

## **Query No. 31**

**Subject: Change in revenue booking in books of account.<sup>1</sup>**

### **A. Facts of the Case**

1. H Limited, a parent company of another company (hereinafter referred to as ‘the Company’) had obtained opinion of the Expert Advisory Committee (EAC) of the Institute of Chartered Accountants of India (ICAI) on Accounting Standard (AS) 9 with respect to the revenue recognition in the year 2011. The Company is following the same opinion since its incorporation in the year 2014 and recognising the revenue in its books of account as per this opinion only.

2. The statutory auditors, while issuing the statutory audit report for the financial year (F.Y.) 2022-23 in the month of August, 2023, have given Emphasis of Matter paragraph in the audit report relating to booking of revenue. The Company has also taken opinion from two Chartered Accountants (CA) firm on the issue in the month of July, 2023.

Therefore, now the Company seeks opinion of the Expert Advisory Committee of the Institute of Chartered Accountants of India so that there remains no confusion as to the compliance of the applicable Indian Accounting Standard (Ind AS).

#### *Company’s Profile:*

3. The Company is a 100% subsidiary of H Limited (A Mini Ratna PSU) under the Ministry of Health and Family Welfare (MoHFW), Government of India and incorporated and registered under the Companies Act, 1956 on 03.04.2014.

4. The Company provides health care services in the field of infrastructure, procurement, facility management and bio-medical engineering.

- **Infrastructure Division**

The Company is engaged in construction, supervision and delivery of projects related to health care construction and infrastructure providing mainly of following types of works:

- (i) Preparation of detailed project report, consultancy and supervision and delivery of construction works.
- (ii) Comprehensive work of construction which includes preparation of detailed project report, architectural consultancy, inviting tenders, award of works to contractors, supervision and monitoring, receipt of payments from clients (MoHFW, various state govt. etc.), payments to contractors and taxation etc. as per contract terms i.e. total Project Management Consultancy (PMC).

At present, the Company is undertaking the construction works/ procurement projects, related to various hospitals and medical colleges. Though the Company is executing the entire project works from planning till project hand over through the appointed contractors/agencies/vendors as stated above, it is booking revenue as project

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<sup>1</sup> Opinion finalised by the Committee on 30.12.2024.

consultancy/supervision charges only and accordingly is accounting the same in the books of account as revenue from operations.

The Company is executing the construction/procurement work (*PMC/ Executing Agency/ PSA*) of healthcare infrastructure under *Deposit Work* model. Under this model, the Company gets designated funds for execution of construction/ procurement works from MoHFW (Government of India) and other clients, supervises the works executed through appointed agencies, maintain MBs, certify bills of the contractors/vendors on behalf of MoHFW and other clients and make payments to the contractors out of the deposits fund given by MOHFW. On completion of work by contractor/agencies based on milestone achievement, the Company raises its bill of consultancy fee and supervision charges (with applicable taxes) on MoHFW and account for the same in the books as revenue from operations.

- **Procurement Division**

Similarly, the Company is also engaged as Procurement Support Agent (PSA) of all foreseeable medical equipments like for MRI, CT scan etc., including furniture for patient treatment at different AIIMS like Institutes. For this, the Company is designated as a National Procurement Support Agency (NPSA).

The Company is also procuring the medical equipments (both domestic and imported) by using its own GSTIN and IEC respectively in the capacity of pure agent on behalf of MoHFW. For procurement, the Company is floating tenders, awarding works to vendors, making payment, ensuring delivery installations and commissioning at site.

*Accounting policy of the Company:*

5. The Company is accounting for in the books only the consultancy and supervision charges on works executed through contractors/vendors; therefore, the contractual expenses in respect of such works executed i.e. bills of contractors are not accounted for in the books of the respective projects undertaken by the Company as construction/procurement expenses and are debited directly to Deposit Fund Account of the project held by the Company; the balance left in the Deposit Fund Account of the project held by the Company is shown as '*Cash and bank balances of projects held under trust as per contra*' under the head 'Assets' and the balance left in the Deposit Fund Account is shown as '*Advances received for projects held under Trust as per contra*' under the head 'Liability' in the books of the Company. The Company is following this practice of revenue recognition and accounting for revenue as income in the books since the inception of Infrastructure/ Procurement Division of the Company.

6. During the statutory audit for the F.Y. 2022-23, statutory auditors of the Company had made the following observation and mentioned the below remarks in Emphasis of Matter in the Company's Annual Report for the F.Y. 2022-23:

The Company has undertaken projects under Procurement & Consultancy Division (PCD) and Infrastructure Division (ID) during the year. Under such projects, the Company controls the specified good or service before that good or service is transferred to a customer, and hence the nature of its promise is a performance obligation to provide the specified goods or services itself (i.e. the Company is a principal). The Company, however, has not recognised revenue in the gross amount of consideration to which it

expects to be entitled in exchange for the specified good or service transferred. As stated in the Note 2.18 of Explanatory/Clarificatory Notes to the Financial Statements, in case of projects under PCD and ID, the Company has considered only Consultancy Fee as Transaction Value as per the terms of contract considering its status as *Pure Agent* as the entire material is being purchased / imported by the Company on behalf of MoHFW (Govt. of India) by using its GSTIN & IEC Code and the said material is being supplied directly at the site of the respective project. The impact of the said transactions on the profit of the Company is Nil. This constitutes a difference of opinion on transaction value as per Ind AS 115 prescribed under section 133 of the Companies Act, 2013 and the transaction value considered by the Company. Accordingly, the cost of material purchased locally and imported should form part of Transaction Value for the purpose of accounting only. While framing our Audit Report, we have relied upon the opinions obtained by the Company from the experts on accounting treatment of Revenue Recognition specifically in case of Procurement & Consultancy Division and Infrastructure Division of the Company.

Our opinion is not modified in respect of the above matters.

