PARIPEX - INDIAN JOURNAL OF RESEARCH | Volume-9 | Issue-5 | May - 2020 | PRINT ISSN No. 2250 - 1991 | DOI : 10.36106/paripex

ORIGINAL RESEARCH PAPER

Commerce

ASSESSMENT OF STRATEGY TO REVIVE PRIVATE SECTOR PARTICIPATION IN INFRASTRUCTURE PROJECTS IN INDIA

KEY WORDS: PPP project, Infrastructure, regulator, dispute resolution, renegotiation

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ABSTRACT

Private sector participation in infrastructure projects in India is essential, as government alone cannot invest large funds required for the purpose. Utilization of fund and expertise of private sector in Indian infrastructure development has taken place in the form of Public Private Partnership projects and the same is presently going on. But, the momentum of implementation of public private partnership projects in India has come down in past few years due to different issues. Government has taken some measures to address the issues. But, these measures are not sufficient and more actions are needed. In the paper, the author has reviewed issues hampering PPP projects in India and different recommendations forwarded by different stakeholders to increase private sector participation in infrastructure projects. The paper also includes review of implementation of the recommendations by Government and required actions to be taken up in future.

INTRODUCTION AND CONTEXT

In India, private sector has a key role in development of infrastructure. Many public-private partnerships (PPP) projects are implemented for benefits of people. However, over the last decade, the share of private sector investments in the sector has fallen drastically. This is due to numerous reasons and immediate measures are needed to reverse the situation. In the paper, the author has reviewed different issues hampering PPP projects in India, measures prescribed to revive PPP projects, actions taken up by Government till date and what more needs to be done.

IDENTIFIED ISSUES HAMPERING PPP PROJECTS:

The major identified issues hampering the PPP projects in India are:

i)Poor cash inflows after completion of project, which is not sufficient to meet the operation and maintenance cost and repayment of installment for capital cost of project. This has happened in several PPP projects and therefore the projects failed.

ii)Delay in project completion or achievement of commercial operation due to different project implementation issues. The implementation issues include inability to acquire the required land for the project due to resistance from land owners, arbitration over ownership of land, delay in obtaining environmental clearances, delay in shifting of existing utilities lying within project area, delay in securing forest clearances for cutting trees in project area, delayed permission for crossing of railway track and national highways in pipeline project, delayed construction of railways under bridge and over bridge in road project, delay in obtaining statutory approvals from pollution control board and other agencies, lack of coordination between different government agencies and stakeholders, etc.

iii)Unfair penalty clauses included in contract documents of PPP projects

iv)Poor quality detailed project reports, erroneous cost estimates and financial analysis of project

v)Inadequate availability of long-term finance for the projects

vi)Absence of renegotiation clause in PPP contracts

vii)Lack of fair and independent dispute resolution mechanism

viii)Unbalanced project risk sharing and partnership between public agency and the developer

ix)Absence of regulators in different infrastructure sectors

x)Inadequate capacity in public institutions and public officials to manage PPP processes

PRESCRIBED REVIVAL STRATEGY

To suggest recommendations on actions to be taken to revitalize PPP projects in India, a nine member committee headed by former Finance Secretary Vijay Kelkar was **constituted on 26th May 2015**. The committee submitted its report on 19th November 2015. The committee recognized that PPP model in infrastructure projects is a valuable instrument to speed up infrastructure development in India. The summary of the Kelkar Committee recommendations is as below:

i)Revisiting PPPs: The committee recognized the importance of brining maturity to current models of PPPs. The committee recommended that PPPs have the potential to deliver infrastructure projects better and faster and the focus of PPP projects should be on service delivery for citizens rather than fiscal benefits.

ii)Risk allocation and management: The committee noted that inefficient and inequitable allocation of risks can be a major factor leading to failure of PPP projects. The contracts of PPP projects should ensure optimal risk allocation across all stakeholders.

