amount for the past 2 weeks.

What is the evidence on the reduction in traffic count of commercial vehicles entering Delhi and therefore reduction in collection of toll and ECC?

There has been no traffic count since the start of the collection of ECC. The letters dated November 6 is before the start of the collection of ECC and November 9 2014 is within 2 days. It is difficult to establish if the counts have decreased, which would be in compliance of Hon'ble Court order, until the CCTV cameras are installed or there is an independent traffic survey to ascertain these numbers. In absence of that it would seem hasty on the part of the toll concessionaire to reduce the amounts to be paid to SDMC.

If the commercial vehicle numbers have decreased, this is a good signal for air quality in Delhi and it is the what is the intent of the Hon'ble Supreme Court order. Based on independent surveys of this reduction, a mechanism for compensation of loss of revenue can be worked out.

In EPCA's view there is possibility of leakages in the system so that the amounts collected are not deposited and this must be avoided.

The problem is that the operator has accepted that the system is designed so that it is for payment of fixed amount to SDMC of Rs 1653.48 crore for its contract period of 3 years. This amounts to Rs 551.16 crore per year. It says that it employs hundreds of employees who carry out the work of actual collection of municipal toll tax and while there is a certain margin of pilferage, irregularities and undisclosed collection by the staff, which the Applicant as the prudent businessman has taken into consideration, while submitting their bid. Therefore, it cannot act as a tax collector, as required for ECC.

It has also stated that it has massive expenses and requirement of additional infrastructure and manpower for this collection.

EPCA estimation on the quantum of ECC collection per day after deducting passenger vehicles is as follows:

Independent count from 9 entry points	ECC (Rate/Rs)	Count	Revenue (Rs/per day)
Light Duty Vehicles	700	22,043	1,54,30,100
Heavy Duty Vehicles	1300	9,374	1,21,86,200
		31,417	2,76,16,300
Extrapolated to all entry points			3,67,29,679
Per week ECC collection			Roughly Rs 26 crore/week
Assuming 30 per cent reduction and allowance for exempted vehicles			Roughly Rs 18 crore/week

Estimation based on average vehicle entry into Delhi according to SMYR

SMYR counts at 9 points	ECC (Rs)	Count	Revenue (Rs/per day)
Light Duty Vehicles	700	14,147	99,02,900
Heavy Duty Vehicles	1300	8558	1,11,25,400
		22,705	2,10,28,300
Extrapolated to all collection points			2,79,67,639
Per week ECC collection			Roughly Rs 19.5 crore/week
Assuming 30 per cent reduction and allowance for exempted vehicles/ per week			Roughly Rs 13.6 crore/week

In other words, based on the traffic counts of Independent Survey done for Centre for Science and Environment and the counts of SMYR for the past 4 months, the difference in ECC collection after accounting for reduction of 30 per cent is in the range of Rs 18 crore to Rs 13.6 crore per week.

E. EPCA's recommendations

It is not possible to estimate the actual decrease in the number of vehicles without data collected from the CCTV cameras or an independent survey. It is not correct of SMYR to make deductions from

the contracted amounts. It is also important that there should not be any leakages in the collection of ECC. In this regard, the following is necessary:

- a. The Toll Operator should include the collection of ECC in the software for collection of Municipal Toll. This will ensure that there is a full record of the entries of the vehicles. Currently, the ECC is collected manually using a receipt book, which does not have any record.
- b. The CCTV camera will capture and record all such entries as well and this will allow for cross-checking on the number and category of vehicles.

The question of costs of the Toll Operator and compensation for reduction in the number of vehicles needs to be examined separately based on the counts that are recorded.