

National Highways of India: A Study on Constraints of Public Private Partnerships in Highways

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Abstract:

India has more than 2 decades of executing the PPP (Public Private Partnerships) in various segments of public service delivery, including urban development, transportation, and social sector and industrial projects. The road and highway is one of the prime segment of the infrastructure development wherein PPP have been executed in large volume. The Highways in India have been considered as a successful case of attracting PPP projects. The National Highways Authority of India has executed various highway projects successfully since its inception. It is interesting to note that NHC only about 2% of the road manner.

National Highway Authority of India (NHAI) has been grappling with the problem of mounting debt to the tune of Rs 1.78 lakh crore in FY19 from around Rs 40,000 crore in FY14. NHAI's expenditure has also gone up in recent times due to higher land acquisition costs and large project awards through the engineering procurement and construction (EPC) route, where the authority bears the entire cost of construction. Around 35% of NHAI's annual expenditure goes into construction of national highways, 30% into acquisition of land, 16% in extending grant for projects under hybrid annuity model (HAM), 15% in debt servicing and the remaining 4% into payment of annuity. The authority has Rs 5,573 crore debt-servicing obligation in FY20, Rs 6,600 crore in FY21 and Rs 4,700 crore in FY23. It has to pay around Rs 15,000 crore interest annually for its outstanding debt.

In the wake of these developments the central government has asked NHAI to frame on Build-Operate-Transfer (BOT) basis that will ensure a level of preparedness before awarding projects and to effectively tackle the constraints of promoting PPP.

Introduction

The National Highways Authority of India (NHAI) was established by an Act of Indian Parliament for development, maintenance and management of National Highways. The Authority became operational in 1995.

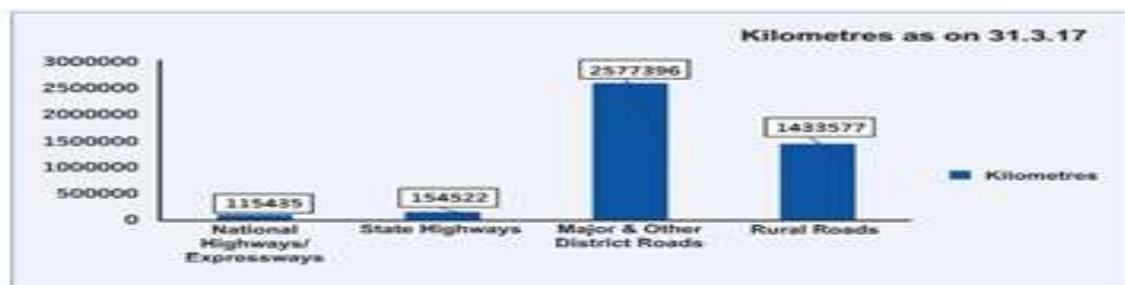
Elements of the Authority are administered by National Highways Authority of India Act, 1988 and rules framed under the Act; Land obtaining for development of national thruways is represented by National Highways Act, 1956; and different issues identified with infringement

and controlling the traffic on the roadways are administered by The Control of National Highways(Land and Traffic)Act,2002.

At first, NHA was depended with the Task of creating 331 km of national parkways with the help of Asian Development Bank (ADB).

Consequently, NHA was ordered with a driven interstate advancement program to be specific National Highways Development Project(NHDP) in the year 2000.Under stage 1 of NHDP,7522 km which included 5846 km of Golden Quadrilateral interfacing four metro urban communities viz.Delhi,Mumbai,Chennai,Kolkata was to be redesigned to4/6 path.

The Government of India characterizes Public Private Partnership (PPP) as "an association between an open division substance (supporting power) and a private area element (a lawful element wherein 51% or a greater amount of value proprietorship is with the private accomplice/s) for the creation and the board of framework for open reason for a predetermined timeframe (concessional period) on business terms and wherein the private player has been secured through an open and straightforward.