iii)Strengthening policy and governance: The committee suggested that the Ministry of Finance may develop a national PPP policy document, endorsed by Parliament. The Committee also recommended formulating a PPP law, if feasible. Further, the committee suggested that the Prevention of Corruption Act, 1988 should be amended to distinguish between genuine errors in decision making and acts of corruption by public servants.

iv)Strengthening institutional capacity: The committee suggested that the capacity of all stakeholders including regulators, authorities, consultants and financing agencies, should be built up by setting up a a national level institution. The committee suggested that independent regulators should be set up in sectors that are going for PPPs. An Infrastructure PPP Project Review Committee may be set up to evaluate PPP projects. An Infrastructure PPP Adjudication Tribunal should also be constituted. A quick, efficient, and enforceable dispute resolution mechanism must be developed for PPP projects. Government should notify guidelines for auditing of PPP projects. The committee suggested that Special Purpose Vehicles of PPP projects (private partners) should follow norms of corporate governance and financial disclosures as per the Companies Act, 2013.

v)Strengthening contracts: The committee recommended that since infrastructure projects span over 20 or 30 years, a private developer may lose bargaining power because of abrupt changes in the economic or policy environment. The committee recommended that the private sector must be protected against such loss of bargaining power by amending the terms of the PPP contracts to allow for renegotiations.

Another set of major similar recommendations to revive PPP projects in transportation sector includes the following:

i)Strengthening of lending institutions: Despite the creation of other lending institutions such as IIFCL, IDFs, and IFCs, commercial banks are major sources of debt financing of PPP projects in India. However, banks are faced with issues such as asset liability mismatch and liquidity constraints as they have been funding long-duration infrastructure projects with their short-term deposits. Hence, strengthening of banks and other financial institutions is needed.

Greater participation of insurance and pension funds: Developer of PPP projects need to have access to long-term funds for infrastructure projects with long gestation periods. Globally, long-term capital is raised via capital markets where major investors are pension and insurance managers. There is an urgent need in India to tap such markets to fund its infrastructure requirement.

iii)Establishment of Infrastructure PPP Project Review Committee (IPRC) and the Infrastructure PPP Adjudicatory Tribunal (IPAT): The Kelkar Committee recommended a two-tier framework of the IPRC and IPAT for faster resolution of disputes relating to private sector partnerships and public procurement. IPRC will be responsible for screening and identifying actionable stress in infrastructure PPP projects in a time bound manner. IPRC will ensure that only relevant and deserved cases of PPP projects which involves substantial question of law reaches IPAT. It is suggested that IPAT be chaired by a judicial member such as former Judge of Supreme Court or Chief Justice of High Court along with technical and financial member. An independent tribunal for PPP projects in India should be set up through an Act of Parliament immediately.

iv)Setting up of 3P India: Government of India, in the Union Budget for year 2014-15, had proposed to set up an institution to provide support to mainstreaming PPPs called 3P India. But, not much progress toward establishing a dedicated institution has been made till now. Thus, there is an urgent need to set up 3P India.

v)Mechanism to keep a check on aggressive bidding: Aggressive bidding is a major cause of concern in PPP projects. It has been observed that, developers bid aggressively to bag projects. Such developers at times become incapable of raising funds and execute projects within the stipulated timelines. Hence, it is recommended that the government develop a framework that would enable authorities to analyze the lowest bid with respect to internal estimates.

vi)Need for independent regulators: For long, authorities in the transport sector such as NHAI have played dual roles of regulators and executing agency. Overlapping in functions of regulatory authorities and executing agencies is also a major cause of concern. Therefore, it is recommended that independent regulators be created in sectors and responsibilities of regulators refined and streamlined.

vii) Need to put strong emphasis on performance-based contracts: India has created huge infrastructure assets on roads, railways, ports, airports, etc. Maintenance of these assets is a huge challenge for the government. Hence, there is a need to develop frameworks for private participation in the operation and maintenance of created assets with an objective to improve service levels and gain efficiencies. In this framework, government can award the work to a private player for management and maintenance, rehabilitation, improvement and emergency works of public assets.

viii)Better preparation of DPRs: It is observed that inadequate quality of detailed project reports leads to high costs of implementation. Hence, it is recommended that the government adopt a value engineering mind set for project design by building strong in house value engineering teams. The design for the project should be thoroughly reviewed to minimize land acquisition to the extent possible.

ix)Revisiting the Viability Gap Funding (VGF) Scheme: Government should consider increasing the limit of VGF. The basis of calculation of VGF should be as per market rates and not as per Schedule of Rates. Also, there is a need to relook at the disbursement mechanism of the VGF fund. State governments may be allowed to disburse funds directly from their own corpus to project SPVs, which could then be reimbursed by the Central Government.

