In order to engage with our readers and simplify the legal complexities of the infrastructure sector, EPC World has partnered with Rajani Associates, a full-service law firm for a series of legal Q&As. Through this Legal Q&A column, **SHISHAM PRIYADARSHINI**, Partner, Rajani Associates and **AMISH SHROFF**, Associate Partner, Rajani Associates, will endeavour to address the queries and challenges faced by our readers.

Shisham Priyadarshini

Amish Shroff

What is a Green Energy Corridor?

The green energy corridor (GEC) is an ambitious project introduced by the Power Grid Corporation of India Limited (PGCIL) in the year 2013 to add and synchronise all major renewable energy projects in different parts of the country to the National Grid by 2030. Germany, who has the required expertise to integrate renewable energy into national grid will be assisting India in this project. In this regard, India (through Ministry of New and Renewable Energy) and Germany (through Deutsche Gesellschaft for Internationale Zusammenarbeit GmbH) have signed an agreement on technical cooperation under the Indo-German Energy Programme-Green Energy Corridors (IGEN-GEC). The primary focus of the project is to make the transmission system dynamic to handle voltage fluctuations and to integrate green energy sources available in India like solar, wind, small hydro, tidal, etc, to the conventional energy grid. The GEC does not take into consideration power generated from low carbon or fossil fuels like nuclear, coal and gas-based thermal power plants or any other non-renewable sources, hence, the name "green energy" corridor. To help integrate renewable sources of energy, the Ministry of Power has proposed to set-up a host of Renewable Energy Management Centres (REMCs) across the country. The functions of REMCs will be to schedule renewable generation with real time tracking, Supervisory Control and Data Acquisition (SCADA) systems and coordinate with the relevant load dispatch centre and to forecast renewable energy generation at state and regional levels.

How has the development of GEC been proposed?

GEC will be developed in two parts. First, at inter-State level will be developed by respective State Transmission Utilities (STU) and second, Intra-State Transmission System will be developed by PGCIL. The task is to renew transmission infrastructure and services to introduce large scale renewable capacity. Initially, eight renewable-energy rich states of Rajasthan, Gujarat, Andhra Pradesh, Tamil Nadu, Karnataka, Maharashtra, Himachal Pradesh and Jammu & Kashmir have been selected to evacuate power from the renewable capacity.

What will be the source of funding for GEC?

In order to fund the GEC in both inter and intra State transmission projects, under the framework of cooperation between Government of India and Government of Germany, German Development Bank has proposed to provide soft loan to the tune of Euro 1 billion. The GEC under the Intra State transmission schemes are funded through 20% equity of the State Government, 40% grant from National Clean Energy Fund while the balance 40% is though soft loan, whereas, in case of the inter State transmission schemes 30% is invested in form of equity by PGCIL and the balance 70% as soft loan.

What is the objective to amend the Companies Act, 2013?

The (new) Companies Act, 2013 replaced the erstwhile Companies Act, 1956. The new Act was enacted to improve corporate governance and better transparency in the corporate sector keeping in view the changing and dynamic economic environment. Several new concepts like One Person Company, requirement of having a woman director on the Board of Directors of the Company, corporate social responsibility, class action suits, dormant company, Serious Fraud Investigation Office, Fast Track Mergers were introduced through this legislation. Pursuant to the new legislation coming into effect, there were several difficulties in implementation due to the stringent compliance requirements. Certain inconsistencies were also found in the provisions of the new Act vis-à-vis the accounting standard, Securities and Exchange Board of India Act, 1992 and the Reserve Bank of India Act, 1932. The Companies Amendment Bill, 2017 promulgated into the Companies Amendment Act, 2017 on January 3, 2018. With more than 50 amendments, it is perhaps for the first time that the

(Indian) Companies Act has witnessed so many amendments in one round of amendments. In the new Act, there are about 470 Sections out of which few sections have been done away with in the past. Looking at the number of amendments, almost 20% of the new Companies Act stands amended. The amendments under the Amendment Act broadly aim to address the implementation issues and rectify errors and inconsistences under the new Act for proper and effective implementation of the new Act. The amendments also aim to initiate strict action against defaulting companies and facilitate ease of doing business in India.

What are the amendments under the Companies Amendment Act, 2017?

The new legislation and the amendments made thereunder are quite vast and can broadly be categorised under definitions, loan to directors and investments, related party transactions, corporate governance, corporate social responsibility, declaration and payment of dividend, audit and auditors, acceptance of deposits, financial reporting, board matters, resident directors, registered office address, managerial remuneration, forward trading, insider trading, penalties, mergers, acquisition and other matters. As regard to the amendments, some of the sections of new Act have been completed amended like sections dealing with private placement and loan to directors. There are few other sections which have been partially modified like the provisions dealing with associate company, holding company, subsidiary company, corporate social responsibility. Besides omitting certain section due to their redundancy, the Amendment Act has also introduced two new provisions dealing with penalties, wherein, the quantum of fine and punishment will be decided after taking into consideration the size of the company, nature of business, gravity of default, past defaults, injury to public interest. The amendments will have significant impact on incorporation matters, undertaking legal diligence exercise, drafting of shareholders agreement, joint venture agreement, voting rights agreement, management rights agreement, restructuring matters, and generally advising clients on the corporate matters.

What are the amendments relating to loan to directors?

The provision of Section 185 dealing with loan to directors under the new Act has not only been much talked about provision but also the most frequently amended provision. As per the provision, no company, whether public or private, can give any loan or provide any security or guarantee in connection with a loan to a director or any other person in whom he is interested. As per the intent of the legislation, there is a restriction for loans to directors, and to any other person in whom the director is interested, which was earlier permitted under Section 295 of the old Companies Act. Initially, when this section came into effect it was more restrictive than its parallel provision, since it omitted the exemption which was granted to private companies under the old Act and also removed the option of obtaining government approval for undertaking such matters. Due to the complete embargo to provide loans to subsidiaries with common director, lot of representations were made to amend Section 185 (which deals with loan to director under the new Act) after it got introduced. Based on the representations, an exemption for granting loans and providing guarantees and security on behalf of wholly owned subsidiaries was inserted under the new Act. The exemptions were granted only for "wholly owned subsidiaries" and not mere subsidiaries. Going forward, two (2) new exemptions were also introduced, ie, one for loans granted to a managing or whole-time director (subject to certain conditions) and second to a company which in the ordinary course of its business provides loans or gives guarantees or securities for the due repayment of any loan. The Amendment Act further bifurcates the regulatory framework into two (2) broad head which being transactions which are prohibited and another consisting of transactions which may be permitted, subject to approval of the shareholders by way of a special resolution passed at a general meeting. The amendments are made with the intent that the genuine transactions do not face difficulties.

What is the current status of the Amendment Act?

While the Amendment Act has come into effect, the Central Government has to notify the sections, which will happen once the notification to this effect is being published in the Official Gazette. It is not certain whether all the sections of the Amendment Act will be notified in one stroke or will be done in a phase wise manner as was the case for the new Act. The Rules for the Amendment Act are also awaited. EPC World