ACCOUNTING AND COMPANY LAW

N. A. SHAH BULLETIN

N. A. SHAH ASSOCIATES LLP
Chartered Accountants

February 2018

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EXECUTIVE SUMMARY:

- **Accounting**
  - Expert Advisory Opinion
    - Based on the certain specific facts of the case (elaborated below), the expert advisory committee of the ICAI has opined that there is no present obligation on the Power Distribution Company to pay carrying cost of true up charges to the Power Transmission Company, and hence no provision is required to be made. The said amount should be disclosed as a contingent liability.
  - Ind AS Transition Facilitation Group (ITFG) of Ind AS Implementation Committee has issued Bulletin 14 which provides clarifications on various issues related to applicability and/or implementation of Ind AS.
  - Accounting Standard Board, ICAI has issued the exposure draft on Ind AS 117, Insurance contracts which is open for comments upto 31st March, 2018.
- **Company Law**
  - Ministry of Corporate Affairs (MCA) has,
    - Exempted specified government companies to comply with provisions of Accounting Standard 22 or Indian Accounting Standard 12 relating to deferred tax asset or deferred tax liability standards upto 7 years beginning from 1st April 2017.
    - Introduced Form AOC-3A [Statement of salient features of financials] for Ind AS compliant companies.
    - Extended the time limit for registration under Companies (Registered Valuers and Valuation) rules.
    - Amended Section 169 to notify that Independent director who was re-appointed by special resolution can be removed by the company only by passing a special resolution.

1 Accounting - Expert Advisory Opinion

a. Facts of the case

Company A is a fully owned Government of Madhya Pradesh engaged in the business of electricity distribution in Madhya Pradesh and is governed by the provisions of the Electricity Act, 2003. Company B is a transmission licensee company and as per provisions of the Electricity Act, 2003 and it can recover charges from Company A, only such tariff which is approved by the MPERC as per its tariff order.

Company B raises invoices on the Company A for the electricity supplied, on monthly basis which contain all approved charges as per tariff order like transmission charges, incentive charges, true up charges. Company B also included non-approved cost like carrying cost of true up charges.

True up charges are the difference between actual expenses at the end of the year and budgeted expenses at the beginning of the year considered for provisional tariff. After year end, based on audited accounts, True up petition is filed to the Commission for recovery of these differential costs in the final tariff order. Based on true up petition and provisions of the regulation, Commission approves the final cost of that year and allows recovery of any unrecovered cost by way of tariff setting of subsequent year. Apart from additional cost approved (true up cost), Commission also allows to recover interest also on true up charges due to deferment of recovery of cost which is called carrying cost of true up charges.

Since the carrying cost of true up charges is not approved by MPERC, Company A did not provide for this liability and disclosed it as contingent liability. In the opinion of the auditor of Company A, provision is required to be made for the carrying cost of true up charges.

In view of the Company A, Since MPERC has not approved any amount towards the carrying cost and company B has not taken any coercive action against the company A for recovery of carrying cost, there is no present obligation of the company A to pay the same. The MPERC has never approved any recovery of such carrying cost for any financial year till date.

b. Query

Whether the company A is required to make provision towards the 'carrying cost of true up charges' as billed by company B even if the same is not approved by MPERC as required by Electricity Act, 2003?

c. Points considered by the committee

The Committee notes that an element of judgment is required to be used by management of the enterprise to decide and the auditor to assess whether a liability should be provided for in the accounts or treated as a contingent liability.

Considering the provisions of Accounting Standard (AS) 29- 'Provisions, Contingent Liabilities and Contingent Assets', the Committee is of the view that whether the company is required to create a provision depends on

- Whether there exist an obligation based on past events as on balance sheet date by taking account of all available evidence including any additional evidence provided by events after the balance sheet date
- Whether it is probable that an outflow of resources will be required to settle the obligation
- Whether amount required to settle the obligation can be estimated

The Committee is of the view that based on certain facts available such as, (a) non-approval of carrying cost of true up charges till date, (b) no order has been issued by MPERC in the past approving/ allowing the recovery of such carrying cost, (c) no explicit statement in the Act indicating whether such charges would be approved or not in future, (d) no legal action initiated by Company B for non-payment of carrying cost of true up charges by the Company, it appears that there is no present obligation that an outflow of resources will be required to settle the obligation towards the carrying cost of true up charges at the balance sheet date.

d. Opinion

Considering facts discussed above, Committee is of view that the Company A should disclose the same as a contingent liability with relevant disclosure as per AS 29 until the possibility of an outflow of resources embodying economic benefits is remote and unless any further contrary facts emerge which indicates that a present or probable obligation towards carrying cost of true up charges exists at balance sheet date.

2 Company Law

2.1 Relaxation to Government Companies in respect of deferred tax

The provisions of Accounting Standard 22 or Indian Accounting Standard 12 relating to deferred tax asset or deferred tax liability shall not apply to following Government companies, for seven years with effect from the 1st April, 2017:

(a) Public financial institution under sub-clause (iv) of clause (72) of section 2 of the Companies Act, 2013;

(b) Non-Banking Financial Company registered with the Reserve Bank of India under section 45-IA of the Reserve bank of India Act, 1934; and

(c) Company engaged in the business of infrastructure finance leasing with not less than seventy five percent of its total revenue being generated from such business with Government companies or other entities owned or controlled by Government.

