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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.

Whether Indian laws permit transfer of mining lease? Are there any restrictions for such transfers?

Yes, Indian laws permit transfer of mining lease. There were restrictions in the Mines and Minerals (Development and Regulation) (MMDR) Act 1957 wherein the transferor was not allowed to assign, sub-let, mortgage or in any other manner transfer the mining lease without the prior approval of the Central Government. In the year 2015, the Government through MMDR Amendment Act of 2015, comprehensively amended the MMDR Act 1957 to include grant of mining lease only by way of auction (and removal of renewal of a mining lease) This means that only those mining lease are permitted to be transferred that are obtained through auction.

What are the different types of PPPS?

The Public Private Projects (PPP) are classified into institutionalized PPPs and contractual PPPs.

The institutional PPPs are in the nature of joint venture (Joint Venture) between government owned public sector and the private parties to undertake the PPP projects with the objective to provide services to the end users on a long term basis. The Noida Toll Bridge Company (NTBC) and the Bangalore International Airport Limited (BIAL) are the projects falling under this category.

As far as the contractual PPPs are concerned they fall under the concession model, where the facility in the form of land, consents and approvals, grants is given by the public sector unit to a private party who designs, constructs and operates the PPP project for a given period of time. Under both the categories the users pay for the facility availed and such charges accrue to the Joint Venture or the private party.

Different kinds of contractual PPPs exist and new variations emerge continuously depending on the changing dynamics. The usually prevailing PPP models are Built,

Operate, and Transfer (BOT), Build, Own, and Operate (BOO), Build, Own, Operate and Transfer (BOOT), Design, Build, Finance and Operate (DBFO), Design, Build, Finance, Operate and Maintain (DBFOM) and Lease Operate and Transfer (LOT). Each of these models is explained below:

Under the BOT Model, the private party is responsible to build, operate the project during the contracted period and transfer back the project to the public sector. The private sector partner is responsible to bring the finance for the project and also take the responsibility to construct and maintain it for a specific time period, which is referred to as the concession period. The highway projects and the railway projects are generally done under this model.

BOO and BOOT are the variations of the BOT model. In both these models, most of the risks related to planning, construction and operation of the project rests with the private partner. As far as the public sector partner is concerned it will contract to purchase the goods produced by and services rendered through the project on mutually agreed terms and conditions. In case of BOOT, the project built under PPP will be transferred back to the Government on completion of the concession period, while in case of BOO the ownership in projects remain with the private party.

Under the other variants of PPP i.e. DBFO or DBFOM, the private party assumes the entire responsibility to design, construct, finance, and operate or maintain the project for the concession period. Another variation is the LOT model under which the project facility which is already constructed and under operation is given to the private party for its operation on lease arrangement for a specific time period, subject to the terms and conditions mutual agreed between the parties. At the end of the contract period, the project facility is transferred back to the Government.

Recently, a hybrid version of PPP called as Hybrid Annuity Model (HAM) was introduced. While the objective is to revive languishing road projects in India, but currently the HAM model is being applied to bid for new projects. Besides sharing the risk involved in the project with the private party, under the HAM model, the government will also share the financial burden of the private party and is expected to fund up to 40% of the project cost while the remaining 60% is to be funded by the private player.

What is the Scheme for Sustainable Structuring of Stressed Assets?

The Reserve Bank of India (RBI) from time to time has announced measures in the form of schemes and guidelines to tackle the burning issue of stressed and non-performing assets (NPA) which affects banks as well as the distressed companies.

Latest, in a series of measures announced by the RBI to tackle stressed assets, is the new Scheme for Sustainable Structuring of Stressed Assets (S4A) formulated and issued by the RBI on June 13, 2016 (after due consultation with the lenders) called.

S4A provides an optional framework for the resolution of large stressed accounts. It envisages determination of the sustainable debt level of a stressed borrower which is determined based on the availability of the free cash flows of the borrower, and bifurcation of the outstanding debt into sustainable debt and equity or quasi-equity instruments which are expected to provide upside to the lenders when the borrower turns around.

The entire resolution plan under S4A shall be independently carried out by the overseeing committee set up by the Indian Banks Association, in consultation with the RBI, in a transparent and prudent manner.

The new guidelines aim to strengthen the lenders ability to deal with stressed assets and to provide an avenue to entities facing genuine financial difficulties to revive a company.

Are there any eligibility criteria to participate in S4A?

Yes, S4A comes with quite a few riders.Only those projects which have commenced commercial operations are eligible to take the benefit of the S4A.

Further, the overall exposure (including accrued interest) of all the institutional lenders should be more than ₹ 500 crore (including Rupee loans, Foreign Currency loans/External Commercial Borrowings) for the borrower to be eligible under the new guidelines. The bankers also need to be satisfied and convinced that the underlying project of a borrower can service the debt in the longer run. In this regard, an external consultant shall be required to endorse a project as a viable project through a techno-economic viability study and the forensic audit should give a clean chit to the promoter.

Another requirement is to meet the sustainability test. The debt level will be deemed as sustainable if the borrower is in a position to service its present principal value of the funded and non-funded liabilities. Upon such determination, the borrower shall be required to service half of their debt.

In addition, the banks are not allowed to change the terms of the original loan which means that the banks cannot offer any moratorium on repayment on the sustainable part of the debt. They are also not allowed to extend the repayment schedule or reduce the interest rate on the debt, which would be akin to loan restructuring. EPC World