

Query No. 21

Subject: *Appropriate disclosure of Competent Authority Land Acquisition (CALA) bank account in the company's annual financial statements.*¹

A. Facts of the Case

1. A company (hereinafter referred to as the 'company') was incorporated on 18th July 2014, under the Companies Act, 2013 as public sector undertaking (PSU) fully owned by the Government of India (GoI) under the administrative control of the Ministry of Road Transport & Highways (MORTH) with authorised capital of Rs. 10 crore. It has started functioning in September 2014 with the objective to develop national highways (NH) and other infrastructure at fast pace in the North East and strategic areas of the country sharing international borders. The company has been entrusted with the task of developing and improving road connectivity in length of 10,000 km including the international trade corridor in the North Eastern region of India on behalf of the GoI. The company has formulated a vision to become an instrument for creation and management of infrastructure of the highest standard while contributing significantly towards nation building. Being a professional company, its mission is to design and develop infrastructure projects in a time bound, most efficient and transparent manner with maximum benefits to all the stakeholders. The company has adopted a business model that relies on outsourcing of a number of activities including design, construction, supervision of national highways, rather than undertaking all such activities through its own employees. This has thus helped the company in maintaining a lean organisational structure to facilitate faster operational decision-making. Within a short period, the company has set up its corporate office and twelve offices in Assam, Arunachal Pradesh, Jammu and Kashmir, Manipur, Nagaland, Tripura, Uttarakhand, Mizoram, Meghalaya, Sikkim, A & N Islands and Nepal for monitoring and supervising the NH projects entrusted to it.

2. The querist has stated that infrastructure is an important component in the development of any economy specially for the developing country like India. Infrastructure projects have large capital requirements and also long gestation periods. A typical highway project has a construction period of two-three years.

3. The querist has further stated that the Government of India (GoI) through Notification entrusted the company the job of construction and development (including widening) of the highways and other infrastructure projects. For widening and for other facilities, GoI acquires land under the NH Act, 1956 in its favour through the company. Revenue Authorities of the concerned state are being appointed as Competent Authorities under section 3(a) of NH Act 1956 as independent authority agency for land acquisition work, commencing from issue of notification regarding intent to do so, to award the compensation, its disbursement to the land owners whose land were acquired and to hand over the possession of land acquired for development to the company.

4. The Land Acquisition (LA) compensation amount is being deposited with Competent Authority-Land Acquisition (CALA) in a specific bank account of CALA and GM (Project) of the company jointly for onward disbursement under section 3H of NH Act for land acquired. The CALA account is being operated by Competent Authority for disbursement of land compensations. The responsibility of the payment of LA compensation amount lies with the CALA alone. GM (P), of the company may only

¹ Opinion finalised by the Committee on 10.11.2017 and 11.11.2017.

render assistance if any, requested by CALA. The querist has separately confirmed that CALA Account is not in the name of the company; rather is a joint bank account in the name of CALA and the GM (P) of the company and that GM (P) is only a joint signatory. Therefore, in substance, all the decisions for operating this account are taken by CALA only. The querist has also informed that funds required for land acquisition are first transferred by MoRTH to the company and then the same are transferred to CALA Bank Account. In order to acquire land through State Government/Competent Authority, the amount as requested by CALA is being deposited in a separate bank account in the name of CALA in order to disburse the amount by CALA. Therefore, it is a routing account for the company for the purpose of acquiring land and to pay land compensation. With regard to the accounting treatment being followed by the company, the querist has informed that the amount transferred to such CALA account for the land acquisition is presently shown by the company as Deposit-Competent Authority Land Acquisition & Other agencies. The amount utilised by CALA towards compensation is being debited to project in progress account (CWIP held on behalf of GoI) on the basis of utilisation certificates issued by CALA.

5. However, there is also an opinion from audit to show this CALA bank account as 'cash and bank balance' of the company in the balance sheet.

6. According to the querist, the opinion of the company on the subject is as follows:

Presently as per accounting principles, the bank accounts which have been opened exclusively in the name of the company with the approval of Board of Directors have been shown under the head 'cash and bank balances' as per the format prescribed in Companies Act.

The amount released to CALA bank account, is neither in the name of the company nor at the disposal of the company alone. It is being operated by CALA as independent authority.

