Publication: Bloomberg Quint Online
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On Aug. 23, Union Finance Minister Nirmala Sitharaman launched the National Monetisation Pipeline, a four-year roadmap by the NITI Aayog of of how the government plans to sell infrastructure assets and raise funds of up to Rs 6 lakh crore.

As the brownfield assets monetised wider the NMP will remain under the ownership of the central government and be handed back after a stipulated concession period, the move has been interpreted as more public-private partnership than outright divestment.

Given this design, India's foremost infrastructure experts say that for the NMP to succeed, it is vital to correct past mistakes made in the PPP framework.

`PPP By The Side-Door'
- Vinayak Chatterjee - Chairman, Feedback Infra; Chairman, CH National Committee on Infrastructure & PPP.

Let's first take a look at the big picture. The National Investment Plan of Rs 20 lakh crore per annum requires the government to seriously think about resource raising - how it is going to be funded. One of the important pillars is asset monetisation or asset recycling, as was announced in the budget and mentioned in previous budgets as well. So, in terms of pure economics, I would commend the government for actually grabbing the bull by the horns, and would take what the Finance Minister has done as a big and bold step.

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Such a recommendation of asset recycling was being made from the early 2000s - to the UPA I and II governments. While they nodded in agreement, nobody did anything about it. Therefore, many of us commentators felt this was an important resource-raising vehicle that was not being tapped. The fact that this government and the Finance Minister have actually moved ahead on this aspect of resource-raising in a big and bold way is to be commended.

The plan is also much larger than the budget announcement, which was an estimate of about Rs 3.5 lakh crore, and this is Rs 6 lakh crore. It is also much more wide-ranging. Earlier, the impression was that government would restrict itself to two or three sectors like highways, rail, and power. But now we see that have gone to stadia, real estate, and warehouses, which is good. Wherever there are operating assets, obviously, there is a monetary value embedded there. The broad stroke of the step has to be commended.

Earlier, one was under the impression that these would be asset sales - divestments. Now, one understands that the government would not sell the family silver but would actually issue out operating contracts—what in jargon is called concessions—which are in the nature of the public-private partnership framework, for the private sector to invest and operate these for whatever is the right duration... 40, 60 years.

To my mind, this is PPP by the side-door - to have PPP in brownfield operating assets in this manner.

Unfortunately, the market confidence among domestic and foreign investors in PPP formatting and level-playing field is on very slippery ground. The private sector today does not have the confidence, with all that has happened in the last two decades. This is why this government had set up the Vijay Kelkar Committee which submitted its report in November 2015. That report had a robust outlining of all the steps that were required to bring PPP formats into line with what is rationally expected by all the players including the government.

The apprehension now is that once you have got into this PPP business, then the PPP framework requires a huge amount of debate, discussion, and tweaking before we actually see money coming in, as we've seen recently in the very lukewarm bids for the private train operating contracts.

My advice to all players and the government would be that while we are pursuing this monetisation, we must take urgent steps to completely revamp the PPP environment and ecosystem and there's no better way than starting with implementing the Kelkar Committee report.

My last comment is that in anecdotal evidence and side-chats that I've had with many players who had earlier expressed great interest in the opportunity to operate railway trains, they have come up with the same grouse that is bedevilling most sectors - which is that private sector honestly wants a level playing field with this behemoth issuer of PPPs which is the sarkar, and therefore sees no better institutional mechanism than an independent regulator.

We have to put the horse before the cart. Revitalising and restructuring the PPP environment is important as issuing bids, to make the National Monetisation Pipeline successful.

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`PPP 1.0 Turned On Its Head'

Rajiv Lall - Singapore Management University; formerly chairman, IDFC and founding MD & CEO of IDFC Bank.

The announcement of the National Monetisation Pipeline by the Finance Minister is a very welcome step in the right direction. In trying to attract private capital into infrastructure, the UPA government made big mistakes in how risk was allocated between the private and public parties engaged in their ambitious program of PPP development.

Inverting The Old PPP Model

The main thrust of UPA efforts was to mobilise private capital for new asset creation which meant that private parties were being asked to take not just the risk of operating infrastructure assets —toll roads, ports, airports, transmission lines, and the like — but also the risk of developing and constructing them. Given the challenge of acquiring land and obtaining clearances of various kinds from multiple authorities, the development and construction risks were too high for the private sector to bear. Not only did this lead to huge delays and dysfunctional behaviour by private developers trying to find creative ways of mitigating the risk they had taken on, but it also led to interminable contractual disputes that jammed up the courts, contributed to further delays and loan defaults that ended up severely damaging bank balance sheets.