Source: NHA

Types of PPP Models Used in Road Sector

1. Build Operate Transfer (BOT Toll): In the BOT model, open area offers work to a private part element to configuration, construct, work and keep up street foundation offices for a particular timeframe known as concession period. During this concession period the private substance has the duty to mastermind the necessary assets for the undertaking and is approved to gather incomes created by the task through assortment of toll charge from clients. The utility or administration later on will be moved to the open authority toward the finish of the concession time frame, with no compensation to the private part included in that.

2. Build Operate Transfer (BOT Annuity): It is like BOT Toll model aside from after finishing of the venture open authority give money according to concurrence on annuity premise to private division; the period could be a half year or one year annuity, till the consummation of concession period. The administration will be then moved to the open authority toward the finish of the concession time frame, without giving any installment to the private area associated with concession.

3. Build Own Operate Transfer (BOOT): In this model the ownership of the infrastructure services belongs to the project executing entity. The government allows a franchise to a private entity for financing, designing, building and operating a period. Later on the ownership of the project is to the public sector at the end of concession period. Consequently, the private entity

accrue the benefits of any residual value of the project. Usually such PPP arrangement is preferred when the physical life of the project and concession periodic is short.

4. Design Build Finance Operate Transfer (DBFOT): In DBFOT, the private entity assumes the entire responsibility for the design, construction, finance, and operation for the period of concession and transfer it to public authority at the end of that period. This model seems similar to the BOT arrangement.

5. Operation and Maintenance (O & M): The Operation and Maintenance contracts covers a wide range of contracts from technical to full-blown operation and maintenance agreements and hence these cannot be easily categorised in to a specific term.

6. Design Build Operate Transfer (DBOT): This model is quite similar with BOT model, only funding option is common when the client has no understanding of what the project entails. In such a scenario the finance is arranged by public authority. Hence the contract is given to a company to design, build, operate and then transfer it.

Challenges and Constraints

Independent Regulator

Roads and highway development is predominantly regulated by government in India through policy, decision, execution and finances – vested– Ministry of Road Transport and Highways (MORTH). Although NHAI was carved out as a separate entity in 1998 to take care of the execution of the road and highway projects, its role is getting interfaced with MORTH.

- (i) The highways development requires the following
- (ii) Setting Policy framework (planning, execution, standardisation and maintenance),
- (iii) Deciding upon tariff structure, tolling, and pricing mechanism
- (iv) Development and maintenance of projects.

NHAI is actively engaged in the development and maintenance of projects having large amount of unallocated road projects wherein the process of bidding not done and anomalies over the allocation of projects have been identified. This result in uneven progress of projects as well as uneven outcomes in terms of road project quality and standards parameters i.e., roads/highways of same class exhibit different characteristics across India. The lack of a centralized regulator, like the sectors like power, civil aviation and telecom, is a major limitation, because of which several decisions of NHAI have been subject to criticism, controversy and legal tussle. Henceforth an independent sector regulator is required in order to lay down standards for development and maintenance along with formulating policies in regard to tariffs and pricing in an objective and transparent manner.

Land acquisition

Large infrastructure projects like road/ highway development requires land parcels including, the areas stretching from forests, wildlife, eco-sensitive zone and agrarian belt. The acquisition of land revolves around following key issues:

- Compensation as per the policy regime
- Timeliness and avoidance of delays

- Government-Administrative-Legal clearance
- Environmental clearance
- Public support-Local cooperation
- Rehabilitation and Resettlement

As per the various policy framework of the Government of India and the procedures established therein the process of land acquisition involves permissions and clearances from multiple authorities which is long, complex and tedious process and often overshoots the identified project time line. Developers have proceeded with projects or bidding process in anticipation that they would be taken care by the project awarding agency (NHAI) within a manageable timeframe. However, there is no separate route for the clearance of development projects awaiting permission from various central and state level departments of environment, forests, power, telecom and other departments. Due to this, the project developers began to withdraw from projects. As a result of such hurdles like land acquisition, environmental clearances and rehabilitation and resettlement issues, some of the project development firms even cancelled their concession contract with NHAI. In fact the newly introduced Land Acquisition Rehabilitation and Resettlement Act (LARR Act 2013) makes it even more difficult to acquire the land and cost of acquiring land has also shot up.