The amount of land compensation payable to land owners, as determined under section 3G of NH Act, 1956, awarded by CALA is required to be deposited with CALA in such manner as may be laid down by rules made in this behalf by the concerned State Government before taking the possession of the land. Concerned GM (P) of the company renders the necessary assistance, as requested by CALA. Hence the undisbursed amount with CALA has been shown under the head 'Long-term loans and advances' as Deposit with Competent Authority Land Acquisition and other agencies, so that the company can monitor the disbursement progress of CALA bank account from time to time.

Also, as per Guidelines for transfer of compensation to CALA accounts stated in the Compendium of Land Acquisition Circulars, Provisions and Guidelines of National Highways Authority of India (NHAI) (an autonomous body of Ministry of Road Transport and Highways), "*Amount deposited in the joint account for LA is accounted under "CWIP – Land" and joint account shall not be part of books of account of NHAI*".

Considering the above financial model and activities of the company, it may be appreciated that a prudent and accepted accounting policy and disclosure procedures are required for the CALA bank account in the company's books of account. Since the financial impact of land acquisition compensation amount is substantial in nature as compared to the other activities of the company, this financial head requires a proper disclosure in the final accounts and financial statements of the company.

7. The querist has informed separately that the interest received in CALA accounts is returned to the company by CALA authorities after all disbursements from that account are made. Further, after the disbursement has been made by the company into the CALA account, any unutilised portion at the year end remain in the CALA account. However, at the year end, CALA provides the company the utilisation certificate of the amount utilized from CALA account. The company, on the basis of the utilization certificate, books the entry in the accounts. Any unspent amount in CALA account is returned back to the company after full and final settlements are made by CALA alongwith reconciliation statement. The querist has further informed that any interest / unspent amount in CALA account which is refunded back to the company is payable to MoRTH. The querist has also separately supplied a copy of the circular of Ministry of Road Transport & Highways, GoI containing guidelines for payment of agency charges to the company for various activities (DPR preparation, land acquisition, etc.) undertaken on behalf of the Ministry. It has also been informed that the provisions of Ind AS are not applicable to the company as per its latest audited financials.

B. Query

8. In order to disclose appropriately the CALA bank account in the company's annual financial statements, the querist has requested the Expert Advisory Committee (EAC) of the Institute of Chartered Accountants of India (ICAI) to give its opinion on:

- (i) whether the company should disclose the undisbursed amount lying in CALA account under the head 'Long term Loans and Advances' as 'Deposit-Competent Authority Land Acquisition & Other agencies'; or
- (ii) whether to disclose the undisbursed amount lying in the CALA bank account under the head 'cash and bank balance' of the company; or
- (iii) Any other manner, which Expert Advisory Committee of the ICAI deems fit under the circumstances explained above.

C. Points considered by the Committee

9. The Committee notes that the basic issues raised by the querist relate to disclosure of undisbursed amount/funds lying in the Competent Authority Land Acquisition (CALA) bank account in the company's annual financial statements. Therefore, the Committee has considered only this issue and has not considered any other issue that may arise from the Facts of the Case, such as, accounting for the funds received from the GoI/MoRTH utilised for acquisition of land and for other project related activities, accounting for agency charges, etc. Further, the opinion expressed, hereinafter, is purely from accounting perspective and not from any legal perspective. At the outset, the Committee wishes to point out that the opinion expressed hereinafter is from the perspective of the Accounting Standards notified under the Companies (Accounting Standards) Rules, 2006 and not from the perspective of Indian Accounting Standards (Ind ASs) notified under the Companies (Indian Accounting Standards) Rules, 2015.

10. At the outset, the Committee notes from the Facts of the Case that the Government of India (GoI) through Notification entrusted the company the job of construction and development (including widening) of the highways and other infrastructure projects. For widening and for other facilities, GoI acquires land under the NH Act, 1956 in its favour through the company, i.e., the ownership of land acquired remains vested with the GoI only. Revenue Authorities of the concerned state are being appointed as Competent Authorities u/s 3(a) of NH Act 1956 as independent authority agency for land acquisition

work, commencing from issue of notification regarding intent to do so, to award the compensation, its disbursement to the land owners whose land were acquired and to hand over the possession of land acquired for development to the company. In this regard, the Committee also notes the provisions of the Circular of the Ministry containing guidelines for payment of agency charges to the company for various activities (DPR preparation, land acquisition, etc.) undertaken on behalf of the Ministry as follows:

“5. ...agency charges of 1% of the amount payable for Land Acquisition would be paid to the company since it is not provided with any budgetary support for meeting administrative/establishment expenses for supervising the work of land acquisition, shifting of utilities and obtaining all mandatory clearances etc.”