Note 2.18 of Explanatory/ Clarificatory Notes to the Financial Statements state as follows:

As per the terms of the agreement being awarded by MoHFW, for various Medical Institutes and state level projects, the Company is liable to procure the medical equipments (Domestic/Imported) by using its own GSTIN & IEC in the capacity of pure agent on their behalf. The entire medical equipments procured as per the terms of the contract are being supplied/despatched to the respective projects (consignees/sites) directly. The year-wise break-up of such materials is as under:					
A.					
Particulars	2022-23	2021-22	2020-21	2019-20	2018-19
Rs. in lakhs					
Procurement of Imported Goods	26,988	30,873	36,736	32,697	60,561
Procurement of Indigenous Goods	46,983	86,329	91,121	50,922	31,040
Total Value of Procurement	73,971	1,17,202	1,27,857	83,619	91,601
Since the Company is working as a procurement and support agent on behalf of MoHFW, Government of India for their projects, the beneficial ownership of goods is with the respective projects only, the amount of the materials so supplied to the projects' consignees has not been considered as a part of transaction value.					
B.					
Particulars	2022-23	2021-22	2020-21	2019-20	2018-19
Rs. in lakhs					
Value of Work executed	47,202	75,777	55,818	89,980	40,061

Auditors also pointed that the other organisations in the similar types of business are booking the gross revenue in their books of account.

7. Now, the Company is planning to change its current accounting procedure in respect of recognition of revenue and its accounting for comprehensive construction/procurement works i.e. to book complete value of construction and procurement work as revenue in the books of account in Infrastructure and Procurement Division respectively. Considering the fact that the Company is using its import license and GST No., contract cost (expenses) and procurement cost (expenses) associated with the construction contract and procurement contract respectively will be recognised as expenses in the books of account of the Company.

8. The querist has separately provided the following information:

- (i) With regard to the specific facts pertaining to each type of project undertaken by the ID and the PCD based on the respective applicable Agreement/MOU that make the Company now believe that the transactions are performed /executed as a Principal and therefore should be accounted for on a gross basis, the querist has informed the following:

*For ID:* Mode of project execution: The Company is undertaking various Infrastructure Projects as PMC/Executing Agency / SPV from different clients. Role of the Company as Executing Agency involves from Concept to Commissioning (Turnkey) i.e. comprehensive planning, designing, construction, testing, commissioning and making the building operational in all respects before handing over including maintenance during defect liability period for all facilities and services created as below from the dedicated project fund provided by the client for executing particular project:

- a. Preparation of designs & drawings, Detailed Project Report
- b. Tendering and selection of agencies / contractors
- c. Site supervision, project and contract management
- d. Processing of bills and release of payments to contractors from the project fund deposited with the Company by Client

Transactions involved: Currently, the Company will be paid consultancy fee by the clients based on the agreed milestones as per agreement, which is accounted for in the books of account as revenue from operations.

The work allotted to the Company are mostly on deposit basis. Contractors submit bills to the Company and payments will be made to contractors from the dedicated account of each project maintained by the Company. Any interest earned on the deposit received/ advance drawn from the Govt. by the Company shall be refunded to the Govt. at the end of financial year as per the contract agreement. The Company provides utilisation certificate for the work executed by the contractor against the deposit amount for a particular project.

In case of Kerala Govt. projects, the Company's role is limited to certification of bills and payments will be released directly by client to the contractors. Related transaction like TDS, GST, all statutory deductions etc. on the project payments are also being done

by the Company. The performance guarantee and security deposit from contractor is maintained in the name of the Company.

In agreement executed for MoHFW projects, following responsibilities are vested with the Company with respect to project payments:

Clause 2.2 Implementation of Project:

(9) ensure correct measurement of Bill of Quantities for payment to contractor / vendor.

(13) Executing agency will be Principal Employer for all contracts executed by them in this project.

(14) To settle and resolve any dispute that may arise between Executing Agency and the Consultants / Contractors / Vendors engaged by the Executing Agency.

However, the cost of such type of expenses will be charged to the Project Fund.

Clause 2.4 Other Responsibilities of Executing Agency:

(xii) At the end of every two months and at the end of the project, Executing Agency shall submit an expenditure and utilisation of funds statement in the format prescribed in CPWD Manual or as per Fee format approved by MoH&FW.

Similarly, same is followed for other respective clients also.

Clause 11. Release of Project Fund:

Separate bank account, as required by MoHFW, shall be opened by Executing Agency for the funds received from MoHFW for AIIMS or any other client.

Any interest earned on the deposit received/ advance drawn from the Govt. by the Company shall be refunded to the Govt. at the end of financial year as per the MOU signed with the respective client.

Moreover, recently MoHFW, GoI has implemented a new payment scheme named as Treasury Single Account (TSA) wherein the Company has opened an account in RBI for all the projects of MoHFW, GoI and payment to the contractors are directly made from there by the Company. There is no need to open separate commercial account for every project. However, the Company has to transfer the amount for the statutory due from the TSA to its own account for making statutory payments i.e. TDS, GST-TDS, Labour Cess etc.

Further to above, based on actual progress of project, Ministry shall release project fund to Executing Agency so that balance of project fund does not fall below 10% of total tendered cost. Executing Agency will release payment to the contractor against R/A bills raised by contractors.

It is also to be noted that in above projects, the agreement for construction is executed between the Company and the selected contractor. As per the agreement, the Company is responsible for release of payments to contractors out of the project funds received from the client for executing the respective project.

The Company is acting as Principal Employer in most of the projects and involved from the concept to commissioning and project payments to contractors are being made

through the Company's account, and therefore, the concept of gross billing and accounting the same into the books of accounts of the Company seem to be justifiable and as per accounting standards.

*For PCD:* The Company is a Procurement Support Agent (PSA) for procurement of medical equipment to be installed at different government hospitals. The Company procures equipment on behalf of the client and the equipments are directly delivered at the client's site only. The Company is procuring equipment under 'deposit work' model. Under this model, the Company gets designated funds for procurement of medical equipment from MoHFW (Government of India) and other clients, supervises the procurement, installation and commissioning of medical equipment executed through appointed suppliers, certifies the Bill on the basis of CRC (Consignee Receipt Certificate) & FAC (Final Acceptance Certificate) received by clients and makes payments to the supplier out of the deposits fund given by MoHFW / clients. The Company raises its bill of consultancy fee and supervision charges (with applicable taxes) on client and accounts it as revenue from operations as per terms of agreement with clients.

