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SMOOTH RIDE

Government to make BOT highway projects more attractive to investors

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AS PRIVATE SECTOR investment is critical for building 34,800 km of highway under the Bharatmala project, the government has started working on making the build-operate-transfer (Toll) model more attractive to potential investors.

"We have noticed that a majority of disputes and delays arising in BOT (toll) projects are due to delays in land acquisition and statutory clearances like forest and environment by the NHAI. So, in the MCA, we have proposed that appointed date can't be given by the NHAI without fulfilling all the responsibilities of the authority. There should also be no option for waiver of conditions precedent by either party," said a source.

Again, in the present concession agreement, there is no cap on claims and liabilities of either party. As a result, claims in BOT (toll) projects go up to 4-5 times the total project cost due to various disputes under the life cycle of the project. This high level of claims and litigations lead to higher contingent liabilities for both parties, which affect their credit rating and in turn, hamper their debt retiring capabilities.

"Now, we have decided to restrict liabilities for either party to the tune of the total project cost in line with prevailing NHAI consultancy assignments and World Bank guidelines issued in 2019. In case termination happens, liability of either party shall be limited to 5% of the total project cost," the source said.

Unlike engineering, procurement and construction (EPC) or the Hybrid Annuity Model (HAM), the government does not bear the entire cost of building highways in the BOT (toll) model. The concessionaire is responsible for designing, building, financing and all other tasks. Depending on the viability of the project, government pays up to 40% of cost of the project in the form of viability gap funding (VGF) to the concessionaire.

Projects with potentially high returns go on premium and awarded to one who pays the highest premium to the NHAI.

Between 2009 and 2012, project awards under BOT (toll) rose 10-fold, only to be plummeted post fiscal 2012. The execution also took a hit. At least 3,300-km projects awarded through BOT (Toll) got stalled of 7,283-km projects awarded in 2012.

Projects under BOT (toll) considerably declined from 2013. In the last one-and-a-half years, not a single project was awarded through BOT (toll), prompting the government to relax some contentious rules under the model concession agreement for BOT (toll).

A senior industry official said if the toll-operate-transfer (ToT) termination clause is made applicable to BOT projects, bankers will be willing to back such projects.

Essentially, this means that termination payment should be based on the future cash flow potential of the project and not the project cost that is fixed at the time of bidding.

Rating agency Icra recently observed that the risk sharing is not balanced in the current BOT (toll) model. The new model should also have provision to re-negotiate contracts to protect returns of developers in case lower-than-anticipated traffic performance, especially given the challenges in traffic forecasting currently on account of likely shift to other competing models. India Ratings and Research recently said lenders have also become risk averse to the BOT model on account of higher leverage and issues pertaining to land acquisitions.