SMART CITIES & URBAN DEVELOPMENT/TRANSPORTATION
SEMINAR: BUSINESS OPPORTUNITIES IN INDIA

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EMERGING TRENDS AND OPPORTUNITIES IN INDIA’S SMART CITIES INITIATIVE AND TRANSPORTATION SECTOR

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On the Agenda

Section I: Snapshot of the Indian Economy

Section II: Opportunities

Section III: Key Developments

Section IV: Understanding the Issues
Snapshot of the Indian Economy...1:  
**Growth & Outlook**

- $2.6 trillion economy *(World Bank)*
  - 6th largest in nominal GDP *(World Bank)*
  - 3rd largest in PPP *(World Bank)*
  - Likely to reach $5 trillion by 2025 *(DIPP)*

- **GDP growth**: Estimated by World Bank at over 7% in the next few years *(Source)*

- **AT Kearney FDI Confidence Index**: 2nd ranked emerging market *(Source)*

- **Ease of Doing Business**: Ranked 77 (moving up 65 places from 2014) *(Source)*
Snapshot of the Indian Economy...2: **Emerging Focus Areas of Growth**

- Smart Cities: Sustainability | Core infra | Quality of life
- City-led development - planning by urban authorities

- E-vehicles to reduce emissions & tackle climate change
- Expanding e-vehicle fleet footprint by 2030

- Development of integrated urban transport solutions
- ‘Transit Oriented Development’
100 smart cities approved:
- Highest number of smart cities in:
  - Uttar Pradesh
  - Tamil Nadu
  - Maharashtra
  - Gujarat
  - Karnataka
- Selection based on ‘proposal’ submitted to Central Government
  - Proposal sets out projects
  - No prescribed model - each city formulates its own concepts
- Average of US$ 28 mn annual funding from Central/State Government per city (MoUD)
Focus on:
- Transportation and Urban Mobility
- Waste Management
- Green Energy

Following PPP projects underway (as per 2017 data):
- Smart toilets - Delhi, Kakinada, Solapur
- Solar rooftop - Guwahati, Delhi, Kakinada, Solapur
- Smart parking - Surat, Indore, Delhi, Bhubaneswar
- Smart cycles - Bhopal, Jabalpur
- Smart cards - Ahmedabad, Surat, Indore, Bhubaneswar

(MoUD)
Smart Cities...3: Model of Implementation

Earlier approach housed urban developed largely in ‘urban local bodies’

- Limited funds - limited scope for technologically ambitious projects
- Limited capacity (technical/ transactional) for innovative structuring
- Political interference/ dominance of ULBs

Case-study: Surat

Govt of India/ Gujarat (Funding)  Municipal Corporation (Equity)  NITI Aayog - ATAL Mission (Grant)

SPV for implementation: Surat Smart City Development Limited

- Integrated control centre
- OFC Network for BRTS
- Intelligent parking management
- Intelligent transit management
- Automatic fare collection

Joint venture with Indian partners  Supply of equipment to authorities
E-Vehicles & Energy Storage: Opportunities

National Electric Mobility Mission (2013)
- Demand-side incentives
- R&D in technology
- Promoting charging infra
- Supply-side incentives
- Retro-fitment

Faster Adoption and Manufacturing of (Hybrid &) Electric Vehicles Scheme (2015)
- The second phase from 2019 to 2022
- Total outlay of USD 1.5 bn
- Emphasis on electrifying public transportation and establishing charging infrastructure
  - Incentives only for vehicles with ‘advance batteries’
- Subsidies currently only to OEMs/ suppliers -
  - Consumers not directly benefitting

National Energy Storage Mission proposed to create enabling framework for:
- Manufacture
- Deployment
- Innovation
- Cost-reduction

Need for better storage technology with long-lasting throughput

National Electronics Policy (2019): Aim to position India as a global hub for electronics system design and manufacturing

SHIFT TOWARD ENHANCED E-MOBILITY
### Railways and MRTS: Opportunities

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**MAKE IN INDIA**

**High-speed rail**
- Mumbai-Ahmedabad
- Chennai-Bengaluru-Mysore

**Dedicated Freight corridors**
- Kolkata-Mumbai
- Delhi-Chennai

**High speed corridors**
- Long-term plan for 6 high-capacity corridors

**Metrorail**
- Kanpur
- Varanasi
- Vizag
- Indore
- Patna

**Suburban rail**
- 160 Km suburban network planned in Bengaluru
Logistics Sector: 
*Outlook & Opportunities*

- National Logistics Policy proposed, with following aims:
  - Enhance efficiency across value chain through digitization and technology adoption
  - Improve quality of storage infrastructure
  - Encourage adoption of green logistics

- *Bharatmala Pariyojana*: 35 multi-modal logistics parks (Source)

- Logistics market poised to reach ~US$ 215 bn by 2020 (Source)

- *World Bank Logistics Index*: India ranked 44th out of 160 (Source)
Subordinate debt can be raised based on future surplus cash flow of operational BOT projects.

Release of 75% of award against bank guarantee pending appeal in disputes.

Recent clarification that no licence is required for battery-charging – same will be treated as a service.