- (ii) With regard to control of the Company over the specified goods and services before these are transferred to the customer, the querist has stated the following:

*For ID:*

- The Company issues specific project wise orders to various contractors for supply of goods and services. The goods / services / building will be delivered to client through contractors based on the instructions from the Company. It is the responsibility of the Company to ensure that the particular goods / service / building is delivered as per the DPR approved by the Client.
- The Company can direct the use of those funds/ lands for the execution of other projects as per the approval of client and as per the requirements of client. The goods / services shall be supplied to concerned client only and the same can be transferable to another client only as per the direction of the respective client.
- As per conditions of agreement with MoHFW, any trade commission, discounts or similar payments received against the project fund utilisation under this contract shall be passed on to the MoH&FW Account.
- After completion of work, buildings are handed over to the respective end users.
- The Company can decide to direct the goods/service providers to provide the specified goods/services for another customer with the approval of the client and as per the requirements of the respective client.

*For PCD:* The Company procures equipment on behalf of the client and the equipment is directly delivered at the client's site only. After installation of

equipment, FAC (Final Acceptance Certificate) is issued by the client where ownership of equipment is transferred to the client.

- (iii) With regard to the inventory risk, for example, if the goods delivered or the services rendered are not as per the specifications prescribed or if there is any damage to the goods delivered or defect in the services rendered, then who bears such cost/loss, the querist has stated the following:

*For ID:*

- It is the total responsibility of the Company to ensure that the services are rendered as per the approved plan and specifications through the contractors selected by the Company with the approval of client (if required). Till the project is handed over, the risk lies with the Company. Agreement with MoHFW specifies about the insurances by the Executing Agency and also, the Company has to submit performance guarantee.
- The Company is also responsible to rectify any damages occurring till the Defect Liability Period (DLP). Even though the Company is responsible for damages, the same will be rectified through the designated contractors / suppliers.
- As per the contract agreement with the contractor, “The Contractor shall at his own cost arrange, secure and maintain insurance in the name of the Company and the contractor with an insurance company selected by the contractor and acceptable to the Company, in such a manner that the Company and the contractor are covered for all time during the period of contract i.e. the time period allowed for completion of work, extended period and the defect liability period. The insurance shall cover the following:
  - a) Contractor’s All Risks Insurance
  - b) Workman Compensation & Employers Liability Insurance
  - c) Third Party Insurance
  - d) Any other...”
- Vendor/ contractor is bearing the cost of insurance from the total amount of work awarded and paid to him from the advance amount provided by the client for executing a particular project. Further, the insurance risk is borne by the respective vendor/ contractor and the Company doesn’t bear any insurance risk. Moreover, as per contract agreement, the Company and Contractor jointly are the beneficiary in the Insurance Policy.

*For PCD:* As per the purchase order issued to supplier, the supplier shall at his own cost arrange insurance covering 110% of the value of equipment from supplier’s warehouse to consignee’s warehouse/ client site for a period including 6 months beyond the date of delivery. If the equipment is not commissioned and handed over to the client within 6 months, the insurance will have to be extended by supplier at his cost till the successful installation, testing, commissioning and handing over of the goods to the client. Thus, Vendor/ Contractor is bearing the cost of insurance from the total amount of work awarded and paid to him from the advance amount provided by the client for executing a particular project. Further, the insurance risk is borne by the respective vendor/ contractor and the Company doesn’t bear any insurance risk. The Company/ Client is the beneficiary in the Insurance Policy but, the Company does never have an insurable interest in the property/ CWIP/ equipment.

- (iv) Further, with regard to the Company's exposure to the credit risk, for example, whether the Company is obliged/liable to pay the contractors/service providers/vendors their dues in respect of the contracts executed/goods delivered/services rendered, even if the MoHFW/AIIMS does not pay the Company for the same, the querist has informed as follows:

*For ID:*

- Since the Company is executing agreement with the contractor, it is the responsibility of the Company to ensure that payments are being timely released to the Contractors. However, since payments are based on the receipt of funds, it is clearly mentioned in the agreement with contractor that payments will be released after receipt of funds from Client. The Company does not pay to the contractor from its own funds.
- The agreement with contractor specifies the condition (GCC) for all projects except that of Kerala Govt. that "Payment will be released only after receipt of funds from Client. No compensation will be paid on account of any delayed payments".
- Since the contractor is quoting for the works in agreement with the above conditions, the risk of the Company can be mitigated.

*For PCD:* The Company pays to the supplier only after receipt of the funds from the respective client for supply of equipment as per the contract terms. The Company does not pay to the supplier from its own funds.

- (v) With regard to discretion for selection of contractors/service providers/vendors for carrying out the underlying construction work / supplying goods / rendering service to the MoHFW/AIIMS and for establishing/setting the price for the goods/services supplied by them to the MoHFW/AIIMS, the querist has stated as follows:

*For ID:* The Company is totally responsible for selection of contractors / suppliers and determining the pricing as per the approved DPR by the respective clients. If required, approvals will be obtained from Client for selection of contractor / suppliers as per MOA with the Client.

*For PCD:* It depends on the contract/ MOU of the Company and various clients. In some contracts, the Company has complete discretion for the selection of contractors/ service providers for carrying out the procurement of goods. However, in some contracts, approval from the client is required before placing Award of Work to the supplier.

- (vi) The contractor raises the bill for the complete work executed amount to the Company. The Company is liable to deduct the applicable taxes/ cess from the bill of the vendor/ contractor and further to deposit them to the relevant authority from the deposit amount for a particular project provided by the client i.e. MoHFW/ AIIMS or any other.

- (vii) At present in case of Infrastructure Division, GST charges by the contractor are directly debited to the project funds provided by the client and the Company doesn't claim any input credit for the same as the Company only raises its own invoice for the consultancy fee.
- (viii) Generally, MoHFW/ AIIMS deducts GST-TDS from the payment of consultancy fee and not from the project fund provided to the Company. However, in some cases, client has deducted GST-TDS while releasing project fund also.
- (ix) Any interest/ penalty arising for the delay in the compliance w.r.t PF/ ESIC of site labour, shall be borne by the contractor. However, for the amount of GST, TDS, PF, ESIC payable by the Company, the Company itself is responsible for all its compliances and in the event of any penalty or interest arising on account of such default or delay in compliance, shall be borne by the Company.

