Decoding asset monetisation

(Mains GS 3 : Infrastructure: Energy, Ports, Roads, Airports, Railways etc. and Investment models.)

Context:

- The National Monetisation Pipeline (NMP) is a bold initiative which the government takes to help fulfill infrastructure gaps in the country.
- The NMP is not about the sale of government-owned assets or privatisation or disinvestment.
- The proposal is to offer infrastructure assets that will continue to be owned by the government under a long-term concession agreement to interested private bidders.

Comparison with PPP model:

- The NMP is also very different from the earlier public-private partnership (PPP) infrastructure development of the mid-2000s.
- The programme of that time was about attracting private parties to build, operate and then transfer 'greenfield' or new infrastructure projects under build-operate-transfer (BOT) concession agreements.
- These enjoined the winning private bidder to take not only the operating risk, but also the development and construction risk of the project, such as a toll road, from scratch.
- This process became controversial and was subject to delay due to land acquisition, securing environmental meeting construction and design standards and other regulatory approvals.
- It involved Compliance with these and it became a source of friction between the concessioning authority and the concessionaire.

- All this undermined trust between the public and private parties and led to a huge volume of disputes for which there was no readily available resolution mechanism.

Advantage of NMP:

- In contrast, the NMP is about leasing out 'brownfield' infrastructure assets (such as an already operating inter-State toll highway) under a toll-operate-transfer (TOT) concession agreement.
- In such an arrangement no acquisition of land is involved and the concessionaire did not need to take any of the construction risk.
- The process promises to be much simpler and cleaner than what was required in the PPP programme.
- It is also certain to attract a different class of private capital.

The essential difference:

- To be successful in the BOT bids required a proven ability to navigate and manage the system.
- It thus attracted battle-hardened domestic entrepreneurs adept at finding creative ways of extracting value, including through 'gold plating' of project costs or through 'negotiated settlements' with demanding government inspectors or friendly bankers.
- On the other hand, for success under the bidding process of the NMP, what will be required is operational experience in running a particular class of infrastructure assets and a strong understanding of the potential cash flows generated over the life of the concession.

Contract design and implementation:

- That said, the success of the NMP is by no means assured as bidding out and designing long-term concessions for assets that are already operating requires considerable skill.
- Given the long tenure of these concession agreements, they must be designed to allow for some flexibility so that each party has the opportunity to deal with unforeseen circumstances (such as climate-related disasters) and to prevent needless litigation.
- Contracts must also incorporate clear key performance indicators expected of the private party and clear benchmarks for assets as they are handed over by the government at the start of the concession.
- This is key to avoiding disputes about potential additional capital expenditures that might be required to keep the asset operational.

Implementation is the key:

- No matter how well a contract is crafted, it still needs to be implemented effectively.

- Experience shows that there is a tendency for government departments to inject opacity into the implementation of concession agreements so that they have more power over the concessionaire.
- To avoid this, it would be useful if the responsibility for administering the concession agreements did not lie directly with the line ministries and/or their agencies.

Dispute resolution mechanism:

- It is vital to put in place a robust dispute resolution mechanism.
- For all reasons there is a strong case to set up a centralised institution with the skills and responsibility to oversee contract design, bidding and implementation, separate from, but with appropriate assistance of, the concerned line ministries.
- An institution such as ‘3 PPP India’, first mooted in the 2014 Budget, is needed.
- It would also be advisable to set up an Infrastructure PPP Adjudication Tribunal along the lines of what was recommended by the Kelkar Committee (2015) to create suitably specialised dispute resolution capacity.

Conclusion:

- It is always wise to under-promise and over-deliver, thus the government could start with sectors that offer greatest cash flow predictability and the least regulatory uncertainty before expanding the experiment.
- It could also ensure that resources raised from the NMP are used to fund new asset creation under the National Infrastructure Pipeline which will ensure credibility.