Query No. 19

Subject: Accounting treatment of reimbursement receivable from the State Government towards the claim settled by the Company (raised by the Concessionaire against the State Government) under AS framework. [1]

A. Facts of the Case

1. A company (hereinafter referred to as 'the Company') is a 100% Government of Gujarat undertaking incorporated under the erstwhile Companies Act, 1956. The main object of the Company is to act as an independent and autonomous body for the construction and development of the roads (State Highway) and bridges as a part of the activities of the Roads and Buildings (hereinafter referred to as R&B) Department of Government of Gujarat under the Build-Operate-Transfer (BOT), (Build-Own-Operate-Transfer) BOOT or Built-Own-Lease-Transfer (BOLT) project. The Company is also required to facilitate, regulate and control the use of roads, bridges and flyovers etc.; and to advise the R & B Department of Government of Gujarat on all the issues relating to roads and assist in formulation of policies in this regard.

2. The Company has received Management Letter dated 20.05.2025 from the Comptroller and Auditor General (C&AG) under section 143 (6) of the Companies Act, 2013 for the year ended 31st March, 2024. As per Management Letter, C&AG has asked the Company to obtain opinion of the Expert Advisory Committee (EAC) of the Institute of Chartered Accountants of India (ICAI) in respect of the issue pertaining to a difference in interpretation of clause 7.1 of the State Support Agreement and Settlement Agreement, specifically whether loss of revenue can be construed as a direct cost, thereby establishing a firm liability of the State Government under the said agreement or not.

3. The Government of Gujarat (GOG), in order to have a developed, efficient and high-quality system of road transportation, had formulated a 'Road Policy' on December 1996 (Policy), to be implemented by the Roads and Buildings Department, GOG. The Policy enables private participation in the development, construction, repair, upgradation, management, operation and maintenance of roads within the State of Gujarat.

4. In furtherance of the Policy, the GOG enacted the Gujarat Infrastructure Development Act, 1999 (Gujarat Act No. 11 of 1999) (GID Act) to provide a regulatory framework for participation of the private sector in financing, construction, maintenance, development and operation of infrastructure projects on build-operate-transfer (BOT) basis in the State of Gujarat. Vide item 2 of Schedule I of the GID Act, roads, bridges and bypasses, are the eligible infrastructure projects that allow private sector participation. In this regard, the GOG established and set-up Gujarat Infrastructure Development Board (GIDB) and the Company in consonance with Gujarat Infrastructure Development Act, 1999 (Gujarat Act No. 11 of 1999) (GID Act), with the object to invite private sector participation for the development, construction, repair, upgradation, management, operation and maintenance of the aforesaid infrastructure development projects within the State of Gujarat.

5. The Company is a wholly owned Government of Gujarat company (i.e. 100% equity ownership and control held by Government of Gujarat) established under the erstwhile Companies Act, 1956, with the objective to requisition and invite private sector participation for infrastructure development projects in the sector of roads, bridges and bypasses.

[1] Opinion finalised by the Committee on 14.11.2025.

6. The Government of Gujarat had resolved to augment the existing road from km 3.0 to km 125.550 including existing Jamnagar by-pass and Rajkot spur road (approximately 131.65 km) on the Rajkot-Jamnagar-Khambhalia state highway No. 25 for the section from Rajkot Km 3.00 to Vadinar Approach Km 125.55 of SH 25 in the State by four-laning on Build, Operate and Transfer (BOT) basis in accordance with the terms and conditions set forth in a concession agreement. The Government of Gujarat had authorised the Company to implement the work of four-laning of Rajkot-Jamnagar-Vadinar road in the State of Gujarat and its operation and maintenance on Build, Operate and Transfer (BOT) basis.

7. The Company had accordingly invited proposals by its Tender Notice dated 09th October, 2006 for short listing of bidders for construction, operation and maintenance of the above referred section of SH-25 on BOT basis and had short listed bidders including, inter alia, L Limited.

8. After evaluation of the bids received, the Company had accepted the bid of L Limited and issued its letter of acceptance (LOA) dated 07.08.2008 to L Limited requiring, inter alia, the execution of Concession Agreement within 45 (forty-five) days of the date of issue thereof.

9. The Company entered into a concession agreement on 17.09.2008 (hereinafter referred to as the 'Concession Agreement'), with M/s. LTRV Tollway Private Limited, a special purpose vehicle incorporated by L Ltd. (hereinafter referred to as the 'Concessionaire') for construction of additional two lanes for Rajkot-Jamnagar-Vadinar Road (hereinafter referred to as the 'Project') to make it four lane divided carriageway facility under viability gap funding scheme of Government of India on Build, Operate and Transfer (BOT) basis.

10. Subsequent to the signing of the Concession Agreements, Supplementary Agreements dated 01.08.2017 were also made between the parties. These Supplementary Agreements are an integral part of the Concession Agreement.

11. Triparty State Support Agreement (hereinafter referred to as the 'SSA') has also been signed and executed between the Company, Government of Gujarat (GOG) and Concessionaire on 10.09.2009. These agreements are also made an integral part of the Concession Agreement. SSA provides for support from the GOG for the smooth execution and functioning of the said roads.