## **B. Query**

9. In view of the above, the querist has requested the Expert Advisory Committee to provide opinion on the following issues:

- (i) (a) for booking of complete value of construction work as revenue in the books of account in Infrastructure Division in compliance to the relevant applicable Ind AS w.e.f. 01-04-2024 onwards and to provide all the impact and incidence associated with the change in accounting policies; and (b) previous implication (if any) due to change in accounting policy in the current F.Y. i.e. any compliance, the Company has to follow for previous F.Y. in current F.Y.
- (ii) (a) for booking of complete value of procurement work as revenue in the books of account in Procurement Division in compliance to the relevant applicable Ind AS w.e.f. 01-04-2024 onwards and to provide all the impact and incidence associated with the change in accounting policies; and (b) previous implication (if any) due to change in accounting policy in the current F.Y. i.e. any compliance, the Company has to follow for previous F.Y. in the current F.Y.

## **C. Points considered by the Committee**

10. The Committee notes that the basic issue raised by the querist relates to the revenue recognition for Infrastructure and Procurement Divisions of the Company in its books of account under Ind AS 115. The Committee has, therefore, restricted its opinion to this issue only and has not examined other issues that may arise from the Facts of the Case, such as, recognition and presentation of cash/fund received from MoHFW/MHA/AIIMS and liability (if any) in respect thereof, accounting for payment made to vendors/contractors for execution of work and accounting for remittance of interest or any other benefit (discounts/rebate) to the client, accounting as per new payment scheme, reporting or expression of opinion by the auditor on the matter, etc. Further, the Accounting Standards referred to in the opinion are the Indian Accounting Standards notified under the Companies (Indian Accounting Standards) Rules, 2015, as revised or amended from time to time. The opinion expressed hereinafter is purely from an accounting perspective and the Committee has not examined any regulatory or legal aspects including under Income-tax Act, 1961 or Goods and Services Tax Act or legal

interpretation of the Memorandum of Agreements (MOA)/contract between the Company and AIIMS/Medical Institute or MoHFW/MHA, Agreement/contract with the suppliers/vendors/contractors, etc. The Committee has also not examined the opinions obtained by the Company from various CA Firms and applicability of earlier EAC Opinion obtained by parent (H Ltd.) of the Company, as mentioned in the Facts of the Case. Furthermore, the Committee's opinion is based on the specific contract/agreement supplied by the querist i.e. Memorandum of Agreement (MoA) between MoHFW and the Company for establishing a Medical Institute (AIIMS) under Infrastructure Division and Agreement between the Ministry of Home Affairs (MHA), the Company and AIIMS/Medical Institute under Procurement Division and not on other contracts/agreements, such as contract for other projects (including project with Kerala Government).

11. With regard to the issue raised by the querist relating to revenue recognition, the Committee notes that the first and foremost issue to be examined in the extant case is the relationship between the Company and the MoHFW/MHA/AIIMS. In this context, the Committee notes the following requirements of Ind AS 115, 'Revenue from Contracts with Customers':

“B34 When another party is involved in providing goods or services to a customer, the entity shall determine whether the nature of its promise is a performance obligation to provide the specified goods or services itself (ie the entity is a principal) or to arrange for those goods or services to be provided by the other party (ie the entity is an agent). An entity determines whether it is a principal or an agent for each specified good or service promised to the customer. A specified good or service is a distinct good or service (or a distinct bundle of goods or services) to be provided to the customer (see paragraphs 27–30). If a contract with a customer includes more than one specified good or service, an entity could be a principal for some specified goods or services and an agent for others.

B34A To determine the nature of its promise (as described in paragraph B34), the entity shall:

- (a) identify the specified goods or services to be provided to the customer (which, for example, could be a right to a good or service to be provided by another party (see paragraph 26)); and
- (b) assess whether it controls (as described in paragraph 33) each specified good or service before that good or service is transferred to the customer.

B35 An entity is a principal if it controls the specified good or service before that good or service is transferred to a customer. However, an entity does not necessarily control a specified good if the entity obtains legal title to that good only momentarily before legal title is transferred to a customer. An entity that is a principal may satisfy its performance obligation to provide the specified good or service itself or it may engage another party (for example, a subcontractor) to satisfy some or all of the performance obligation on its behalf.

B35A When another party is involved in providing goods or services to a customer, an entity that is a principal obtains control of any one of the following:

- (a) a good or another asset from the other party that it then transfers to the customer.

- (b) a right to a service to be performed by the other party, which gives the entity the ability to direct that party to provide the service to the customer on the entity's behalf.
- (c) a good or service from the other party that it then combines with other goods or services in providing the specified good or service to the customer. For example, if an entity provides a significant service of integrating goods or services (see paragraph 29(a)) provided by another party into the specified good or service for which the customer has contracted, the entity controls the specified good or service before that good or service is transferred to the customer. This is because the entity first obtains control of the inputs to the specified good or service (which includes goods or services from other parties) and directs their use to create the combined output that is the specified good or service.

**B35B** When (or as) an entity that is a principal satisfies a performance obligation, the entity recognises revenue in the gross amount of consideration to which it expects to be entitled in exchange for the specified good or service transferred.

**B36** An entity is an agent if the entity's performance obligation is to arrange for the provision of the specified good or service by another party. An entity that is an agent does not control the specified good or service provided by another party before that good or service is transferred to the customer. When (or as) an entity that is an agent satisfies a performance obligation, the entity recognises revenue in the amount of any fee or commission to which it expects to be entitled in exchange for arranging for the specified goods or services to be provided by the other party. An entity's fee or commission might be the net amount of consideration that the entity retains after paying the other party the consideration received in exchange for the goods or services to be provided by that party.