6. In order to link the payment of 1% Agency charges to the company to the final outcome and make it performance linked, the company would be permitted to retain 1% as Agency charges, only on the basis of actual disbursement made to CALA against LA compensation and various other executive agencies for forest clearance, utility shifting etc. subject to the following conditions:

- (i) The company shall co-ordinate all land acquisition related activities such as preparation of 3(a), 3A, 3D and 3G Notifications in the gazette.
- (ii) The company completes preparation of estimates for land acquisition, forest clearance, utility shifting etc.
- (iii) Funds are released to the Competent Authorities for Land Acquisition (CALA) after the approval of 3G notification and other executing agencies for forest clearances, utility shifting etc.
- (iv) The company liasoning with CALAs for fast tracking the distribution of compensation to the authentic land owners/beneficiaries with forest authorities for tree cutting and timely shifting of other utilities.
- (v) The company taking over the possession of land, so acquired by CALA, and ensure its availability to the contractors before the appointment date for timely start of projects.
- (vi) Reconciliation of the funds released to CALA vis-à-vis its disbursement to the beneficiaries is done by the company.
- (vii) The company co-ordinates and completes all activities involved in obtaining various statutory and mandatory clearances required for smooth execution of the projects.

The above amount to the company shall be payable from the respective total project cost.

From the above, the Committee notes that the role of the company in the activity of land acquisition is that of an agent of the Ministry/GoI for facilitating the activities related to acquisition of land for which the company is only entitled to receive agency commission.

11. With regard to the issue raised, the Committee notes that the first issue to be examined is whether the item (viz., undisbursed amount/funds lying in the CALA bank account) meets the definition of the term ‘asset’, as defined in paragraph 49(a) of the ‘Framework for the Preparation and Presentation of Financial Statements’, issued by the Institute of Chartered Accountants of India as follows:

“(a) An *asset* is a resource controlled by the enterprise as a result of past events from which future economic benefits are expected to flow to the enterprise.”

The Committee notes from the Facts of the Case (refer paragraph 4 above) that the funds disbursed by the Ministry towards land acquisition (LA) compensation amount is being deposited with Competent Authority-Land Acquisition (CALA) in a specific joint bank account of CALA and GM (Project) of the company for onward disbursement for land acquired. The company is not a joint account holder and the company does not have any control over the funds lying in the said account. All decisions for operating the account are taken by CALA only in accordance with the rules of individual State Governments. It is only a routing account to the company for the purpose of acquiring land and to pay land compensation. Further, the interest accrued on deposit balance in the joint bank account will be to the Ministry's benefits and any unused funds will have to be transferred to the Ministry after the land acquisition process is over. Further, since the amount of compensation as awarded/determined by CALA is required to be deposited with the CALA in the joint bank account, apparently, the money lying in such account cannot be used for ordinary business of the company and the company has no right to utilise such money except for land acquisition for the Ministry. From this, the Committee notes that the company does not have any right to use the amount lying in the joint bank account and therefore, no control is exercised by the company on such account. Further, since the balance of funds in the joint account with CALA can be used only for the acquisition of land which will be owned and controlled by the Ministry, no future economic benefits from such funds arise to the company. Accordingly, the Committee is of the view that the funds lying in the joint account is not an 'asset' of the company and therefore, and should not be recognised by the company in its books of account either as 'Deposit- with Competent Authority Land Acquisition and other agencies under 'long term loans and advances' or as 'cash and bank balance'. However, considering the role of the company as an agent/facilitator of the Ministry/GoI for acquisition of land and since the company has also to do reconciliation of the funds released to CALA vis-à-vis its disbursement to the beneficiaries, the Committee is of the view that such funds lying in the bank account may be disclosed in the notes to accounts giving details of nature of funds, the purpose and restrictions imposed and its relationship with the Ministry/GoI.

D. Opinion

12. On the basis of the above, the Committee is of the following opinion on the issues raised in paragraph 8 above:

- (i) The undisbursed amount lying in CALA account should not be disclosed under the head 'Long term Loans and Advances' as 'Deposit-Competent Authority Land Acquisition & Other agencies' as discussed in paragraph 11 above.
- (ii) The undisbursed amount lying in the CALA bank account should not be disclosed under the head 'cash and bank balance' of the company as discussed in paragraph 11 above.
- (iii) The undisbursed amount lying in CALA account may be disclosed in the notes to accounts giving details of nature of funds, the purpose and restrictions imposed and its relationship with the Ministry/ GoI, as discussed in paragraph 11 above.