12. As per SSA clause 3.2, GOG shall not build or cause to build any competing road. Extract of relevant clause 3.2 is reproduced as under:

> *"GOG agrees and undertakes that it shall not build and construct nor shall it cause to be built and constructed any Competing Road in breach of the Concession Agreement."*

13. However, Government of Gujarat has made operational the state highway SH-26 (Rajkot-Kalavad-Jamnagar Road) which is also known as 'Reliance Road Diversion' which was the alternative road to the project road whose length is same as the Rajkot-Dhrol-Jamnagar stretch of the project road. This alternate road to the project (TP3 near Vadinar) was a private road which was open to public and there were diversion of trucks and multi axle vehicles (MAV) traffic segment into the alternate road. As heavy trucks and multi axle vehicles (MAV) segment are the major contributor to both the traffic volumes and revenues in the project stretch, there

was loss of revenue to the Concessionaire due to this diversion leading to lower-than-estimated traffic.

14. Further, as per clause 7.1 of SSA, Concessionaire raised claim against GOG as compensation for loss of revenue due to Reliance Road Diversion. Extract of relevant clause 7.1 is reproduced as under:

> "*In case GOG or any GOG Agency is in material breach of any of its obligations under this Agreement, and such breach is not cured within 30 days of receipt of a notice in writing in this behalf from the Concessionaire to GOG with copy to the Company and which has not occurred as a result of Concessionaire's breach of its obligations under this Agreement or the Concession Agreement or Force Majeure, GOG shall pay to the Concessionaire, all direct additional costs suffered or incurred by the Concessionaire, determined by R&BD as arising out of such material default by GOG.*"

15. Also, during the execution and commercial operations of the Project, Concessionaire has raised claims against the Company under the Concession Agreement as well as against the GOG under the State Support Agreement. Therefore, certain disputes and differences arose between the Company and Concessionaire. Clause 37.1 of Concession Agreement provides for amicable resolution of the Disputes in accordance with the Conciliation procedure set forth in Clause 37.2 and as per Clause 9.2 of State Support Agreement.

16. The process of amicable settlement of the disputes/claims of the Concessionaire against the Company and GOG as well as claims of the Company were taken up for conciliation as per Clause 37.2 of Concession Agreement. As the disputes were not resolved amicably, the Concessionaire decided to refer the disputes under the relevant provisions of Concession Agreement and State Support Agreement to Arbitration.

17. Accordingly, the Hon'ble Arbitral Tribunal was constituted on 05.09.2019 for adjudication of claims and counter claims raised by Concessionaire and the Company, respectively under the Concession Agreement. The Arbitral Tribunal was not constituted for the adjudication of the claims of Concessionaire against GOG.

18. The Hon'ble Arbitral Tribunal in its order dated 10.09.2020 directed the Parties to place the claims and counterclaim before the Secretary (R & B), Government of Gujarat for conciliation and amicable settlement.

19. Pursuant to the meeting held on 15.12.2021 chaired by the Hon'ble Minister, Roads & Buildings, who is also the Chairman of the Company, a decision was taken to constitute a Conciliation Committee to examine and opine on the Settlement proposal(s) on claims and counterclaims of the parties including Concessionaire's claim against GOG under both the Concession Agreement and State Support Agreement.

20. Accordingly, the Company constituted a Conciliation Committee of Independent Experts (CCIE) comprising three eminent members on 05.03.2022.

21. Pursuant to the constitution of the CCIE, the disputes between the Parties including Concessionaire's claim against GOG on account of loss of revenue due to Reliance Road Diversion were exhaustively deliberated in the series of meetings, in which the Parties made their detailed and exhaustive representation.

22. Pursuant to the deliberations taken place before the CCIE and in view of the opinions expressed by the CCIE, the Company and the Concessionaire agreed for amicable settlement of the issues and by keeping the same in mind, resolved to enter into settlement agreement dated 27th April, 2023.

23. Clause 3(e) of the settlement agreement between the Company and Concessionaire reads as under:

> "The Company shall pay Rs. 98.14 crores as cash compensation towards the claims of the Concessionaire against GOG, which shall be adjusted against the outstanding liability of Concessionaire towards accumulated interest on deferred payment which comes to around Rs. 29.60 crores (from 01.04.2017 to 31.03.2022). Further, the balance Rs. 68.54 Cr (Rs. 98.14 Cr minus Rs. 29.60 Cr) shall be adjusted against the outstanding liability of Concessionaire towards the Principal premium due (from 01.04.2017 to 31.03.2022). Therefore, the amount to be paid is NIL."

24. The Company also has entered into settlement agreement with another concessionaire, an SPV incorporated by L Ltd. (hereinafter referred to as Concessionaire-1) on 31st March, 2023. Clause 3(f) of the settlement agreement between the Company and Concessionaire-1 reads as under:

> "The Company shall pay Rs. 26.21 crores as cash compensation towards the claims of the Concessionaire against GOG, which shall be adjusted against the outstanding liabilities of Concessionaire towards accumulated interest on deferred premium payment. Therefore, the net amount to be paid is NIL."

The querist has stated that as per both the settlement agreements, *income receivable by the Company amounting to Rs. 124.35 crores (Rs. 98.14 crores + Rs. 26.21 crores) has been adjusted against claim of the concessionaire against GOG.* (Emphasis supplied by the querist.)

25. The Company in accordance with accounting policy adopted, has recognised settled claim of concessionaire amounting to Rs. 124.35 crores as settlement expenditure in the financial statements during F.Y. 2022-23 and disclosed same as 'Exceptional Items' in Note No. 25. The accounting treatment of settlement agreement has also been accepted by C&AG.