**B37** Indicators that an entity controls the specified good or service before it is transferred to the customer (and is therefore a principal (see paragraph B35)) include, but are not limited to, the following:

- (a) the entity is primarily responsible for fulfilling the promise to provide the specified good or service. This typically includes responsibility for the acceptability of the specified good or service (for example, primary responsibility for the good or service meeting customer specifications). If the entity is primarily responsible for fulfilling the promise to provide the specified good or service, this may indicate that the other party involved in providing the specified good or service is acting on the entity's behalf.
- (b) the entity has inventory risk before the specified good or service has been transferred to a customer or after transfer of control to the customer (for example, if the customer has a right of return). For example, if the entity obtains, or commits itself to obtain, the specified good or service before obtaining a contract with a customer, that may indicate that the entity has the ability to direct the use of, and obtain substantially all of the remaining benefits from, the good or service before it is transferred to the customer.

- (c) the entity has discretion in establishing the price for the specified good or service. Establishing the price that the customer pays for the specified good or service may indicate that the entity has the ability to direct the use of that good or service and obtain substantially all of the remaining benefits. However, an agent can have discretion in establishing prices in some cases. For example, an agent may have some flexibility in setting prices in order to generate additional revenue from its service of arranging for goods or services to be provided by other parties to customers.

B37A The indicators in paragraph B37 may be more or less relevant to the assessment of control depending on the nature of the specified good or service and the terms and conditions of the contract. In addition, different indicators may provide more persuasive evidence in different contracts.

B38 If another entity assumes the entity's performance obligations and contractual rights in the contract so that the entity is no longer obliged to satisfy the performance obligation to transfer the specified good or service to the customer (ie the entity is no longer acting as the principal), the entity shall not recognise revenue for that performance obligation. Instead, the entity shall evaluate whether to recognise revenue for satisfying a performance obligation to obtain a contract for the other party (ie whether the entity is acting as an agent)."

"26 Depending on the contract, promised goods or services may include, but are not limited to, the following:

- (a) sale of goods produced by an entity (for example, inventory of a manufacturer);
- (b) resale of goods purchased by an entity (for example, merchandise of a retailer);

...

- (f) providing a service of arranging for another party to transfer goods or services to a customer (for example, acting as an agent of another party, as described in paragraphs B34–B38);

..."

"33 Goods and services are assets, even if only momentarily, when they are received and used (as in the case of many services). Control of an asset refers to the ability to direct the use of, and obtain substantially all of the remaining benefits from, the asset. Control includes the ability to prevent other entities from directing the use of, and obtaining the benefits from, an asset. The benefits of an asset are the potential cash flows (inflows or savings in outflows) that can be obtained directly or indirectly in many ways, such as by:

- (a) using the asset to produce goods or provide services (including public services);
- (b) using the asset to enhance the value of other assets;
- (c) using the asset to settle liabilities or reduce expenses;
- (d) selling or exchanging the asset;
- (e) pledging the asset to secure a loan; and

- (f) holding the asset.”

The Committee notes that as per the requirements of Ind AS 115, where another party is involved in providing goods or services to the customer, the entity should first determine whether the nature of its promise is a performance obligation to provide the specified goods or services itself (ie the entity is a principal) or to arrange for those goods or services to be provided by the other party (ie the entity is an agent).

Further, as per the requirements of Ind AS 115, the entity should assess whether it controls each specified good or service before that good or service is transferred to the customer. The Committee further notes from the above-reproduced requirements of Ind AS 115 that control of an asset refers to the ability to direct the use of, and obtain substantially all of the remaining benefits from, the asset. Control includes the ability to prevent other entities from directing the use of, and obtaining the benefits from, an asset.

Further, the Standard provides three indicators of when an entity controls the specified good or service (and is, therefore, a principal) in paragraph B37. The Committee notes that these indicators are meant to support an entity’s assessment of control, not to replace it. These indicators do not override the assessment of control; and should not be viewed in isolation. Furthermore, they should not be considered as a checklist of criteria to be met or factors to be considered in all scenarios. As per paragraph B37A of Ind AS 115, these indicators, depending on the facts and circumstances, may be more or less relevant or persuasive to the assessment of control.

#### *Infrastructure Division*

12. With regard to assessment of ‘control’, the Committee notes the following from the Memorandum of Agreement (MoA) between MoHFW and the Company for establishing a Medical Institute (AIIMS) under Infrastructure Division:

“Whereas the MoHFW has entrusted the executing Agency for Comprehensive Planning, Designing, Execution of Construction and Buildings and Estate services, Commissioning including maintenance during Defect liability period and all facilities & services created, for All India Institute of Medical Sciences (AIIMS) ...under the Pradhan Mantri Swasthya Suraksha Yojna ..., and the Executing Agency (the Company) who has the requisite qualifications, and experience, and expertise as Project Executing Agency for such job has agreed to provide the same. ...

...

#### **2. Scope of Work:**

The Executing Agency (CPSU) shall discharge the following obligations:-

- 2.1 To appoint design consultant/architect for comprehensive architectural design by competitive bidding process ensuring adherence of GFR, CVC guidelines, Ministry of Finance guidelines and any other instruction of Government of India in this regard. The scope of work for design architect will essentially have the following:

...

**n) Implementation of the Project:**

Execution work will essentially involve the

1. Obtaining Administrative Approval (A.A) & Expenditure Sanction (E.S) of Preliminary Estimates (P.E) from MoH&FW.  
...
3. Inviting tenders (through EPC contract mode) and award the work to contractors/vendors as per their approved procedure and CVC guidelines etc.  
...
9. Ensure Correct Measurement of Bill of Quantities for payment to contractor / vendor  
...
11. (a) Procurement and installation of Medical Gas Pipeline System (MGPS) and Modular Operation Theatre (MOT) equipment system in a cost effective manner ensuring the following:
  - (i) The Executing agency will follow the Ministry's specification for these two equipment systems.
  - (ii) No dilution of specification of the equipment should take place in the course of execution of contracts.
  - (iii) The specialized agency(ies), engaged for procurement and installation of the above equipment system, possess adequate experience of procurement, installation and commissioning of these equipment systems. The qualification criterion should be in line with the relevant General Financial Rules, CVC guidelines and Manuals of Government of India.  
...
13. Executing agency will be Principal Employer for all contracts executed by them in this project.
14. To settle and resolve any dispute that may arise between Executing Agency and the Consultants / Contractors / Vendors engaged by the Executing Agency.
15. To initiate, defend the Arbitration and Court cases (Preparation of Claims, Counter Statement of Claims/ Defense, Counter Claims, affidavit of evidence, compliance of court orders, Rejoinder, filing appeals, challenge awards and court order, written submission etc. through Counsel). Reasonable legal expenses, generally paid by MoH&FW/AIIMS in accordance with the good industrial practices, shall be reimbursable to the Executing Agency by MoHFW.”

