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The Kali Gandaki tangle

NEA management, with official collusion, let $30 million in guarantee money slip away

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Even before the shady transfer of cost overruns in the Kali Gandaki A hydropower project has been resolved, yet another scam has rocked the country's biggest power project.

The Nepal Electricity Authority (NEA) paid $50 million in cost overruns to the project's Italian contractor, most of it without authorisation from the board. Now, it has been revealed that NEA's past management allowed the contractor's $30 million guarantee money to slip away even though a court ruling in Paris a year ago awarded it to Nepal.

As a result, NEA doesn't have access to the performance bid (also known as 'retention money') amounting to $30 million because the contractor has gone for arbitration in the International Chamber of Commerce in Paris. The Intasa Bank in Milan says it can't transfer the money to NEAs account because of the new legal tangle. The other bad news is that there is no counter bank guarantee in Nepal—yet another flaw on the NEAs part—when it signed the deal with the contractor in the late 1990s. Had there been a counter bank guarantee, the recovery of the money would have been much easier.

"The previous management should have taken the money as soon as we had won the case," says Minister of State for Water Resources, Thakur Prasad Sharma. "Since they didn't do that, we are having a tough time getting the $30 million back." NEA had sent two officials to Milan earlier this month but they came back empty-handed because the bank said the matter was in arbitration.

The legal proceedings will last another year-and-a half and even at the end of it, there is no certainty NEA will get back the $30 million. The arbitration is over another $20 million the Italian contractor, Impregilo SpA, has claimed over and beyond the $50 million in cost overruns that it has already been paid. NEA has been refusing the payment of the additional claim.

In this tangle, the question now is not whether NEA will get the guarantee money back, but why it did not transfer the $30million to its account when it could have after the international court in Paris authorised it to do so. The decision came after Impregilo moved the court following NEA's bid to freeze the guarantee because the Italian contractor had not extended its term despite the authority's repeated requests. The extension of the guarantee money had become necessary because the two parties had not agreed on the variation costs of the project during the government of Lokendra Bahadur Chand last year. *(See Nepali Times #155,166 and 174)*

The court's decision in favour of NEA had come while when the Chand government was being replaced in early 2003. The successor government did not pursue the matter and insiders say the NEA management at that time was complicit in not making any moves to retrieve the money. Fingers are pointed at the then-Tourism Minister and NEA chairman Sravendra Nath Shukla, who allegedly made no attempt to get the money back.

"He used to argue that the idea was to settle the variation dispute amicably," said one former board member. "But, many knew that this would be in the Impreglio's interest." Besides, the theory of amicable settlement simply does not apply here, because Impregilo had already walked away with $50 million in variation costs. NEA insiders told us the additional $20 million the Italians are claiming can't be justified, and reclaiming the $30 million bank guarantee could have at least compensated for the earlier unauthorised payment.

Former Minister Shukla said the NEA did not collect the money because he wanted the dispute with Impregilo to be settled amicably. "If we had taken the money, we would have had to face the arbitration then. Our legal advisors suggested that we go for an amicable settlement." However, board members during his tenure remember suggesting to him that the money had to be collected at the earliest. "But he always discouraged the idea and now money has slipped out of our hands for good," said one official.

Impregilo's local agent Sanjeev Koirala says the money is safe in the Milan bank and that it has never said it would not pay NEA. "The bank has never said so and even if it had given the money in the past, the NEA would have an upper hand in the present arbitration," he told us.

But the Italian contractor has influenced the civil construction deal of the 144MW Kali Gandaki A project from the beginning. It won the contract by bidding the lowest, $130 million, but used a clause in the contract for variation to claim and got the $50 million in cost-overruns, most of it without the NEA board's approval. Our complicit officials seem to have as much a hand in this as the Italians.

When the scam became public knowledge, instead of taking action against the culprits, the former NEA board swept the matter under the carpet. Worse yet, it helped the foreign contractor keep its $30 million guarantee money which rightfully belongs in the national coffers. ●