26. As per settlement agreement, the aforesaid claim of Rs. 124.35 crores has been settled by the Company and now, said settlement amount is to be claimed from GOG. The Company has also requested to Roads & Buildings Department of GOG vide letter dated 17.06.2023, seeking reimbursement of the settled amount of Rs. 124.35 crores. However, *till the date of finalisation of accounts for F.Y. 2022-23, no confirmation regarding admissibility from GOG in respect of the said claim was received by the Company. Hence, in the absence of any confirmation available from GOG, the Company has not recognised any income against reimbursement receivable from GOG owing to principle of conservatism where pending certainty of income collection would result into not recognising the same as income in the books of account.* (Emphasis supplied by the querist.)

27. The querist has further stated that as per accounting policy adopted by the Company, revenue is recognised on accrual basis as per the terms of the contract *except in the cases where the ability to assess the ultimate collection with reasonable certainty is lacking.* Same may be

referred from Annual Report for F.Y. 2022-23 as well as F.Y. 2023-24, of which Note No. 1 of Significant Accounting Policies, clause I, 'Revenue Recognition', reads as under:

> "Revenue arising out of various contracts is recognized on accrual basis as per the terms of the contract except in the cases where the ability to assess the ultimate collection with reasonable certainty is lacking at the time of raising any claim (because of disputes raised by the contractor) particularly with respect to, Project Development Fees, Toll collection, Excess Revenue Sharing, Additional Concession Fees, Interest, etc. then such revenue is recognized on realization basis."

28. The Company has adopted accounting policy in accordance with Accounting Standard (AS) 9 'Revenue Recognition'. As per paragraphs 9.1, 9.2 and 13 of AS 9, which reads as under, r*evenue must be recognised when no significant uncertainty as to measurability or collectability exists* (emphasis supplied by the querist):

> "9.1 Recognition of revenue requires that revenue is measurable and that at the time of sale or the rendering of the service it would not be unreasonable to expect ultimate collection.
>
> 9.2 Where the ability to assess the ultimate collection with reasonable certainty is lacking at the time of raising any claim, e.g., for escalation of price, export incentives, interest etc., revenue recognition is postponed to the extent of uncertainty involved. In such cases, it may be appropriate to recognise revenue only when it is reasonably certain that the ultimate collection will be made. …"
>
> ***"13. Revenue arising from the use by others of enterprise resources yielding interest, royalties and dividends should only be recognised when no significant uncertainty as to measurability or collectability exists…"***

29. Further, the querist has referred to paragraphs 10.5, 31 and 32 of AS 29, 'Provisions, Contingent Liabilities and Contingent Assets', which read as under:

> ***"10.5 A <u>contingent asset</u> is a possible asset that arises from past events the existence of which will be confirmed only by the occurrence or non-occurrence of one or more uncertain future events not wholly within the control of the enterprise."***
>
> "31. Contingent assets usually arise from unplanned or other unexpected events that give rise to the possibility of an inflow of economic benefits to the enterprise. An example is a claim that an enterprise is pursuing through legal processes, where the outcome is uncertain.
>
> 32. Contingent assets are not recognised in financial statements since this may result in the recognition of income that may never be realised. However, when the realisation of income is virtually certain, then the related asset is not a contingent asset and its recognition is appropriate."

30. According to the querist, as the Company was uncertain about the collection of the above referred reimbursement of settled claim, the same will fall under the definition of 'contingent asset' as per AS 29. Hence, treatment adopted by the Company of not recognising above referred income in the books of account is in cognizance with AS 29, as according to

paragraph 30 of AS 29, *an enterprise should not recognise the same as income in the books of account.* (Emphasis supplied by the querist.)

31. As per the Company, the settlement amount of Rs. 124.35 crores was a contingent asset as the same was recoverable from GOG and the realisation of claim was not certain in the absence of confirmation from GOG and hence, the said claim *was not recognised in books of account in accordance with AS 29.* (Emphasis supplied by the querist.)

32. Further, reimbursement of the claims settled by the Company, raised by the Concessionaire against the GOG under State Support Agreement for the year 2022-23 was requested by the Company from GOG on 17th June 2023 and the same was reimbursed on 30th March 2024 by the GOG. Hence, such reimbursement from GOG has been recognised in the books of account only in the financial year 2023-24, i.e. in the year in which the said reimbursement was received.

33. Furthermore, as per clause 4 (d) of settlement agreement, the Company is required to pay compensation towards the claim of Concessionaire against GOG for loss of revenue due to reliance road diversion. Relevant clause 4(d) is reproduced as under:

> "For future claim (from April 2022 to end of Concession) for compensating LOR due to Reliance Road Diversion more realistic scientific methodology may be adopted for counting the traffic at evading TP3 to Locations which will be decided jointly by parties. For avoidance of doubt, it may be noted that as mutually agreed in the Joint submission to the CCIE on May 01, 2022, the Concessionaire is carrying out videographic survey on a monthly basis, based on which the claim is being lodged and 85% of the traffic captured at Changa location will be paid out by the Company as a valid claim month on month basis to the Concessionaire till the Effective Date. For further period, beyond Effective date till finalisation of scientific methodology, the Company shall make payment on the aforesaid 85% on ad hoc basis, which shall be reconciled with the amount due in accordance with scientific methodology."

34. As per clause 4(d) of settlement agreement, during the financial year 2023-24, claim amounting to Rs. 1410 lakh was raised by the Concessionaire against the GOG under State Support Agreement towards the loss of revenue due to reliance road diversion. In consonance of clause 3(e) of settlement agreement, the Company has settled the claims amounting to Rs. 1410 lakh, which was adjusted against interest (Net of TDS), due and payable by Concessionaire to the Company.