Key Developments...1:

FDI liberalised in railways sector - 100% FDI through Automatic Route in:
- Suburban corridor projects through PPP
- High speed train projects
- Dedicated freight lines
- Manufacturing rolling stock & maintenance facilities
- Railway electrification & signalling systems
- Freight/ passenger terminals
- Industrial park infrastructure (railway line/ sidings)
- Mass Rapid Transport Systems

1. Recent clarification that no licence is required for battery-charging – same will be treated as a service
Key Developments...2:
‘Transit Oriented Development’ & New Technologies

- National Transit Oriented Development Policy - increasingly being built into infrastructure concessions (e.g., Pune metro)
  - Integration of land use & transport planning
  - Increased use of public transport
  - Greater accessibility to public transport
  - Densification of areas near public transport
  - Compact self-contained communities
- Newer technologies being actively considered and explored - hyperloop, pods, etc.
Airports Authority of India awarded concession for operations, management and development of 6 airports – Guwahati, Thiruvananthapuram, Lucknow, Mangaluru, Ahmedabad and Jaipur

Energy Efficiency Services Ltd awarded contracts for on-site supply of 10,000 e-vehicles which will then be leased to government departments

Pune Metropolitan Region Development Authority awarded the concession for developing Pune Metro Line-3 Project on a PPP basis

Vigorous deal activity in the urban mobility space - many transactions are being done in the start-up space, including OEM start-up space

- Ather Energy Pvt Ltd has introduced its e-scooter - had raised funds via VC, PE and strategic investment routes (several other examples - Ola, etc.)
- As a result of push for e-mobility solutions, tier-I and tier-II suppliers/solution providers are jump-starting on the e-mobility highway

Component suppliers are evolving as providers of mobility solutions
Understanding the Issues...1:
*Contractor-level Concerns*

**Selection of Partner**
Identifying partner key to successful entry – legal/business history has to be scrutinized

**Joint & Several Liability**
Bid documents stipulate joint/several liability – partners to manage/negotiate liability

**Dispute Resolution**
Local players push for Indian seat of arbitration – Singapore/London neutral options

**‘Paid-if-paid’**
Main contractors insist on ‘paid if paid’ clause – supplier to push for independent payment
Approvals
Delay in grant of approvals results in cost/time overruns that threaten viability (e.g., transmission)

Right of Way
Delays in grant of right of way/land-acquisition impact progress of works (e.g., highways)

Procurer’s Financial Health
Poor finances of procuring entity can adversely impact viability/payment (e.g., renewables)

Divestment Restrictions
Equity lock-in commitments ordinarily during construction (e.g., metro/airports)
Understanding the Issues...3: Sector-level Concerns

Legal framework
Institutional Overlap
Institutional Capacity
New Models
Key Takeaways

- Implementation issues (land acquisition, approvals) slow-down projects
- The bankability of procuring entities is a concern

- Emerging opportunities - waste-to-energy, smart grids, smart metering
- Recent legislative changes have improved lending eco-system

Attractive economic growth in coming years:
  - Infrastructure to be the mainstay of growth
  - Favourable investment climate - encouraging actions
DISPUTES IN RELATION TO THE TRANSPORTATION SECTOR
Dispute Resolution:
Arbitration Clause...1

- Arbitration is the preferred mode for resolution of disputes
- Arbitration clauses in these contracts generally provide for ad-hoc arbitrations
  - This is due to absence of any credible arbitration institution in India
- Employers often try to control the appointment of arbitrators by having a panel of arbitrators from which arbitrator can be selected by the Contractor
- In some contracts with foreign contractors, arbitration is conducted under Rules of Arbitration of International Chamber of Commerce (ICC)
  - Regulate arbitration costs (as per its own fee schedule)
Recently, some Employers (such as NHAI) are providing for arbitration to be conducted in accordance with Rules of Society for Affordable Resolution of Disputes (SAROD)

The SAROD Rules:
- Provide for appointment of Presiding Arbitrator or Sole Arbitrator from the panel of arbitrators of the Society
- Prescribe a time limit for rendering award (1 month from completion of oral submissions)
Arbitration in India is governed by the Arbitration & Conciliation Act, 1996 (A&C Act)

A&C Act was recently amended in 2015

These amendments have had a positive impact on arbitration process in India

Amongst other things, the 2015 Amendments provide:

- Appointment of independent arbitrators
- Speedier resolution of disputes (time limit of 1 year for completion of domestic arbitrations)
- Restricted Court interference in the arbitration process
Dispute Resolution:
Recent Developments in Arbitration...

- **Voestalpine Schienen GmbH v. DMRC Ltd.**
  
The number of arbitrators from whom a contractor can choose an arbitrator must be broad based and not restricted (to 5 persons). The panel must contain engineers from private sector, persons with legal background like judges and lawyers, persons well versed with accountancy, etc.

- **TRF Ltd. v Energo Engineering Projects Ltd.**
  
  If a person is himself ineligible to act as an arbitrator (the Managing Director in this case), he does not have the power to appoint another person as an arbitrator.

- **ICOMM Tele Ltd. v Punjab State Water Supply and Sewerage Board**
  
  A clause that mandates pre-deposit of a particular amount (10% of claim amount in this case) as a pre-condition for initiating arbitration is void.

- **Jaiprakash Associates Ltd v Tehri Hydro Development Corp. India Ltd.**
  
  If a contract contains a clause that bars payment of interest, arbitrator has no jurisdiction to award interest.
Larsen & Toubro Limited Scomi Engineering BHD v. MMRDA

In contracts executed by a consortium of an Indian entity and an entity incorporated outside India, the terms of consortium agreement are important for the purpose of dispute resolution

- If the consortium partners do not act as independent entities while dealing with the Employer, claims can be filed only on behalf of the Consortium and not individually

- If the management and control of the consortium is vested with the Indian entity, arbitration proceedings will not be International Commercial arbitration

Union of India v Hardy Exploration & Production (India) INC

Arbitral Tribunal is required to determine the seat of arbitration in each case
THANK YOU

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