Litigations and Delays in execution of the projects

Litigations and delays are interrelated to each other in the India. Major cause impacting the viability of highways PPP Infrastructure projects is long gestation period cost overrun due to project delays. Thus the main consideration deciding the danger of a venture is the capital expense and opportune execution. Litigations emerge due to various reasons which include land, approval, delays in submission /acceptance of documents, nonconformities of agreed norms, differences in interpretation of various clause and provisions governing the contract. The administration set up a board of trustees (Chaturvedi Committee) to make recommendations for improving the contest goals technique. The advisory group prescribed to characterize the cases dependent on the sums associated with these questions to determine the cases on fast premise.

Institutional Governance and Coordination

The advancement and support of streets and thruways is completed by two distinctive Ministry of Surface and Road Transport and Highways (MoSRTTH) and Ministry of Rural Development (MoRD); both the ministries operate in a different manner and with entirely different style of functioning. For instance Highways are dealt by NHAI, Rural roads are dealt by Panchayat Raj Departments, District roads are dealt by the Zilla Parishads and Urban roads by Urban local bodies. This sort of decentralization of responsibility gives rise to difficulty in coordinating among the various stakeholders for assessing the progress and development of various road related projects.

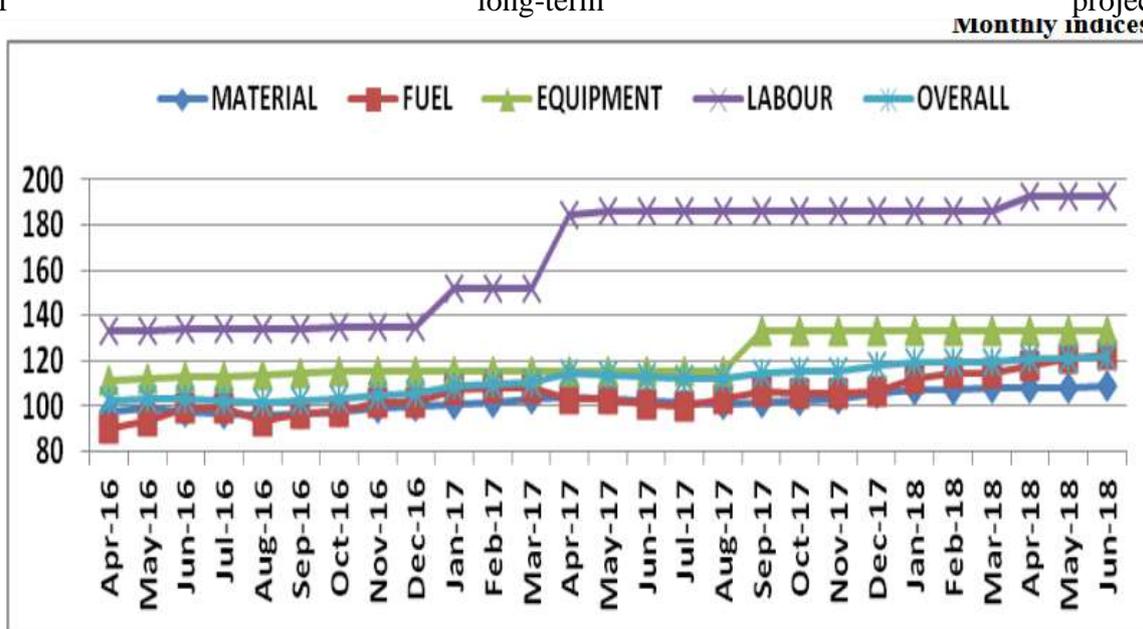
Most of road development departments and agencies are working in the domain of road infrastructure for several decades, however their information sharing system with the different agencies in not well developed. The lack of proper pool of data sets creates several duplications while planning for the new projects and preparing the roadmap. Reliance on physical data sets and manual record keeping till date is considered to be one the major concern. The availability

of data for assessing the physical, environmental and financial viability is essential as it support the decision making for the projects to be undertaken in future along with it also supports in rehabilitation and maintenance of the projects.