35. The Company in accordance with accounting policy adopted, has recognised the settled claim of Concessionaire amounting to Rs. 1410 lakh as 'settlement expenditure' in the financial statements during F.Y. 2023-24 and disclosed the same as 'Exceptional Items' in Note No. 25.

36. As per settlement agreement, the aforesaid claim of Rs. 1410 lakh has been settled by the Company and now, said settlement amount is to be claimed from GOG instead of Concessionaire. The Company has also requested to Roads & Buildings Department of GOG vide letter dated 02.07.2024, seeking reimbursement of the settled amount of Rs. 1410 lakh. However, *till date no confirmation regarding admissibility from GOG in respect of the said claim has been received by the Company. Hence, in the absence of any confirmation available from GOG, the Company has not recognised reimbursement receivable from GOG owing to reasonable certainty of collection lacking.* (Emphasis supplied by the querist.)

37. As the Company is uncertain about the collection of the above referred reimbursement of settled claim, the same will fall under the definition of 'contingent asset' as per AS 29. Hence, as per the querist, treatment adopted by the Company of not recognising above referred income in books of account is in cognizance with AS 29, as according to paragraph 30 of AS 29, *an enterprise should not recognise a contingent asset.* (Emphasis supplied by the querist.)

38. As per the Company, the settlement amount of Rs. 1410 lakh is 'contingent asset' as the same is recoverable from GOG and the realisation of income is virtually not certain in the absence of confirmation from GOG, the said amount need *not to be recognised as an income in books of account in accordance with AS 29.* (Emphasis supplied by the querist.)

39. However, the Office of Comptroller and Auditor General (C&AG) raised a paragraph on the above accounting treatment vide letter dated 13.02.2025 and issued the provisional comment as under:

> **"(A) Comments on Profitability**
>
> **Statement of Profit and loss for the year ended 31st March 2024**
>
> **Exceptional item- Rs. 1410 Lakh (Note No. 25)**
>
> **Expenditure – Rs. 1410 Lakh**
>
> The above balance is overstated by Rs. 1410 lakh being claims of the Concessionaire against the Government of Gujarat (GOG) for loss of revenue due to Reliance Road diversion at Rajkot-vadinar Toll Road. The Company settled the above claims from interest receivable on the additional concession fees from the Concessionaire.
>
> As the claim was to be paid by GOG as per the existing contractual obligations, the settlement amount should have been shown as receivable from GOG under Other current Assets (Note 18). This has resulted in overstatement of exceptional item (expenditure) and understatement of other current assets by Rs. 1410 lakh. Consequently, the profit before extraordinary items and taxes is understated by Rs. 1410 lakh.
>
> Further, Note 40 states that Rs. 1410 lakh was recognized as settlement expenditure, with reimbursement from GOG to be recognized upon receipt due to uncertainty. However, clause 3 of the State Support Agreement explicitly obligates GOG to reimburse such costs making the uncertainty unjustified. Thus, Note 40 is deficient in this regard.
>
> Further, audit also noticed that the Company has also settled the claims for the year 2022-23 against the GOG raised by the Concessionaire under State Support Agreement as it requested (17 June 2023) the GOG for reimbursement and the same was reimbursed (30 March 2024) by the GOG. Hence, there is no lacking the certainty for reimbursement of the above settled expenditure."

40. In response to the issue raised, the Company had given the following submission:

> "The Company has appropriately classified its expenditure pertaining to the settlement of claims under the State Support Agreement against the Government of Gujarat

(GOG) raised by the Concessionaire. These claims were resolved by the Company by adjusting its revenue, including interest as per Concession Agreement and supplementary agreement dated 01.08.2017 and settlement agreement dated 27/04/2023.

The Company has settled the claims raised by the Concessionaire against the GOG under the State Support Agreement as per the direction of GOG; hence it has treated as "*settlement expenditure*".

Audit is requested to refer note no. 40 of the financial statements which is reproduced as below:

The Company has entered into settlement agreement with the Concessionaire on 27-04-2023. As per settlement agreement clause 4(D), total loss of revenue due to reliance road is Rs. 1410/- Lakh which will be adjusted against interest (Net of TDS), due and payable by the Concessionaire to the Company.

Consequently, the Company has recognized an interest of Rs. 1566 Lakh (including TDS). Moreover, the Company has settled the claims raised by the Concessionaire against the GOG under the State Support Agreement and hence recognized as settlement expenditure of Rs. 1410 Lakh (Net of TDS). Further, the Company has also sent a request to the Roads and Buildings Department of the Government of Gujarat (R&B, GOG) through letter dated 02-07-2024 seeking reimbursement of Rs. 1410/- lakh. This amount will be recognized as revenue when received from the GOG as per the approved accounting policy for revenue recognition, as reasonable certainty is lacking.

During F.Y. 2016-17, the Company has changed its accounting policy and deferred revenue recognition of Revenue from Contract with L Ltd. in respect of 3 projects (i.e. Concessionaire, Concessionaire-1 and Concessionaire-2) as ultimate collection with reasonable certainty is lacking. The said accounting policy has been approved by all statutory auditors as well as previous C&AG Audit Team also. In above case also, reimbursement of Rs. 1410.00 lakh has not been recognised because the Company has not received any confirmation from Roads & Buildings Department, Government of Gujarat, and thus, ultimate collection with reasonable collection is lacking. Hence, the Company has not recognised reimbursement receivable of Rs. 1410.00 lakh during the F.Y. 2023-24. The said practice is also in consonance with paragraph 9.2 of Accounting Standard 9 "Revenue Recognition". Paragraph 9.2 of AS 9 is reproduced as under for your reference:

> "9.2 Where the ability to assess the ultimate collection with reasonable certainty is lacking at the time of raising any claim, e.g., for escalation of price, export incentives, interest etc., revenue recognition is postponed to the extent of uncertainty involved. In such cases, it may be appropriate to recognise revenue only when it is reasonably certain that the ultimate collection will be made. Where there is no uncertainty as to ultimate collection, revenue is recognised at the time of sale or rendering of service even though payments are made by instalments."

