Chapter 7

Conclusions

Concession agreement which consists of matrix of risk and rewards to stakeholder is one of the important instrument of final outcome of delivery objective of the project. Various provisions incorporated in concession agreement to balance risks and responsibilities among the stakeholders are examined and compared with the available provisions of latest MCA .Role of various provisions of PRCL concessionaire agreement is also evaluated during the actual construction and operation of project.

Proper partner

Partner selection for PRCL project was contextually (strategically), rather through open system of calling of EOI along with technical details. Hence element of competition was completely absent in the process for selection of partner for this project. GPPL, the chosen partner was not having any experience in dealing with construction and operation of a railway project, hence GPPL was not suitable to take these risk in such a complex project. Hence during the operation phase, instead of applying innovativeness within the concessionaire agreement GPPL demanded number of modification in concessionaire and other subsidiary agreements. These are given in Annexure-D.

Same regulator and operator

In the PRCL Rail connectivity project IR has assumed the role of a licensor, regulator and operator (being 50% partner in PRCL). This is against the basic principle of natural justice ("player cannot also be umpires"). The principle of checks and balances aiso prohibits both roles to one authority as there will be conflict of interest and level playing field will not be available to private player.

It is unrealistic to expect from one partner to forgo their power and priveleges particularly when these are related to contracts and fiefdoms. It is in vain to anticipate the progress when fundamental principle of human

behavior are violated.For any PPP framework reform to success it is necessary that decision making is vested in institutions that are free from any conflict of interest.

In the PRCF project which is being studied, Railway had played all the three roles i.e. licenser, regulator and operator. In other sector like telecom till the conflict of interest is removed success of PPP could not be achieved in JV projects.

Role of Railway Ministry as a regulator and operator has delayed the execution of various partnership agreements in this project.

Risk transfer

Obligations of various stakeholders and subsequent action in their default, are not properly incorporated in concessionaire agreements. It is observed that only risk which GPPL was to bear was guarantee for availability of minimum aggregate cargo of one, two, three million tonnes in first three years respectively. All the risks in regard to construction and operation of railway line were to be borne by Indian Railway. Hence inspite of signing so many complex agreement major risks of construction and operation remained with Indian Railway and could not be transferred to other partner. Ideally concessionaire agreement should unbundle the risks in the project and these are to be allocated to party which is capable to manage these easily. But GPPL was not capable of neither construction nor operation of the project. Hence the selection of the partner were not as per the accepted principles of PPP.

High debt cost for private sector

With JV arrangement Indian Railway could complete project (including gauge conversion) total equity capital of Rs.98 Crore which IR contributed its share of equity to PRCL. The remaining funds came from other partner and through open market. As per the recent study by Sh. Ajmer Singh (2014). It is reported that for a highway project cost of debt to private sector is higher in

comparison to cost of debt to public sector. In the study it is brought out that due to higher cost of raising debt for private sector over public sector has resulted in 60 percent higher unit cost for highway projects in BOT. From the above it is observed that basic purpose of project partner(i.e. GPPL) in this project is to provide additional finances and to enable creation of an instrument for arranging finance from the market, but as seen above that involving a private partner just for arranging the finance for the project is likely to cause higher cost of financing to the project.

Provisions for uncertainties

No provision is available in concession for dealing with uncertainties which was one of important reason for many problems in construction and operation of project. Government can compensate private sector loss via different kinds of compensation mechanisms such as direct subsidy payments, availability payments, demand guarantees, loan guarantees and viability gap funding. Government should carefully consider which compensation mechanism to apply in the PPP and take account dilemma always attached to it. Indeed, government guarantees tend to appear often as a risk in the procurement stage. Government guarantees encourage private sector to make unrealistic project plans (extremely high revenue and unrealistic low project cost estimations) in the bidding process in order to win the bid. Hence, government should always approach private sector future profitability calculations skeptically.

One solution to solve this dilemma between weak profitability and government guarantees is a conditional guarantee. The guarantee provided compensation to the private sector when lower threshold was exceeded, while private sector was obligated to pay certain percentage of the profit to the public sector when higher threshold was exceeded as wind fall gain.