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.

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What is GIFT City?

GIFT City is an acronym for Gujarat International Finance Tec-City. GIFT City is India's first operational smart city and international financial services center developed between Ahmedabad and Gandhinagar on the bank of the Sabarmati River. It aims to use digital technologies to provide high quality infrastructure facilities and is designed as a financial Central Business District on lines of global financial and IT Services hub at Shinjuku in Tokyo, Lujiazui in Shanghai, La Defense in Paris and London Dockyards. This is Greenfield project. In order to implement this project Gujarat International Finance Tec-City Company Limited (GIFTCL) a joint venture company (between the Government of Gujarat (represented by Gujarat Urban Development Company Limited) and Infrastructure Leasing & Financial Services Limited) has been incorporated. The planning of the project is being undertaken by East China Architectural Design & Research Institute, and Fairwood Consultants India. As per the information available in the public domain, the estimated cost of the project is ₹ 70,000 crore and is being built on area of 8,50,00,000 square feet spread over more than 3.5 kms.

What projects will form part of the GIFT City?

GIFT City project will house multi-services SEZ, a center for domestic financial sector, corporate offices, regional offices of companies, skill development and training center, multi-specialty hospital, a world trade center, housing colonies, social infrastructure and other associated amenities. The Vibrant Gujarat Global Summit, 2011 saw investment commitments worth ₹ 11,700 crore in the project. It is estimated that GIFT would provide 10,00,000 direct and indirect jobs which would require 62 million square feet of real estate office and residential space.

What are the benefits available entities in GIFT City?

There are specific tax exemptions which the companies operating in GIFT City may avail, such as exemption from paying of Minimum Alternate Tax, Securities Transaction Tax, Commodities Transaction Tax, Dividend Distribution Tax and Long Term Capital Gain. Further, the units in the GIFT City enjoy a tax holiday for the first five years on profits, extendable by another five years on 50 percent of the profits that are reinvested by such units. The units are also exempt from indirect tax on goods and services procured within the GIFT City. The Gujarat Government, too, has waived the stamp duties for entities having registered office in GIFT City for certain capital market transactions.

What was the challenge face by the NTP 2012?

The telecommunication sector in India has seen massive transformation after the National Telecom Policy, 2012 (NTP 2012) came into effect. During the last few years, the mobile network has upgraded from 3G to 4G and now 5G is in pipeline. There has been a steep decline in the tariffs of telecommunication services. This has made the services affordable which has led to multifold increase in the consumption of data across India. Few other developments include convergence of voice, video and data services, mobile number portability, free roaming and a simplified merger & acquisition regime in telecom service sector. Despite several developments in the telecommunication sector in the last few years, the NTP 2012 did fall short on certain counts. The aim of the NTP 2012 was to increase rural teledensity from the current 39% to 70% by the year 2017 and finally to 100% by the year 2020. As per recent records, there is a lot of ground to cover. The objective was also to provide good quality and high speed broadband access to the masses. While the internet speed has in the last few years improved, the average speed of the internet in India is still much lower compared to other countries.

India has also lagged behind as a global manufacturing hub in this sector, as envisaged under the NTP 2012. Besides these, the expected success in development of state of the art technologies through research and development, and creation of intellectual property rights of global standards have also not been achieved.

What are the key expectations from NTP 2018?

The telecom sector in India is currently reeling under financial stress. This is due to decline in the revenue, high spectrum procurement cost (in the successive spectrum auctions), disruptive pricing strategy, intensive market competition and frequent revision of taxes levied on this sector. The National Telecom Policy, 2018 (NTP 2018) presents yet another opportunity to the Government to bring in the required changes in this dynamic sector and to place India amongst the top 50 nations in international ranking in terms of network readiness, communication systems and services. The new policy should ideally set the groundwork for the next round of transformation in the telecom sector and encourage investment, facilitate innovation and help maintain the financial stability of the sector. The telecom industry is transforming from a voice-led market to a data-centric market propelling the whole digital India vision. NTP 2018 needs to lay importance on providing secured, high quality internet connectivity to all. Indian telecom sector is the second largest market in the world and is witnessing massive technological advancement in this field. With new technologies, there have been fresh challenges. The telecom sector is exposed to multiple forms of information security and data privacy related risks. It is therefore essential to have in place a robust security governance framework. The emphasis of the NTP 2018 should therefore also be to facilitate state of art, secured, reliable and affordable services with the focus on inclusive development and job creation.

What is Fraud under the Companies Act, 2013?

The term 'Fraud' has for the first time been defined in the Companies Act. Fraud includes any act, omission, concealment of any fact or abuse of position committed by any person, with intent to deceive, to gain undue advantage from, or to injure the interests of, the company or its shareholders or its creditors or any other person, whether or not there is any wrongful gain or wrongful loss. The offences of fraud are cognizable and the person accused of such offense cannot be released on bail, unless for certain exceptions as provided under the Companies Act. Any person who is found to be guilty of fraud, shall be punishable with imprisonment for a term which shall not be less than 6 months but which may extend to 10 years and shall also be liable to fine which shall not be less than the amount involved in the fraud, but which may extend to three times the amount involved in the fraud. Where the fraud in question involves public interest, the term of imprisonment shall not be less than 3 years.

Are there any specific activities under the Companies Act liable for punishment for fraud under Section 447?

There are various sections in the Companies Act which set out the activities which are liable for action under Section 447. The offence of fraud can be right from the stage of incorporation of the Company, till closure of the Company. Few of the instances as set out below will attract criminal liability and punishment are False or incorrect information, suppressing of any material information by any person while filing the documents with the Registrar of Companies in relation to the registration of a company; Fraudently conducting the affairs of the company; Where a prospectus issued, circulated or distributed includes any statement which is untrue or misleading; Where any person who, either knowingly or recklessly makes any statement, promise of forecast which is false, deceptive or misleading, or deliberatively conceals any material facts, to induce another person to invest money; If a company with intent to defraud issues a duplicate share certificates; Where shares have been transferred by any depository or depository participant, with an intention to defraud a person; Any officer of the company (a) knowingly conceals the name of any creditor entitled to object to the capital reduction; or (b) knowingly misrepresents the nature or amount of the debt or claim of any creditor; or (c) abets or is privy to any such concealment or misrepresentation; Deposits had been accepted with intent to defraud the depositors or for any fraudulent purpose; Where business of a company has been or is carried on for a fraudulent or unlawful purpose; If it is proved that (a) the business of the company is being conducted with the intent to defraud its creditors, members or any other persons or is otherwise conducted for a fraudulent or unlawful purpose, or that the company itself was formed for any fraudulent or unlawful purpose; or (b) any person concerned in the formation of the company or the management of its affairs have in connection therewith been guilty of fraud; Where a person who is required to provide an explanation or make a statement during the course of inspection, inquiry or investigation, or an officer or other employee of a company or other body corporate which is also under investigation (a) destroys, mutilates, falsifies, conceals, tampers, unauthorizedly removes, or is a party to the destruction, mutilation, falsification, concealment, tampering or unauthorized removal of, documents relating to the property, assets or affairs of the company or the body corporate; or (b) makes, or is a party to the making of, a false entry in any document concerning the company or body corporate; or (c) provides an explanation which is false or which he knows to be false. EPC World