Hence amount of Rs. 1410.00 Lakh will be recognised as revenue when received from the GOG as per the approved accounting policy for revenue recognition, as reasonable certainty is lacking."

41. The Office of Comptroller and Auditor General (C&AG) vide letter dated 20.05.2025 advised the Company to obtain an opinion of Expert Advisory Committee (EAC) of the Institute of Chartered Accountants of India (ICAI) as to whether in accordance with the applicable accounting standards and interpretations, such loss of revenue qualifies as a direct cost in the context of referred State Support Agreement and Settlement agreement.

42. The querist has separately clarified as follows:

(i) The Government of Gujarat vide its Government Resolution dated 20th February, 1999 incorporated the Company with following objects under the jurisdiction of Roads & Buildings Department of Government of Gujarat, and also as directed by the Government of Gujarat:

a. To undertake the development of bridges and roads.

b. To raise financial resources from Banks, Institutions, Mutual Funds, Individuals etc.

c. To commercially develop & exploit land along-side the roads / bridges.

d. Other Objects – Draw up plans for the project, prepare feasibility studies, become a consultant or appoint a consultant for environmental studies etc.

(ii) The Company is not charging any commission / fees / charges from the Government to implement the project of the State. The Company is not transferring any concession fee collected from Concessionaire to the Government of Gujarat.

(iii) The Company has settled / made payment of such cost as per the decision of the Conciliation Committee of the Independent Expert (CCIE) after entering into Settlement Agreement with the Concessionaire. Point No. 25 of the Meeting stipulates that Concessionaire has agreed to adjust 98.14 crore against the outstanding premium of the Company. Extract of Point No. 25 is reproduced as under:

"25. Concessionaire has agreed for settlement of claim for total amount of Rs. 109.91 Cr. The payable amount of Rs. 109.91 Cr. by GOG/the Company to the Concessionaire, shall be set off from waiver Reliance Road the Company Revenue share of Rs. 11.77 crore and the difference amount of Rs 98.14 core (Rs. 109.91 Cr minus Rs. 11.77 Cr) shall be set off from the outstanding Premium (from 01-04-2017 to 31-03-2022 of Rs. 103.10 i.e remaining premium on 01-04-2022 Rs. 4.96 crore) part liability."

Pursuant to the deliberations taken place before the CCIE and in view of the opinions expressed by the CCIE, the Company and the Concessionaire agreed for amicable settlement of the issues and by keeping the same in mind, resolved to enter into settlement agreement on 27th April, 2023.

Clause 3(e) of the settlement agreement between the Company and Concessionaire reads as under:

"The Company shall pay Rs. 98.14 crores as cash compensation towards the claims of the Concessionaire against GOG, which shall be adjusted against the outstanding liability of Concessionaire towards accumulated interest on deferred payment which comes to around Rs. 29.60 crores (from 01.04.2017 to 31.03.2022). Further, the balance Rs. 68.54 Cr (Rs. 98.14 crore minus Rs. 29.60 crore) shall be adjusted against the outstanding liability of Concessionaire towards the Principal premium due (from 01.04.2017 to 31.03.2022). Therefore, the amount to be paid is NIL."

The Company also has entered into settlement agreement with another concessionaire, Concessionaire - 1 on 31st March, 2023. Clause 3(f) of the settlement agreement between the Company and Concessionaire - 1 reads as under:

"The Company shall pay Rs. 26.21 crores as cash compensation towards the claims of the Concessionaire against GOG, which shall be adjusted against the outstanding liabilities of Concessionaire towards accumulated interest on deferred premium payment. Therefore, the net amount to be paid is NIL."

As per both the settlement agreements, income receivable by the Company amounting to Rs. 124.35 crores (Rs. 98.14 crores + Rs. 26.21 crores) has been adjusted against claim of the Concessionaire against GOG.

B. Query

43. On the basis of the facts and circumstances stated above, the querist has sought the opinion of the Expert Advisory Committee as to whether the present accounting policy followed by the Company and the accounting treatment of not recognising simultaneous reimbursement receivable from GOG with respect to claim settled by the Company on behalf of GOG, due to lack of certainty, is in accordance with Generally Accepted Accounting Principles in India as well as Accounting Standard (AS) 29 'Provisions, Contingent Liabilities and Contingent Assets' and Accounting Standard 9, 'Revenue Recognition'.

