

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**, Principal Associate, Rajani Associates, will endeavour to address the queries and challenges faced by our readers.

**Why is public private partnership relevant for the economy compared to undertaking the project through traditional methods, which is entirely either by a private player or government?**

Governments all over the world have realized that they cannot meet the constantly growing demand for services by acting on their own in isolation without the support of a private player. PPP is one of the most promising forms of collaboration to undertake the projects in roadways, railways, airways, communication, energy and power, water and waste water management, solid waste management and such other sectors, which were traditionally undertaken by the Government. Each private party bidding for the project spends considerable time and resources in evaluating the project prior to submitting a tender. Prior to the commencement of the project, extensive risk analysis of the projects is done to understand the overall feasibility and the economic viability of the same. Risks evaluation at an early stage helps the participants to set realistic goals.

Considering that the decision to undertake a project by the private participant is well thought of, after proper planning, the same help to a large extent in setting realistic goals to achieve increased efficiency in project delivery, operation and management of the project. Availability of fund plays a crucial role in timely completion of any project. In the PPP arrangement, besides incentives, concessions, grants to a private player to execute the project, in some cases there may also be sharing of risks. The joint participation is aimed to help reduce the overall project cost, which in turn offers higher return-on-investment, compared with the returns on the projects undertaken either independently by private or government entity.

High-quality standards, access to advanced technology, better compliances with environment regulations, less political influence, operating efficiency, replacement for poor service, stimulating of domestic capital and debt markets are few of the other benefits offered under this arrangement. Due to the advantages that the PPP model has to offer, it becomes quite



**Shisham Priyadarshini**



**Amish Shroff**

relevant for the economy and if the model is applied for the right project in the right environment, it can also be a win-win situation for both the private and public sectors

**What is the overall process of a PPP Project?**

PPP is a contractual arrangement between a private party and public sector whereby the private party is given the rights and

agrees to provide services or infrastructure on behalf of the Government. Identifying, developing and implementing a project under a PPP can be broadly divided into various stages. The first stage is to identify the project to be undertaken and to determine whether the selected project can be delivered under PPP, instead of using traditional methods of undertaking the project. At this stage, the Government ascertains whether the implementation of the project may help resolve the existing problem and how it may help achieve the objectives with which the project is proposed to be set up. Potential PPPs are then evaluated for their suitability for development and a prefeasibility report is prepared. It is at this stage that the Government along with its advisers also may consider the other alternatives to meet the end objective.

After doing the preliminary groundwork, the key features and the specifications of the project are drawn up and the advisers and experts so appointed by the Government undertake a series of initial studies (which includes supply and demand analysis of the services, cost analysis, rehabilitation issues, and more importantly a preliminary environmental assessment of the potential impacts of the project). The aim of the project identification process is to ensure that the investment offers value for money in terms of outcome for the society after taking into consideration all benefits, costs and risks involved in the project.

A potential PPP that was considered suitable in the first stage analysis is then further evaluated in detail by conducting a thorough due diligence and feasibility study in the second stage. The process includes activities of conceptualizing the project plan, doing risk analysis, value assessment and

economic valuation of the project to ensure that the selected project is well structured and can be successfully tendered and implemented. Based on the full feasibility study, the report for the same is prepared to procure the approval of the concerned department before proceeding to the next phase.

After the successful completion of the feasibility study and obtaining the relevant approval of the department, in the third stage, the Government decides the procurement procedure to be followed. Generally, the Government employs competitive tendering to select the preferred bidder through request for qualification (invitation to bid for the tender) (RFP). The RFP includes output specifications of the project related to the infrastructure facility and the length and terms of the PPP contract. At this stage, prospective bidders or sponsors, usually acting as consortium, carry out their own feasibility study and thereafter submit their bids. The government then evaluates these bids and award the project to the bidder that best conforms to the criteria. The letter of award is then issued to the preferred bidder to undertake the project at this stage.

In the fourth stage, the implementation work is commenced by the private player (being a concessionaire) with the construction of the project facilities in terms of the provisions of the concession agreement entered between a private player and the authority. Depending upon the PPP model, the concessionaire may also have the obligation to operate and/ or manage the project for the concession period. In which case, upon the completion of the concession period, the project facilities are then transferred to the Government, usually for nil or nominal consideration.

#### **Why is water and wastewater management in India of paramount importance?**

Water is a scarce resources yet inevitable for human survival. Amongst several environmental challenges that India is facing, shortage of clean water is one of the biggest challenges that the country is encountering. This problem is mainly attributed to the lack of sustainable infrastructure, poor sewerage services, increasing growth of population and rapid urbanization. The estimate suggests that less than 20 percent of the household and 60 percent of industrial wastewater is treated in India. As far as metros and large cities are concerned, only about 30 percent of their wastewater are treated. Even, the smaller cities treat only about less than 4 percent of their wastewater, which is dismal. The data also suggests that the wastewater from urban India may cross 120,000 MLD (million liters per day) and that from the rural areas may cross 50,000 MLD by 2050.

Even the sewage generated by the larger and smaller cities is not properly treated. In India, the total number of sewage treatment plants (STPs) can just treat up to a third of the

total sewage generated, while remaining sewage flows into water bodies or into the ground. The increasing level of the untreated waste water not only contaminates the land, the water body, where such water is disposed but also pose severe health challenges.

Considering the importance of water to the human society and the problems encountered in the treatment and management of water and waste management, issued faced in treatment and management of problems which are being currently faced by the country, water and wastewater management in India are key areas of concern and of paramount importance.

#### **What is the legal framework and the laws dealing with waste water in the country?**

Water is the state subject under the Indian Constitution and the Central Government plays an advisory role to the States by issuing a non-binding National Water Policy. Another important policy is the National Urban Sanitation Policy, 2014 that emphasis on the reuse of wastewater as an important factor for conserving water and meeting environmental norms.

Currently, there is no separate statue dealing with waste water in the country, and the water sector is governed by the environmental legislations, pollution control acts, and rules and notifications, which being, the Water (Prevention and Control of Pollution) Act, 1974; the Water Prevention and Control of Pollution) Rules, 1975; the Water (Procedure for Transaction of Business) Rules, 1975; the Water (Prevention and Control of Pollution) Second Amendment Rules, 1976; National Environment Policy, 2006; National Sanitation Policy, 2008, the Hazardous waste (Management and Handling) Rules, 1989, the Municipalities Act; and the District Municipalities Act.

The Ministry of Water Resources (MOWR) is the principal body responsible for policy guidelines and programs for the development and regulation of country's water resources. MOWR is essentially responsible and oversees the planning and development of the resource from policy formulation to infrastructure support.

The other central departments working in the area concerning the water are the Ministry of Agriculture (Watershed development and irrigation), the Ministry of Power (Hydropower development), the Ministry of Environment and Forests (Water quality), the Ministry of Rural Development (Watershed development and drinking water provision), the Ministry of Industry (Industrial uses of water), the Ministry of Urban Development (Urban drinking water provision and sanitation), the Central Pollution Control Board (Water quality monitoring), and the Indian Council of Agricultural Research (Development of water management techniques).