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Poor Contracts in PPP Will Not Stand

Get the lesson right from Noida Toll Co's fate

The Allahabad High Court has done right in directing the Noida Toll Bridge Company to stop collecting toll or user fee from vehicles using the Delhi-Noida DND expressway. What this shows is not that Public-Private-Partnership projects in India are inherently risky and to be avoided by investors, particularly since the present ruling comes in the wake of judicial termination of tolls on the Delhi-Gurgaon expressway in 2014. Rather, what the court verdict means is that one-sided contracts that bestow undue benefits on the project developer would be terminated or renegotiated, sooner or later. The lesson to be learnt is that PPP projects call for intelligent contracting, to give a fair deal to the investor/developer while not being onerous on the exchequer or the consumer.

The contract with private developer NTBCL was awarded without competition, guaranteed a 20% return on investment for 30 years, stipulated that tolls would go up in line with inflation and added shortfalls in this regard to

the project cost on which returns are guaranteed. The company was to be compensated with land for development, in lieu of shortfalls to the guaranteed return. NTBCL's concession agreement executed with New Okhla Industrial Development Authority is a poor example of PPP in infrastruc-

ture. NTBCL has reportedly realized the construction cost of the flyway several times over. Rightly, the Allahabad High Court said the levy of the toll is unjust and unfair and that the method of calculating the total project cost of the expressway was arbitrary and against public policy. NTBCL has moved the Supreme Court to challenge the HC's order, paving the way for a legal battle that we hope will transfer the toll road to the state soon.

India needs more roads and infrastructure to be built and paid for through private public partnership. Private builders of such projects have to make decent returns on the capital employed. So, the need is for better contracting and transparency in the award of the contract, and flexibility in the time of operation, after building the asset, before transfer to the state.