C. Points considered by the Committee

44. The Committee notes that the basic issue raised by the querist relates to accounting treatment of reimbursement receivable from the GOG towards the claim raised by the Concessionaire against GOG, but settled by the Company on behalf of GOG. The Committee has, therefore, examined only this issue and has not examined any other issue that may arise from the Facts of the Case, such as, accounting for concession agreement entered into by the Company with the Concessionaire and Concessionaire – 1 along with revenue recognition in respect of such agreements, accounting in the books of account of Concessionaire and Concessionaire - 1, whether the Company is acting as an agent of the GOG, accounting for Concessionaire's claims against the Company under concession agreement, appropriateness of adjustment or set-off of the amount settled in respect of Concessionaire's claim against GOG with/against the Company's receivable from the Concessionaire, deferment of revenue recognition or recognition of interest receivable on additional concession fee from the Concessionaire under the concession agreement, presentation and disclosure requirements as per Ind AS 1 and the Companies Act, 2013, accounting for reimbursement received from the GOG, accounting in respect of reimbursement receivable from the GOG in respect of projects other than 'Project' or for concession agreement (s) being undertaken by the Company with other concessionaires, etc. The Committee while expressing its opinion has examined the terms and conditions of the agreements between the

Company, Concessionaire (M/s LTRV Tollway Private Ltd.) and GOG in respect of 'Project' and has not examined the terms and conditions of other agreements entered into by the Company for other projects. Further, the Committee has examined the issue only from accounting perspective and not from any legal perspective, including legal interpretation of any terms of the Concession Agreement, Settlement Agreements, Triparty State Support Agreement, or any other agreement entered into between the parties, Gujarat Infrastructure Development Act, 1999 (GID Act), order of arbitral tribunal, decision of Conciliation Committee of Independent Experts, etc.

45. At the outset, the Committee notes that Accounting Standard (AS) 9, 'Revenue Recognition', defines the term 'revenue' as follows:

> ***"4.1 <u>Revenue</u> is the gross inflow of cash, receivables or other consideration arising in the course of the ordinary activities of an enterprise from the sale of goods, from the rendering of services, and from the use by others of enterprise resources yielding interest, royalties and dividends. Revenue is measured by the charges made to customers or clients for goods supplied and services rendered to them and by the charges and rewards arising from the use of resources by them. ..."***

From the above, the Committee notes that revenue is the charge made to the customers/clients for the goods supplied or the services rendered and by the charges and rewards arising from use of enterprise's resources by them. In this regard, the Committee notes that the Company's receivable from GOG in the extant case is not a charge for goods supplied or services rendered by the Company or a charge for use by the GOG of its resources; rather it is the reimbursement of the payment made by the Company in respect of a claim made by the Concessionaire against the GOG. Therefore, the amount receivable from GOG cannot be considered as revenue and, accordingly, the principles of AS 9 are not applicable in the extant case.

46. The Committee further notes that the Company is a 100% Government of Gujarat undertaking, with the main object to act as an independent and autonomous body for the construction and development of the roads (State Highway) and bridges as a part of the activities of the Roads and Buildings (R&B) Department of GOG under the BOT, BOOT or BOLT projects. The GOG had authorised the Company to implement the work of four-laning of Rajkot-Jamnagar-Vadinar road in the State of Gujarat and its operation and maintenance on Build, Operate and Transfer (BOT) basis. The Company entered into a concession agreement on 17.09.2008 with the Concessionaire for construction of additional two lanes for Rajkot-Jamnagar-Vadinar Road. Subsequently, Triparty State Support Agreement (SSA) has also been signed and executed between the Company, Government of Gujarat (GOG) and Concessionaire on 10.09.2009, which was made an integral part of the concession agreement. SSA provides for support from the GOG for the smooth execution and functioning of the said roads. In this regard, the Committee notes the following clauses of SSA:

> "**3. SUPPORT OF GOG**
>
> …
>
> 3.2 *GOG agrees and undertakes that it shall not build and construct nor shall it cause to be built and constructed any Competing Road in breach of the Concession Agreement.*
>
> …

3.4 GOG acknowledges and agrees that each of the Concessionaire and the Company shall have the right to seek specific performance of this Agreement.

…

5. REPRESENTATIONS AND WARRANTIES

…

5.2 GOG represents and warrants to the Concessionaire that:

(i) …

…

(iii) This Agreement constitutes the legal, valid and binding obligation of GOG enforceable against it in accordance with its terms.

…

7. Breach and Compensation

7.1 In case GOG or any GOG Agency is in material breach of any of its obligations under this Agreement, and such breach is not cured within 30 days of receipt of a notice in writing in this behalf from the Concessionaire to GOG with copy to the Company and which has not occurred as a result of Concessionaire's breach of its obligations under this Agreement or the Concession Agreement or Force Majeure, GOG shall pay to the Concessionaire, all direct additional costs suffered or incurred by the Concessionaire, determined by R&BD as arising out of such material default by GOG.

7.2 In case of any dispute by GOG on admissibility of the claim or extent of compensation determined by R&BD, the claim shall be settled in accordance with the Dispute Settlement mechanism provided in Clause 9 of this Agreement.

7.3 Any such compensation, as determined by R&BD or through the Dispute Settlement mechanism setforth in Clause 9 hereof as payable by GOG, shall be paid to the Concessionaire by GOG, …

…

9. GOVERNING LAW AND DISPUTE SETTLEMENT

…

9.2 **Dispute resolution**

Any dispute, difference or controversy of whatever nature howsoever arising under or out of or in relation to this Agreement…between the Parties … shall, in the first instance, be attempted to be resolved amicably in accordance with the conciliation procedure set forth in Clause 37.2.

…

9.3 **Conciliation**

In the event of any Dispute between the Parties, … either Party may require such Dispute to be referred to the Secretary, Roads and Buildings Department, GOG for amicable settlement… If …the Dispute is not amicably settled within 30 (thirty) days of…, either Party may refer the Dispute to arbitration in accordance with the provisions of Clause 37.3.

9.4 **Arbitration**

9.4.1 Any Dispute, which is not resolved amicably as provided in Clause 37.2 shall be finally decided by reference to arbitration by a Board of Arbitrators …

…

9.5 Arbitration Awards to be Binding

9.5.1 The Concessionaire and the Company undertake to carry out any decision or award …without delay. Awards relating to any Dispute shall be final and binding on the Parties as from the date they are made."

