

CONFIDENTIAL

COUNCIL OF THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA

383RD MEETING OF THE COUNCIL – 21ST AND 22ND MAY, 2019

FINDING OF THE COUNCIL – 22ND MAY, 2019

UNDER SECTION 21 OF THE CHARTERED ACCOUNTANTS ACT, 1949

PARTHA GHOSH IN RE:
[25-CA(S-26A)/2006]

&

D.V.P. RAO IN RE:
[25-CA(S-26B)/2006]

MEMBERS PRESENT:

CA. Atul Kumar Gupta (Vice-President)(In the chair)
CA. Anil Satyanarayan Bhandari
CA. Jay Chhaira
CA. Chitale Chandrashekhar Vasant
CA. Tarun Jamnadas Ghia
CA. Dhiraj Kumar Khandelwal
CA. Babu Abraham Kallivayalil
CA. Prasanna Kumar D
CA. Rajendra Kumar P
CA. M.P. Vijay Kumar
CA. Ranjeet Kumar Agarwal
CA. (Dr.) Debashis Mitra
CA. Pramod Kumar Boob
CA. Anuj Goyal
CA. Satish Kumar Gupta
CA. (Ms.) Kemisha Soni
CA. Hans Raj Chugh
CA. Nanda Charanjot Singh
CA. Sanjeev Kumar Singhal
Shri Vijay Kumar Jhalani

[Out of four Signatories to the Report of the Disciplinary Committee dated 13th June, 2018, namely, CA. Prafulla P. Chhajed, President in Office, Dr. P.C. Jain, CA. Nihar Niranjan Jambusaria were not present at the time of consideration of the Report on 22nd May, 2019 and the remaining fourth signatory namely CA. Naveen N.D. Gupta was no longer member of the Council.]

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[CA. Atul Kumar Gupta, Vice-President in Office was in the Chair when this Report was taken up for consideration on 22nd May, 2019]

1. On perusal of the news items published in the various dailies on July, 26th 2004 in respect of the Statutory Audit of Global Trust Bank Ltd and the statement showing the details of NPAs and other assets where divergence was observed in assets classification and provisioning requirements and understatement of other liabilities / expenditure made by the Global Trust Bank Ltd (for the position as on 31.03.2003, received from the Reserve Bank of India (hereinafter referred to as the "**RBI**") in the matter of statutory audit of Global Trust Bank Ltd for the financial year ended 31st March, 2003, the RBI was requested vide letter dated 26th July, 2004 to file a formal complaint and provide relevant details and documents to the Institute. In response, the RBI vide its letter dated 2nd August, 2004 stated that the Inspecting officers of RBI found that the quantum of gross NPA of the Bank at Rs.915.82 crore in its audited balance sheet as on 31st March, 2003, did not reflect the correct position and was significantly understated. The RBI in its said letter also requested to take such action as deemed necessary against M/s. Price Waterhouse & Co. (hereinafter referred to as the "**Respondent Firm**"). Meanwhile, the attention of the Respondent firm was drawn vide letters dated 26th July, 2004 and 25th February, 2005 to the various news items appearing in today's dailies in connection with the statutory audit of the Global Trust Bank Ltd for the years 31st March, 2003 and was requested to offer their comments and views on the issue. In response, the Respondent firm vide letter 4th March, 2005 stated that they are required to contact the RBI to obtain a key to decode certain information the Institute had enclosed therewith its letter. The Respondent firm expressed their inability to comments in absence of the basis of arriving at divergence/irregularities and requested the Institute to provide them with the basis on which the RBI has arrived at its figures as to the treatment and/or provisioning of loans/advances/investment/other liabilities/expenditure of Global Trust Bank Ltd for the financial year ended 31st March, 2003.
2. On receipt of abovementioned letter from the Respondent firm, the RBI was requested vide letter dated 14th March, 2005 to provide the basis for their observations. The RBI vide its letter dated 21st April, 2005 informed that since the Respondent firm as statutory auditors, had accesses to all records, including RBI and special auditors' report, it is not necessary to provide the Respondent firm any further information. It was also stated in its letter that keys to the codified accounts were provided to the Respondent audit firms vide letter dated 7th March,