2.2 Introduction of Form AOC-3A

- The companies which are required to comply with Companies (Indian Accounting Standards) Rules, 2015 shall submit FORM AOC-3A to MCA.

- Form AOC-3A is a statement containing salient features of the Ind AS financial statements under Division II- Schedule III to the Companies Act, 2013. It is consists of Abridged Balance Sheet, Abridged Statement of Profit and Loss and Abridged Cash Flow Statement.

- The statement stating salient features of abridged financial statements and Auditor's report on the same should be authenticated by the auditor in the same manner as the main financial statements.

2.3 Extension of time limit for registration as Valuers

The time limit for registered valuers to get registered under Companies (Registered Valuers and Valuation) Rules, 2017 has been extended from 31st March, 2018 to 30th September, 2018.

2.4 Amendment in section 169 of Companies Act, 2013

Previously, an independent director re-appointed by way of special resolution under section 149(10) of Companies Act, 2013 could be removed by an ordinary resolution. Under new provisions of section 169 of Companies Act, 2013, such independent director re-appointed shall be removed by the company only by passing a special resolution.

2.5 Substitution of Company e-forms

Following Company e-forms are substituted with new ones:

Sr. No.	E-Forms	Nature of e-form
1.	ADT-1	Notice to the registrar by company for appointment of auditor

Sr. No.	E-Forms	Nature of e-form
2.	ADT-2	Application for removal of auditor(s) from his/their office before expiry of term
3.	URC-1	Application by a company for registration under section 366(conversion from firm into company and LLP into company)
4.	MGT-6	Return to the registrar in respect of declaration under section 89 received by the company
5.	MGT-15	Filing report on Annual General Meeting

3 Indian Accounting Standards (Ind AS)

3.1 ITFG Bulletin 14

Summary of clarification given under ITFG bulletin 14 is as under:

Sr. no.	Clarifications
1.	It has been clarified that the processing charges to the extent amortised as per EIR method only up to the period of capitalisation of the qualifying asset can be capitalised.
2.	In case leasehold land is considered to be finance lease, site restoration cost expected to be incurred at the end of lease term shall be capitalized along with the Property, plant and equipment (PPE) with a corresponding liability recognised in accordance with Ind AS 37 – Provisions, Contingent Liabilities and Contingent Assets. Such PPE along with site restoration cost shall be depreciated over the estimated useful life. When leasehold land is considered to be operating lease, entity shall capitalize leasehold building or improvements along with associated restoration costs and depreciate it over the lower of useful life of its estimated useful life or the lease term. The provision for restoration cost is progressively unwounded, with the unwinding charge shown as finance cost.
3.	Ind AS 18 – 'Revenue' requires entities to measure revenue at fair value of consideration received or receivable. In case an entity receives advance payments from customers for providing goods or services, it should evaluate

Sr. no.	Clarifications
	whether it includes component of financing based on judgement and whether advance is received in normal course of business e.g. as per normal industry practice. In case it is concluded that consideration received includes financing component, amount received should be adjusted for time value of money.
4.	In case National Company Law Tribunal (NCLT) approves a scheme of amalgamation for entities under common control with retrospective effect and approval is subsequent to the balance sheet date but before approval of financial statements in the Board Meeting, the effective date for accounting would be prior to the balance sheet date as same is adjusting event since the conditions existed at the end of reporting period.
5.	In case of shares held as stock in trade, since these are financial instruments, principles given in Ind AS 109 – 'Financial Instrument', Ind AS 32 – 'Financial Instrument presentation' and Ind AS 107 – 'Financial Instruments Disclosure' would be applicable. Further, these standards shall be applied retrospectively to shares held as stock in trade by a company unless otherwise exempted under Ind AS 101- First time adoption of Indian Accounting Standards.
6.	With respect to property, plant and equipment (PPE), in case an entity upon transition elects to apply fair value as deemed cost or Ind AS 16 – 'PPE' retrospectively and subsequently measure PPE as per revaluation model, the revaluation surplus recognized as per previous GAAP shall be transferred to retained earnings or if appropriate, another category of equity. On the date of transition, revaluation surplus as per Ind AS 16 shall be recognised in equity as revaluation reserve. Subsequent changes in revaluation shall be recognised under other comprehensive income.
7.	Treatment of preference shares issued by subsidiary to holding company which are redeemable or convertible would be as given below: • In the books of subsidiary, preference shares issued by subsidiary company to holding company which are either redeemable in cash or convertible into fixed number of equity shares at the option of the subsidiary and these preference shares carry discretionary dividend shall be classified as equity instrument in the books of subsidiary subject to conversion feature is considered as substantive. • Holding company shall classify the preference shares as an investment in subsidiary in its separate financial statement and shall measure the same

Sr. no.	Clarifications
	at cost or fair value, as per the accounting policy selected by holding company as per Ind AS 27 – 'Separate Financial Statement'. • In the consolidated financial statement of the Group, these transactions will be eliminated, being intra group transactions in accordance with Ind AS 110.

From:

N. A. Shah Associates LLP

Chartered Accountants

Address: B 41-45, Paragon Centre, Pandurang Budhkar Marg, Mumbai – 400 013.

Tel: 91-022-4073 3000, Fax: 91-022-4073 3090

E-mail Id: info@nashah.com