From the above, the Committee notes that as per SSA, GOG has acknowledged and agreed that it shall not cause to build or construct any competing road in breach of the Concession Agreement and that the Concessionaire and the Company shall both have the right to seek specific performance of this Agreement. Further, the GOG has warranted to the Concessionaire that the SSA constitutes the legal, valid and binding obligation of GOG enforceable against it and that in case GOG is in material breach of any of its obligations under this Agreement, it shall pay to the Concessionaire, all direct additional costs suffered or incurred by the Concessionaire, *determined by R&BD* as arising out of such material default by GOG. Also, the GOG has agreed that in case of any dispute, the claim shall be settled in accordance with the Dispute Settlement mechanism provided in Clause 9 of this Agreement, which refers to conciliation and arbitration procedure as per clause 37 of the concession agreement.

47. The Committee further notes that in the extant case, in accordance with the above provisions of SSA, the Concessionaire raised claim *against GOG* as compensation for loss of revenue due to Reliance Road Diversion. Thereafter, the process of amicable settlement of the disputes/claims of the Concessionaire against GOG were taken up for conciliation as per Concession Agreement. As the disputes were not resolved amicably, the Concessionaire decided to refer the disputes under the relevant provisions of Concession Agreement and State Support Agreement to Arbitration. Accordingly, the Hon'ble Arbitral Tribunal was constituted on 05.09.2019 for adjudication of the claims. The Hon'ble Arbitral Tribunal in its order dated 10.09.2020 directed the Parties to place the claims before the Secretary (R & B), Government of Gujarat for conciliation and amicable settlement. Thereafter, a meeting was held on 15.12.2021 chaired by the Hon'ble Minister, Roads & Buildings (R&B), who is also the Chairman of the Company and in the presence of Secretary, R&B, wherein a decision was taken to constitute a Conciliation Committee to examine and opine on the settlement proposal(s) on the Concessionaire's claim against GOG. Accordingly, the Company constituted a Conciliation Committee of Independent Experts (CCIE) comprising three eminent members on 05.03.2022 and the Concessionaire's claim against GOG on account of loss of revenue due to Reliance Road Diversion was exhaustively deliberated; and pursuant to the decision of CCIE, the

Company and the Concessionaire agreed for amicable settlement of the issues and resolved to enter into settlement agreement dated 27th April, 2023. In this regard, the Committee also notes the following clauses of settlement agreement between the Concessionaire and the Company:

"**WHEREAS**

…

o. The Parties based on their respective management approvals, decided to draw up this Agreement, setting the terms of the settlement including those to finally settle all the Disputes under this Concession Agreement as on date of this Settlement Agreement.

…

IT IS HEREBY AGREED, DECLARED AND RECORDED BY AND BETWEEN THE PARTIES AS UNDER:

…

2. FULL AND FINAL SETTLEMENT

…

c. *Concessionaire undertakes and agrees that it shall not raise any claims against GOG arising out of State Support Agreement* or otherwise in future, which are settled here in this Agreement except for the future claim of LOR due to Reliance Road Diversion (from April 2022 to end of Concession Period) for which more realistic scientific methodology may be adopted as per para 3(g) of this Agreement.

…

3. OBLIGATIONS OF THE PARTIES

…

d) Concessionaire has agreed to pay additional Concession Fee from 01.04.2021 till the end of Concession period including extended Concession Period based on formula adopted for computing Concession Fee of Rs. 11.96 Cr up to March, 2021. The sample formula is annexed hereto as Annexure-2.

Claims of Concessionaire against Government of Gujarat

e) The Company shall pay Rs. 98.14 crores as cash compensation towards the claims of the Concessionaire against GOG, which shall be adjusted against the outstanding liability of Concessionaire towards accumulated interest on deferred payment which comes to around Rs. 29.60 crores (from 01.04.2017 to 31.03.2022). Further, the balance Rs. 68.54 Cr (Rs. 98.14 crore minus Rs. 29.60 crore) shall be adjusted against the outstanding liability of Concessionaire towards the Principal premium due (from 01.04.2017 to 31.03.2022). Therefore, the amount to be paid is NIL."

…

g) For future claim (from April 2022 to end of Concession Period) for compensating LOR due to Reliance Road Diversion more realistic scientific methodology may be adopted for counting the traffic at evading TP3 to Locations which will be decided jointly by parties. For avoidance of doubt, it may be noted that the Concessionaire is carrying out videographic survey on a monthly basis, based on which the claim is being lodged. This process shall continue till the methodology is finalized.

…

5. PENDING PROCEEDINGS:

a. The Parties shall withdraw their respective legal proceedings against each other.

b. The Parties hereby confirm that, in view of the full and final settlement arrived between the parties no cause of action remains as on the date of this Agreement except the items listed in Para 2 (b) above for pursuing any legal proceedings for seeking any kind of demand, damages, compensation or penalty under any provisions of the Concession Agreement.

c. Parties shall withdraw from the arbitration proceedings and request jointly to terminate the arbitration *proceedings* in terms of Section 32(1) read with Section 30(2) of the Arbitration and Conciliation Act."