**“2.4 Other Responsibilities of Executing Agency:**

- ...
- (iii) Ensuring of rectification of defects by the contractors during the respective defect liability periods.

- (iv) Ensure organizing/providing all operation and maintenance manuals through contactors and imparting training to MoH&FW and Institute personals maintenance and safety procedures.
- ...
- (vi) All records, drawing etc. related to the Project and maintained by Executing Agency during Project execution shall be handed over to the MoH&FW or as directed by MoH&FW on completion of the Project.
- ...
- (x) Executing Agency shall hand over the buildings complete in all respect with completion certificates along with final drawings etc. from authorities, free from all encumbrances including complete site clearance, vacation of temporary workers' hutments etc. at site, if any, to the MoH&FW or to any person / body authorized by them.
- (xi) Executing Agency shall maintain all registers / records during execution of works as stipulated in CPWD Works Manual. It will also make arrangement for inspection conducted by MoH&FW representatives and other statutory dignities.
- (xii) At the end of every two months and at the end of the project, Executing Agency shall submit an expenditure and utilization of funds statement in the format prescribed in CPWD Manual or as per Fee format approved by MoH&FW.
- (xiii) Executing Agency shall not make any material deviation, alteration, addition to or omission from the work shown and described in the contract document except without first obtaining the written consent of MoH&FW.
- ..."

**“4. FEES**

Service charge amounting to Rs. XXX + GST ... shall be paid to Executive Agency as per MoHFW letter ...”

**“8.1.2** The Executing Agency shall always act in respect of any matter relating to this contract or to the services as faithful advisers to the MoH&FW and shall at all times support and safeguard the MoH&FW legitimate interest in any dealings with third parties.

**8.1.3** The Executing Agency is obliged to act within its own authority and abide by the directives issued by the MoH&FW. The Executing Agency is responsible for managing the activities of its personnel and will hold itself responsible for their misdemeanors, if any.”

**“8.1.5** The Executing Agency shall not assign this contract or sub contract or any portion of the work without the prior written consent of MoH&FW.”

**“8.1.7** Any trade commission, discounts or similar payments received against the Project fund utilization under this contract shall be passed on to the MoH&FW Account.”

**“8.2 Insurance by the Executing Agency**

During the performance of services hereunder, the Executing Agency shall take out, carry and maintain insurance as applicable from those listed below:

...

- 8.2.4** Relevant insurance cover which will be in force until the date of successful completion of the Project for all buildings, imported and indigenous equipment, machinery and material and also for storage-cum-erection including third-party liabilities.

...”

**“11 Release of Project Fund**

...

Separate bank account, as required by MoHFW, shall be opened by Executing Agency for the funds received from MoH&FW for AIIMS. All project fund will be released in the project account.

The Interest Earned from the funds released is to be mandatorily remitted to the Consolidated Fund of India in terms of Rule 230(8) of GFR 2017. The interest component shall be distinctly reflected in the MIS provided by the banks. ...”

From the above clauses, the Committee notes as follows with regard to Infrastructure Division work:

- The Company will appoint design consultant/architect ensuring adherence of GFR, CVC guidelines, Ministry of Finance guidelines and any other instruction of Government of India in this regard. Execution work will essentially involve obtaining administrative approval and expenditure sanction from MoHFW. For procurement and installation of certain systems and equipment, the Company will follow the Ministry's specification and no dilution of specification of the equipment should take place in the course of execution of contracts. The qualification criterion for specialised agencies engaged for procurement should be in line with the relevant General Financial Rules, CVC guidelines and Manuals of Government of India. The Company also needs to take approval to assign or sub-contract any portion of the contract. Further, though the Company may be totally responsible for selection of contractors / suppliers and determining the pricing, the same has to be as per the approved DPR by the clients or approvals obtained from Client for selection of contractor / suppliers as per MOA with the Client, if required. Thus, all the suppliers/contractors/architects etc. have to be appointed either with the approval of MoHFW or the guidelines prescribed by it. The Company cannot also make any material deviation, alteration, addition, omission from the work specified in the contract except with the consent of the Ministry. Hence, there is no or little discretion with the Company with regard to selection of contractors/service providers/vendors for carrying out the underlying construction work / supplying goods / rendering service to the MoHFW/AIIMS and the Company merely arranges them as per the specifications of the MoHFW.
- Reasonable legal expenses incurred to initiate or defend the arbitration/court cases, are to be reimbursed by MoHFW/AIIMS to the Executing Agency (the Company). Though insurance during execution of work is to be arranged by the Company, the same is arranged through contractor out of the advance amount provided by MoHFW/AIIMS for executing the project and therefore, the same is on account of and at the cost of the

MoHFW/AIIMS and not the Company. This indicates that the inventory risk on goods and services is not borne by the Company. Further, though the Company is responsible to rectify any damages occurring till the Defect Liability Period (DLP), however, the same will be rectified through the designated contractors / suppliers and thus, the Company does not bear the significant risks normally associated with contract with customers as a principal.