That is why some of us have been arguing for years that the UPA PPP model should be 'turned on its head'. That is, the government should take the development and construction risk of creating new infrastructure. It should attract private capital by selling/leasing out operating assets i.e. by re-cycling government-owned brownfield assets.

This is precisely what the NMP aims to do, although it restricts itself — no doubt for good political reasons — to recycling only in the form of long-term concession agreements, not through outright sale to private parties. This is wise. The outright sale of brownfield assets would involve selling the associated government-owned land to a private party - a huge complication in the Indian context. The NMP builds instead on Nitin Gadkari's initiative in the road sector where several thousand kilometers of NHAI highways have been successfully given to private bidders in the form of long-term Toll-Operate-and Transfer concessions. The NMP broadens the scope of such concessions to 14 sectors with a goal of raising Rs 6 lakh crores to be deployed for the creation of new infrastructure projects identified in its National Infrastructure Pipeline over the next four years.

What is laudable about the NMP is the scale of its ambition and the breadth of its scope. It sets out a clear principle and framework for how infrastructure development should be pursued and financed across the nation. Although the NMP is restricted to central government assets, there is no reason why it cannot be extended to cover state government assets as well.

Getting The Enabling System Right This Time

However, the mere announcement of the NMP does not guarantee its success. Indeed, what is not clear is whether or not this government has learned a second crucial lesson from the UPA government's experience with PPPs which is that we must also improve the design of long term concession contracts and build specialised capability to manage the inevitable legal disputes that will arise along the way.

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The Model Concession Agreements churned out by the UPA were much too rigid - no contract can foresee events that might occur over the 20-50 years over which concessions typically run.

• Contracts must be designed to allow for some flexibility for addressing unforeseen developments (such as climate-related disasters, for example) and to prevent needless and longwinded litigation.

• Second, clear quality benchmarks must be set for the assets that are handed over by the government. This is key to avoiding disputes about potential additional capital expenditures that might be required to keep the asset operational over the life of the concession.

• Third, the same implies for KPIs expected of the private party for operating and maintaining the asset.

• Finally, there is a need to set up a robust mechanism for dispute resolution relating to PPP contracts. In this regard, the government would benefit from acting on the recommendations of the Kelkar Committee on PPPs.

I would also strongly urge the government to set up a centralised institution with the skills and responsibility to oversee contract design, bidding, and dispute resolution, separate from, but with appropriate assistance of, the concerned line ministries. If any government can pull this off, it is this one. Given the vital importance of NMP to the nation, an institution such as '3 PPP India' first mooted in the Arun Jaitley budget of 2014 — one that reports directly to the PMO — is needed to perform this function.

In short, the NMP is a great step forward. To ensure its success let us invest in setting up the necessary supporting institutional infrastructure as well.

`Robust Contractual Framework A Must'

- Hemant Sahai - Founding Partner, HSA Advocates

Infrastructure fmancing in India suffers from the inherent mismatch between the short and medium-term capital available locally and the long-term capital requirement of this sector. This is a two-pronged approach directed at unlocking the value in the country's infrastructure assets by creating tangible investment opportunities for the private sector, and thereby ensuring optimal upkeep and augmentation of existing assets, as well as funding new infrastructure development by re-investing the proceeds from monetising said assets.

In light of the requirements pertaining to mandatory hand-backs and assets not being sold off, at its core, this can be classified as a large-scale PPP push targeted at a variety of infrastructure projects in the pipeline - power, railways, telecom, transportation. As such, the lessons learned from India's PPP experience will be vital for meeting the ambitious targets.

A critical enabler for this exercise will be the creation of an objective mechanism for a structured contractual partnership that provides investment certainty and reduces the scope of intervention on grounds of transparency, fairness, and such.

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Therefore, creating a robust contractual framework, provisioning for swift remedial action, limiting arbitrary or capricious actions by the dominant party (as seen in the context of cancellation of several projects by the Andhra Pradesh government), restricting precipitative actions (such as withholding payments and termination) without due process, mandatory provisions for arbitration for swift dispute resolution and involvement of all stakeholders, including ministries and sector regulators, will be critical in ensuring a smooth roll-out and avoiding many of the tripping points associated with earlier PPP projects.

The recent spate of deals in operating infrastructure assets as well as InvITs is a testimony to the investor interest in this sector. The initiative is well-timed and will indeed help India address its significant infrastructure financing needs without creating stress on existing government finances.