STATUS OF IMPLEMENTATION OF REVIVAL STRATEGY

Over past few years, Government has undertaken some steps to address the issues faced by PPP projects in India. This includes the following:

i)Formulation and implementation of PPP models like Hybrid Annuity Model (HAM) & Toll Operate and Transfer (TOT), where Government has optimally taken over the project implementation risk and thereby revived the interest of private players in PPP projects in the road sector. In HAM model, government contributes 40% of the project cost as fixed amount in five equal installments and the remaining 60% is paid as variable annuity amount after the completion of the project depending upon the value of assets created. There is no toll right for the developer and revenue collection is the responsibility of the National Highways Authority of India (NHAI). Thus, the model gives enough liquidity to the developer and the financial risk is shared by the government. Under TOT model, public funded projects operational for two years are put up for bidding, wherein the right of collection and appropriation of toll fee is assigned to concessionaires for a predetermined concession period (30 years) against upfront payment of a lump sum amount to NHAI.

ii)Continuation of Viability Gap Funding Scheme, whereby the user charges of the project is kept down and the project is made viable and attractive to the bidder.

iii)Government has liberalized the exit policies for concessionaires to free-up equity for reinvestment into new projects. Government has allowed existing concessionaires in on-going and completed national highway projects to divest their equity stake in the project at any time after securing the bid. The revised policy applies both to existing and future projects.

iv)Indian railways has identified public private partnership projects for strengthening of rail connectivity, private container train operations, building private freight terminals, wagon investment/leasing schemes and redevelopment of stations. Government has already initiated PPP projects for railway station development.

v)Set up National Infrastructure Investment Fund (NIIF) to channelize Indian and foreign institutional funds into infrastructure. NIIF is a fund manager that invests in infrastructure and related sectors in India. Reserve Bank of India has also introduced Infrastructure Investment Trusts (InvITs), which are collective investment schemes similar to mutual fund, which enables direct investment of money from individual and institutional investors in infrastructure projects.

vi)Introduced PPP component in new metro policy. The policy has made PPP component mandatory for availing central assistance for new metro projects. In the policy, private investment and other innovative forms of financing of metro projects have been made compulsory.

vii)Amendment in the Arbitration and Conciliation Act, 1996, which has made arbitration as speedy, efficient and cost effective remedy for disputes in PPP projects.

viii)Periodic recapitalization of public-sector banks aimed at reviving bank-lending.

ix)Introduction of state level ranking in ease of doing business (EODB), which may force state governments to push through reforms in infrastructure sector.

It is to be noted that Government has not implemented many recommendations to revive PPP projects in India. This may be due to political reasons. In India, reasonable actions on reforms initiated by government can be distorted by opposition political parties and thereby put the government in politically disadvantaged position.

UNFINISHED WORKS TO REVIVE PPP PROJECTS

For revival of PPP projects in India, Government needs to implement all major recommendations. These include the key recommendations of the Kelkar Committee Report such as setting up of national level PPP institution, engagement of regulators in all important sectors, setting up a dedicated PPP tribunal and approve a formal framework for post award contract renegotiation covering PPP projects in all sectors. Implementation of recommendations as mentioned above shall send a message to the market about commitment level of Government to PPP projects. But, any government will be willing to implement the above recommendations only when there is no possibility of any political backlash. Therefore, government will have to make proper political strategy to implement the recommendations.

Disclaimer: The findings and conclusions presented in the paper are personal opinion of the author.