- The Company is acting as faithful advisor, safeguarding the interest of MoHFW and is receiving fixed service charge for the services rendered. Thus, it does not appear to earn any margin on the goods or services provided by the vendors/contractors/service providers. Moreover, it does not have any price discretion in establishing the price for the goods or services to be arranged that the contractor or other service providers are charging and it is only charging a fixed commission for its advisory services. The prices charged by the contractor/vendor/service provider and approved by the MoHFW or as per its directions/specifications/guidelines have to be accepted and paid by the Company out of the funds provided by the MoHFW.
- The funds received by the Company are to be utilised only for payment to contractors or sub-contractors and the Company cannot take any benefit out of these funds. Any interest earned on balance funds and any trade commission discounts or similar payments received against the Project fund utilisation under the contract shall be passed on to the MoHFW Account. This indicates that all the benefits or rewards during the contract execution from goods or services arranged shall belong to the MoHFW.
- Though the Company is executing agreement with the contractor and it is the responsibility of the Company to ensure that payments are being timely released to the contractors, the payments will be released after receipt of funds from client and the Company does not pay to the contractor from its own funds. This shows that the Company is not obliged to pay to the contractor/ service provider even if the customer fails to pay and therefore, the Company does not commit itself to obtain the goods/services from the contractor/service provider for itself or on its own account.

Further, on an analysis of the requirements under Ind AS 115, the Committee notes that in the extant case, the Company's responsibility is limited to arranging for certain goods or services to be provided by other parties such as contractors/vendors/suppliers for establishing medical institute as per the approval or directions/specifications/guidelines issued by MoHFW. The Committee further notes that as per Ind AS 115, control of an asset refers to the ability to direct the use of, and obtain substantially all of the remaining benefits from, the asset. In this context, in the extant case, the Committee notes that the goods and services are being directly delivered at the project site. Even if the Company takes possession of goods supplied by the contractors or vendors temporarily, it cannot obtain substantially all of the remaining benefits from such goods or direct their use. The Company cannot also direct the use of goods or direct service providers to provide the specified goods/services for another customer without the approval of the customer.

Accordingly, the Committee is of the view that the Company in the extant case cannot be said to control the goods and services before these are transferred to the MoHFW/AIIMS/Medical Institute. Thus, it can be inferred that the Company is acting only as an agent and not as principal in respect of goods and services being arranged under Infrastructure Division for the purpose of accounting under Ind AS 115. Therefore, the Company should continue to recognise

revenue from Infrastructure Division on net basis (rather than on gross basis), i.e., the Company should recognise as revenue only the fee or commission being received by it from the MoHFW/AIIMS.

*Procurement & Consultancy Division*

13. With regard to assessment of ‘control’, the Committee notes the following relevant clauses from the Agreement between the Ministry of Home Affairs (MHA), the Company and AIIMS/Medical Institute under Procurement Division and a Tripartite Contract for Procurement Consultancy Service between them dated 5<sup>th</sup> April, 2024:

“Whereas the Company is appointed as Procurement Support Agency (PSA) by the Medical Institute to provide such procurement services in relation to procurement of Medical Equipment, Medical Furniture and General furniture and other equipments vide Agreement dated 5<sup>th</sup> April, 2024 for the Medical Institute.

Therefore, it is agreed by & amongst the Parties as under:

1. The Company has agreed and undertaken *for providing consultancy services* for the procurement of Medical Equipment, Medical Furniture and General Furniture for the Medical Institute as per the terms & conditions of the Agreement ...dated 05<sup>th</sup> April 2024.

2. The terms & conditions on which the works shall be undertaken and performed by the Company will be same as agreed by the Company and the Medical Institute vide above mentioned agreement(s) and the same shall form and integral part of this Agreement.

(i) Custom Duty, Port clearing & Forwarding expenses, in-land transportations, loading, unloading, warehousing (if applicable) charges, detention/ demurrage not attributable to PSA, Foreign exchanges variations, duties & taxes variations, if any etc. will form a part of procurement cost.

(ii) PSA (the Company), shall keep the project funds received from procurement of medical equipment, medical furniture & general furniture for the Medical Institute in a separate bank account dedicated for procurement of medical equipment, medical furniture & general furniture for the Medical Institute and shall refund the interest accrued on the fund so received to MHA, Government of India, on completion of each financial year.

...

(iv) The Medical Institute may constitute a **Specifications Drawing Committee (SDC)** for finalization of the list of Medical Equipment, Medical Furniture and General Furniture and make it available to the Company for subsequent procurement, under intimation to Ministry of Home Affairs.

...

- (vi) The consultancy fees @ 1.50% plus applicable GST in respect of Medical Equipment, Medical Furniture and General Furniture items shall be paid by MHA to the PSA. ...

...

- (viii) In addition to Consultancy fees as above, MHA shall reimburse the following actual expenses in respect of Medical Equipment, Medical Furniture and General Furniture:

- a. Cost with respect to IFB publication charges in newspaper/journals/magazines etc.

...

- c. Reasonable legal expenses ...

- d. Actual Insurance premium paid – if any specific insurance is requested by AIIMS.

...

- 4. PSA shall carry out the procurement in accordance with GFR, 2017; CVC Guidelines and procurement procedure/guidelines issued by GoI from time to time; Manual of Procurement of Goods, Manual of Procurement of Consultancy and Other Services, and PSA Company's own Procurement Manual/SoP and DOP.

...”

*Tripartite Contract for Procurement Consultancy Service between the Company and the Ministry of Home Affairs (MHA) and AIIMS/Medical Institute dated 5<sup>th</sup> April, 2024*

“This Tripartite contract ...between Ministry of Home Affairs (MHA), the Medical Institute (herein after referred as “Client” which shall unless repugnant to the context thereof include its successor...) of the First Part and,

The Company ... (hereinafter called "Consultant" which expression shall be unless repugnant to the context thereof include its successor) of the Second Part

#### WHEREAS

- (b) CONSULTANT, has further represented to the “Client” that they have the required professional skills and expertise, personnel and technical resources, to offer consultancy services for procurement of all types of Medical Equipment, Medical Furniture and General Furniture and other procurement services as desired by the client;

...

- A. General Conditions of Contract

...

#### **3.2.1 Consultant not to benefit from Commissions, Discounts, etc.:**

- (a) The payment of Consultant pursuant to Clause GC 6 hereof shall constitute Consultant's only payment in connection with this Contract and, subject to Clause GC- 3.2.2 hereof, *Consultant shall not accept for its own benefit any trade commission, discount or similar payment in connection with activities pursuant to this Contract or in the discharge of its obligations hereunder, and Consultant shall use its best efforts to ensure that any Sub-*

Consultants, as well as the Personnel and agents of either of them, similarly shall not receive any such additional payment.