Availability of Long Term Secure Finance and rising cost

The lack of secure and long term financing is another reason for some of the projects could which not be initiated and for others the developer backed-off from the projects. The regulatory control by Reserve Bank of India exercised in regard to Non-performing Assets and reluctance on behalf of financial institutions has further dried up the capital flow to the projects. Some of the initiatives taken by government through Infrastructure Debt Funds (IDFs) and Government loans to road developers are yet to make a positive impact on the sector.

The general duty of orchestrating fund for executing Public-private-association ventures lies with the private designer. The financing is for the most part gotten from value and household obligation sources. The foreign funds in the have not made available sufficiently for the Indian highways sector. The absence of long-term resources of capital have compelled banks to take added risks in financing PPP in highways. Banks in India are facing serious liquidity crunch for long-term projects.



Source: NHAI

Risks associated with projects

There was a lack of enthusiasm among the developers due to changing external milieu that brought lot of uncertainties at political level, policy thrust, capital flow, borrowing cost, inflation rise, land acquisition, environmental concerns, legal issues and project implementation. Due to several hurdles experienced in executing the PPP / Concession projects, some of them could not take-off from the ground.

The developers of highway development projects were not fully aware of some of these risks associated with the projects; they could not foresee these challenges which ultimately led to project failure. Model Concession Agreement (MCA) for highway projects did provide a

breather for the projects however still many externalities are required to be addressed for mitigating the risks associated with the projects.

Role of Anti-Social Elements, Social and Environmental Activists and Information seekers

Roads and highway development sector, has suffered from the interest groups that began to create stumbling blocks in the road development projects. It is in the public domain that some part of the Golden Triangle suffered from the delays due to naxals, anti-social elements operating in the nearby areas demanding extortion money for allowing projects to be undertaken, which adds to the cost burden of the project. Similarly, in the states like Jharkand, Chattisgarh, North East and Bihar, project development is difficult due to multiple payments to be made by the developers to the separatist, naxals and mafia.

Another major concern is the approach of some of the interest groups that mobilize and rally communities against highways project and then broker the deal to settle the payments. This kind of negotiated settlements initially started with industrial projects and later on began to spread to infrastructure projects as well. Some activists have even obtaining project and financial allocation information through Right to Information Act (RTI Ac, 2005) provisions to begin the process of harassing developers, contractors and stalling the projects by raising the objections and mobilizing the local people against the project.

Conclusion:

In India the large number of developers entering the road development segment. It requires an active role of the government to ensure that the competent players are vested with the responsibility of road development, having competition in the field has enhanced the capacity of the country in increasing the pace of development. As discussed the main problem in the development of highways at a faster pace is the delay in land acquisition and obtaining statutory clearances. Land acquisition has become a contentious issue in India hence effective legal framework in regard to land acquisition is needed for a faster development of road projects. It is the responsibility of government to ensure timely clearance of statutory requirements. At the level of state it is essential to have PPP policy in place before allowing the private sector for developing highway projects. As the number of private players is increasing, the risk exposure of the sector is also increasing. The challenges pertaining to land acquisition, legal clearances and project financing require immediate attention of the policy makers. The government is required to create an enabling framework to streamline the PPP in highways for ensuring project success.

It is important that the road contract awarding authorities that is both the Central and State government and agencies must have robust contract management plan and effective policy framework and institutional governance in place for ensuring sound contract administration, Performance monitoring , Quality supervision and timely execution of the highways projects .

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India's PPP Juggernaut

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