2005. The RBI further stated that it may not be appropriate to part with information relating to the basis on which the Special Auditor have concluded the treatment and provisioning of loans / advances etc. referred to them from the special auditors report. Thereafter, the Respondent firm vide their letter dated 20th May, 2005, while giving the aforesaid background, stated that they were appointed as Central Statutory Auditors for the year ended 31st March, 2003 at the EGM held on 27th September, 2002. The AFI Report of RBI U/s 35 of the Banking Regulations Act, 1949, of GTB for the year ended 31st March, 2003 has been issued after their period of audit and the same was not available with them at the time of audit. The Respondent firm stated that they had not received copy of report of Annual Financial Inspection (hereinafter referred to as the "AFI"). On receipt of copy of extract of report of Annual Financial Inspection of GTB, the copy of the same was forwarded to the Respondent firm vide letter dated 5th August, 2005 with a request to offer their comments on the same. In response, the Respondent firm vide its letter dated 15th September, 2005 submitted their clarifications on the allegations. The clarifications given by the Respondent were examined and after examination, as regards some of the accounts mentioned in AFI, where clarifications of the Respondent firm were found satisfactory, the matters have been dropped. For the irregularities in the other accounts where clarifications were not found satisfactory, it was decided to treat the matter as "Information" against the Respondent firm under Section 21 of the Chartered Accountants Act, 1949.

3. An information letter dated 5th December, 2006 was sent to the Respondent-firm asking them to disclose the name of the member answerable under Regulation 12(6) of the Chartered Accountants Regulations, 1988 and to submit written statement against the charges of misconduct in defence within 14 days of the receipt of this Information letter. In reply to the above, the Respondent firm vide their letter dated 5th January, 2007, informed the names of CA. Partha Ghosh (signing partner) and CA. D.V. Prasada Rao (Senior Audit Manager) (hereinafter referred to as the "**Respondent no.1 and the Respondent no.2 respectively and as the "Respondents" collectively**") as the members answerable to the charges. The Respondents sought extension from time to time and vide letter dated 31st March, 2007 filed their Written Statements.
4. Thereafter, in accordance with the provisions of Regulation 12(11) of the Chartered Accountants Regulations, 1988, the above papers containing the "Information" letter along with written statements of the Respondents were considered by the Council at its meeting held in August 2007 at New Delhi. The

Council being prima facie of the opinion that the Respondents were guilty of professional and/or Other Misconduct decided to cause an enquiry to be made in the matter by the Disciplinary Committee. Thereafter, the Disciplinary Committee had fixed number of hearing in the matter. The Disciplinary Committee in spite of facing several constraints in the matter, kept on fixing hearing on regular interval and concluded the case after giving ample opportunity to the Respondents to defend their case as per provisions of the Chartered Accountants Act, 1949 and in accordance with the directions contained in order dated 16th April, 2009 of the Hon'ble High Court of Mumbai. The Respondents have sought number of adjournment of hearing(s) and approached different High Court of India to stay the proceedings before the Disciplinary Committee. In spite of the fact that all the documents on record have been duly provided to the Respondents, they tried to halt the hearing on the pretext that the documents have not been provided to them or on the pretext, the RBI has not provided sufficient documentary evidence to support the observations of PIO as contained in AFI, 2003. The Disciplinary Committee conducted the enquiry in the case and the hearing in the matter was completed at its Meeting held on 27th April, 2018 at New Delhi. A table of number of hearing(s) by the Disciplinary Committee is as follows:

Particulars	Date of Meeting	Status
1 st	13 th Dec, 2007	Fixed and Adjourned.
2 nd	22 nd April, 2008	Part heard & Adjourned.
3 rd	01 st Aug, 2008	Fixed & Adjourned.
4 th	06 th Oct, 2008	Part heard & Adjourned.
5 th	08 th Nov, 2008	Adjourned at the request of the Respondent.
6 th	07 th Jan, 2009	Fixed & Adjourned.
7 th	17 th Jan, 2009	Part heard & Adjourned.
8 th	22-24 th Jan 2009	Adjourned at the request of the Respondent.
9 th	23 rd March, 2009	Heard & Concluded. [During the Course of hearing, the Respondent questioned the procedures followed by the Committee and he did not submit anything on merit. Accordingly, the then Committee concluded the case on merit. Thereafter, the Respondent approached the High Court of Mumbai and challenged the procedure followed by the DC. As per order of the High Court of Mumbai and in order to give fair opportunity of hearing to the