...

### **3.6 Consultant's Actions to be informed to "Client":**

The Consultant shall keep the "Client" informed in writing about the following actions:

- (a) **Subcontracts:** Consultant may subcontract work relating to the Services to an extent and with such experts and entities need to be informed to the "Client" in writing. Consultant shall always retain full responsibility for the Services. *In the event that any Sub-Consultants are found by the "Client" to be incompetent or incapable or undesirable in discharging assigned duties, the "Client" may request Consultant to provide a replacement, with qualifications and experience acceptable to the "Client", or to resume the performance of the Services itself.*

...

### **3.9 Equipment, Vehicles and Materials Furnished by the "Client":**

*Equipment, vehicles and materials made available to Consultant by the "Client", or purchased by Consultant wholly or partly with funds provided by the "Client", shall be the property of the "Client" and shall be marked accordingly. Upon termination or expiration of this Contract, Consultant shall make available to the "Client" an inventory of such equipment, vehicles and materials and shall dispose of such equipment and materials in accordance with the Client's instructions. While in possession of such equipment, vehicles and materials, Consultant, unless otherwise instructed by the "Client" in writing, shall insure them at the expense of the "Client" in an amount equal to their full replacement value."*

(Emphasis supplied by the Committee.)

From the above, the Committee notes as follows with regard to Procurement & Consultancy Division work:

- The Company is to provide consultancy services for the procurement of Medical Equipment, Medical Furniture and General Furniture; and any expenses incurred in relation thereto such as, custom duty, port clearing and forwarding expenses, transportation, loading, unloading, warehousing, foreign exchanges variations, duties & taxes variations, etc. will form a part of procurement cost. This indicates that all the costs incurred or liabilities/obligations assumed in relation to procurement will be borne by the MHA/AIIMS (hereinafter referred to as 'Client') and not the Company.
- The project funds will be kept in separate account by the Company for procurement and the Company shall refund the interest accrued on the fund to Government. The Company shall not accept for its own benefit any trade commission, discount or similar payment from procurements. Thus, all the benefits/rewards of or during procurement process (other than fixed commission/fee of PSA) shall belong to the Client and the Company cannot obtain substantially all of the remaining benefits from the goods/assets acquired during procurement process.

- The Company will make the procurement as per the list of equipments and furniture finalised by the Specifications Drawing Committee of the Client. Further, the procurement by the Company has to be made as per the Rules, Manuals, Procedure and Guidelines issued or specified by the Client. Furthermore, although the Company may sub-contract work but that has to be under the intimation of Client and if any sub-consultants are found by the Client to be incompetent or incapable or undesirable in discharging assigned duties, the same have to be replaced. Thus, all the suppliers/contractors etc. have to be appointed either with the approval of Client or as per the guidelines/specifications prescribed by it and there is no or little discretion with the Company as far as the goods or services to be obtained or from whom these have to be obtained. The Company merely arranges them as per the guidelines/specifications of the Client.
- The Company is merely acting as consultant of the Client in procurement of goods/services and is receiving fixed service charge for the services rendered. Thus, it does not appear to earn any margin on the goods or services provided by the vendors/service providers. Moreover, it does not have any price discretion in establishing the price for the goods or services to be arranged that the contractor or other service providers are charging and it is only charging a fixed commission for its consultancy services. The prices charged by the vendor/service provider approved by the client have to be accepted and paid by the Company out of the funds provided by the Client.
- The Company pays to the supplier only after receipt of the funds from the respective client for supply of equipment as per the contract terms and the Company does not pay to the supplier from its own funds. Thus, the Company does not commit itself to obtain the equipment from the vendor/supplier for itself or on its own account.
- Equipment, vehicles and materials purchased by the Company out of the funds provided by the Client shall be the property of the Client and be marked accordingly. Further, the insurance on the equipments supplied is being arranged by the supplier, cost of which shall be reimbursed to him out of the funds provided by Client for executing the project and therefore, the same is on account of and at the cost of the Client and not the Company. Moreover, the Company does not have an insurable interest in the property/ CWIP/ equipment being insured. Also, legal expenses incurred during the procurement shall be reimbursed to the Company. Even any disposition of the assets acquired has to be in accordance with the instructions given by the client. Thus, the ownership of the equipments and materials purchased by the Company vests with the Client as soon as these are purchased and any inventory risk even when these are in possession of the Company lies with the Client and not with the Company. Moreover, the Company cannot direct the use of these assets acquired for the client for its own purposes or obtain any future economic benefits out of them. Thus, it does not control these assets before these are transferred to the Client.

Accordingly, the Committee is of the view that the Company in the extant case is acting only as an agent and not as principal in respect of goods and services being arranged under Procurement & Consultancy Division for the purpose of accounting under Ind AS 115. Therefore, the Company should continue to recognise revenue from Procurement &

Consultancy Division on net basis (rather than on gross basis), i.e., the Company should recognise as revenue only the fee or commission being received by it from the MHA/AIIMS/ Medical Institute.

**D. Opinion**

14. On the basis of above, the Committee is of the following opinion on the issues raised in paragraph 9 above:

- (i) *Infrastructure Division:* The Company is acting only as an agent and not as principal in respect of infrastructure services being rendered for the purpose of accounting under Ind AS 115, as discussed in paragraph 12 above. Therefore, the Company should continue to recognise revenue from infrastructure division on net basis (rather than on gross basis), i.e., the Company should recognise as revenue only the fee or commission being received by it from the MoHFW/AIIMs. Thus, the question of change in accounting does not arise.
- (ii) *Procurement Division:* The Company is acting only as an agent and not as principal in respect of procurement of goods and services for the purpose of accounting under Ind AS 115, as discussed in paragraph 13 above. Therefore, the Company should continue to recognise revenue from Procurement & Consultancy Division on net basis (rather than on gross basis), i.e., the Company should recognise as revenue only the fee or commission being received by it from the MHA/AIIMs. Thus, the question of change in accounting does not arise.

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