48. From the above (clause 3(e)), it appears that as a result of settlement agreement, claim of the Concessionaire *against GOG* under SSA is to be settled by the Company by way of adjustment of its receivable against the Concessionaire for additional concession fee. In this context, the Committee without examining the appropriateness or legal validity of the above procedure followed, presumes that such procedure was in accordance with the Concession Agreement and SSA. Therefore, the outcome or decision finally arrived at is binding on and acceptable to all the parties involved, including GOG. Thus, it can be said that the claims against GOG as raised by the Concessionaire and settled by the Company under the Settlement Agreement are not *per se* the liability or obligation of the Company; rather these are the obligations of the GOG, as is clear from the various clauses of the SSA, as discussed above. By way of settlement agreement, these are only settled by the Company, *for and on behalf of the GOG*. Therefore, the settlement will not result into any expense to be accounted for by the Company as settlement does not result into any depletions of assets or incurrences of liabilities that result in decreases in equity requiring recognition of an expense in the financial statements of the Company; rather it results into conversion of one asset (cash/bank) to another asset (receivable from GOG). Similarly, since realisation of amount from the GOG against the amount settled by the Company is only a reimbursement of the cashflows incurred by the Company, the same is not an increase in economic benefits during the accounting period in the form of inflows or enhancements of assets or decreases of liabilities that result in increases in equity. Hence, the amount realised cannot be considered as an income of the Company on reimbursement by the GOG. In this regard, the Committee notes the definitions of income and expense as per the Framework for the Preparation and Presentation of Financial Statements (hereinafter referred to as 'the Framework'), issued by the ICAI:

"69. Income and expenses are defined as follows:

(a) *Income* is increase in economic benefits during the accounting period in the form of inflows or enhancements of assets or decreases of liabilities that result in increases in equity, other than those relating to contributions from equity participants.

(b) *Expenses* are decreases in economic benefits during the accounting period in the form of outflows or depletions of assets or incurrences of liabilities that result in decreases in equity, other than those relating to distributions to equity participants."

With regard to uncertainty regarding the reimbursement of settlement amount claimed by the Company from the GOG, the Committee further notes the following requirements of the Framework:

"82. An item that meets the definition of an element should be recognised if:

(a) it is probable that any future economic benefit associated with the item will flow to or from the enterprise; and

(b) the item has a cost or value that can be measured with reliability."

"84. The concept of probability is used in the recognition criteria to refer to the degree of uncertainty that the future economic benefits associated with the item will flow to or from the enterprise. The concept is in keeping with the uncertainty that characterises the environment in which an enterprise operates. *Assessments of the degree of uncertainty attaching to the flow of future economic benefits are made on the basis of the evidence available when the financial statements are prepared*. For example, when it is probable that a receivable will be realised, it is then justifiable, in the absence of any evidence to the contrary, to recognise the receivable as an asset. For a large population of receivables, however, some degree of non-payment is normally considered probable; hence, an expense representing the expected reduction in economic benefits is recognised."

(Emphasis supplied by the Committee.)

From the above, the Committee notes that an asset should be recognised when it is probable that any future economic benefit associated with it will flow to the enterprise and the asset has a cost or value that can be measured reliably. Also, with regard to the concept of probability, the Framework states that it refers to the degree of uncertainty that the future economic benefits associated with the item will flow to the enterprise. The concept is in keeping with the uncertainty that characterises the environment in which an enterprise operates. *Assessments of the degree of uncertainty attaching to the flow of future economic benefits are made on the basis of the evidence available when the financial statements are prepared*. For example, when it is probable that a receivable will be realised, it is then justifiable, in the absence of any evidence to the contrary, to recognise the receivable as an asset.

In this context, the Committee notes that in the extant case, the Company has settled the claim of the Concessionaire on behalf of the GOG and the same is to be reimbursed by GOG. As per the facts supplied by the querist, claim settled by the Company for any financial year is requested for reimbursement by the Company from GOG in the next financial year and as at the reporting date, except for the lack of confirmation from GOG regarding admissibility, there is no evidence to show the uncertainty in the realisability of receivables from the GOG. Further, as discussed above, considering the presumption made regarding validity of the procedure followed, it can be said that the outcome or decision finally arrived at is acceptable or binding on all the parties involved, including GOG.

Furthermore, in this context, the Committee notes that while following the above procedure, there was active involvement of the Hon'ble Minister, Roads & Buildings (R&B) (who is also the Chairman of the Company) and the Secretary, R&B. Therefore, in substance, since the GOG was involved in the process of settling the obligation, it can be said that even though the GOG may not have acknowledged or given confirmation regarding admissibility for the above claim, the GOG has also not denied or disputed its obligation (or quantum thereof) against the Concessionaire as settled by the Company on its behalf. There is no apparent reason to believe that GOG will go against the decision of the CCIE. Moreover, the subsequent event of reimbursement by the GOG for the amount paid by the Company to the Concessionaire against the claim for financial year 2022-23 provides an additional evidence that there was no uncertainty as to the realisability or flow of future economic benefits to the Company. Thus, it can be said that at the time of settlement of claim by the Company, it is probable that the same will be realised from the GOG. Accordingly, in the absence of any information or evidence to the contrary, the Committee is of the view that in the extant case, it is justifiable for the Company to recognise the amount on settlement (in respect of Concessionaire's claim against GOG on its behalf) as an asset, viz., receivable in its financial statements.

D. Opinion

49. On the basis of the above and subject to paragraph 44 above, the Committee is of the opinion that in the extant case, the Company should recognise the reimbursement receivable from GOG (with respect to claim settled by it in respect of the Concessionaire's claim against GOG on its behalf) as an asset on settlement, viz., receivable, and not as an expense in its financial statements, as discussed in paragraphs 46 to 48 above. Further, the amount realised cannot be considered as an income of the Company on reimbursement by the GOG. Thus, the current accounting practice followed by the Company in this regard is not appropriate.

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