		Respondent in conformity with Regulation 15(3) and the procedure stated in the letter dated 3 rd October, 2007, the procedures was again intimated to the Respondent vide letter dated 18 th July, 2009, and the hearing was fixed again]
10 th	20 th Aug, 2009	Adjourned at the request of the Respondent
11 th	16 th Sept, 2009	Adjourned at the request of the Respondent.
12 th	30 th Jan, 2010	Adjourned at the request of the Respondent.
13 th	07 th Feb, 2010	Adjourned at the request of the Respondent.
14 th	6 th & 7 th April, 2010	Part heard & Adjourned
15 th	15 th & 16 th April, 2010	Adjourned at the request of the Respondent.
16 th	1 st & 2 nd May, 2010	Fixed & Cancelled
17 th	06 th March, 2013	Adjourned at the request of the Respondent
18 th	05 th April, 2013	Part heard & Adjourned. The Respondent moved a petition in High Court for stay of proceedings.
19 th	22 nd April 2013	Hearing in the matter has been adjourned due to the pending court case
20 th	21 st August, 2014	Adjourned at the request of the Respondent.
21 st	23 rd September, 2014	Meeting cancelled due to unavoidable circumstances
22 nd	05 th November, 2014	Adjourned at the request of the Respondent
23 rd	21 st May, 2015	Fixed & Adjourned
24 th	07 th July, 2015	Part heard & Adjourned
25 th	23 rd January, 2016	Adjourned at the request of the Respondent
26 th	27 th February, 2016	Meeting cancelled due to unavoidable circumstances.
27 th	30 th May, 2016	Adjourned at the request of the Respondent
28 th	14 th & 15 th July, 2016	Part heard & Adjourned
29 th	23 rd September, 2016	Meeting cancelled due to unavoidable circumstances
30 th	02 nd November, 2016	Adjourned at the request of the Respondent

31 st	21 st December, 2016	Meeting cancelled due to unavoidable circumstances
32 nd	09 th May, 2017	Partly heard & Adjourned
33 rd	07 th June, 2017	Adjourned due to unavoidable circumstances
34 th	18 th & 19 th July, 2017	Part heard & Adjourned.
35 th	23 rd & 24 th August, 2017	Part heard & Adjourned
36 th	05 th September, 2017	Adjourned at the request of the Respondent.
37 th	09 th October, 2017	Adjourned at the request of the Respondent.
38 th	10 th November, 2017	Part heard & Adjourned
39 th	7 th December, 2017	Part heard & Adjourned
40 th	4 th April, 2018	Part heard & Adjourned
41 st	16 th April, 2018	Part heard & Adjourned
42 nd	27 th April, 2018	Hearing Concluded. Brief of the proceedings is enclosed as Annexure 'C' to this report

4.1 The major details of proceedings held by the Disciplinary Committee during 2017 & 2018 are as follows:-

- A) On 9th May, 2017, on the plea of the Respondents, the Disciplinary Committee agreed for the joint hearing in both cases. Further, de-novo hearing was granted to the Respondents and thereafter, the representative from M/s. M. Bhaskara Rao & Co. was examined by the Committee.
- B) On 18th & 19th July, 2017, the Committee allowed the Counsel for the Respondents fullest opportunity to cross-examine the witnesses of both RBI & M/s. M. Bhaskara Rao & Co and thereafter, both the witnesses were discharged by the Committee.
- C) At the hearing held on 23rd & 24th August, 2017, CA. D.V.P. Rao was examined by the Counsel for the Respondents in his capacity of being witness of CA. Partha Ghosh as well as that of being the Respondent. Thereafter, CA. Jay Kumar Shah - an additional witness of the Respondents was also examined by their Counsel.
- D) Hearing on 9th October, 2017 was fixed for testimony of CA. Partha Ghosh, who was also cited as one of the witness(es) by the Respondent in CA. DVP Rao's case as well as in his case as respondent. However, CA. Partha Ghosh could not appear due to medical reasons on which the Disciplinary Committee noted that last hearing(s) held on 23rd & 24th August, 2017 and hearing fixed on 5th September,

2017 were adjourned only due to provide a fair & reasonable opportunity to produce CA. Partha Ghosh's testimony on record but instead of brining the same on record, the Respondents were continuously seeking repetitive adjournment of the hearing(s). The Committee then informed the Counsel for the Respondents that in view of adjournment granted earlier and in view of matter being of high public importance, it could not keep the hearing pending so long, however, in order to provide a final opportunity to the Respondents, the Committee had again adjourned the hearing.

- E). On 10th November, 2017, CA. Partha Ghosh was examined by the Respondents Counsel as witness in CA. DVP Rao's case and in case against him as respondent.
- F). On 7th December, 2017, the Committee examined CA. D.V.P. Rao and posed questions as regard to his role and work done by him in audit of e-GTB and questions relating to the extent of reliance placed by him on MBR report and AFI 2002 reports. The Committee also posed questions on accounts with regard to his observation on accounts and nature of verifications and steps taken by him for verifying the accounts in compliance with IRAC norms. After posing certain questions on irregularities in certain accounts, examination of CA. D.V.P. Rao was completed.
- G). At the next date of hearing on 4th April, 2018 wherein remaining proceedings of examining CA. Partha Ghosh (being witness in case of CA. D.V.P. Rao and also as Respondent had to take place, the Counsel for the Respondents submitted an application referring therein provision of Regulations 15(5) of the Chartered Accountants Regulation, 1988 and requesting for de-novo hearing. The then Committee noted that the afore-stated Regulations states that if there is change in the membership of the Disciplinary Committee, the party to enquiry may demand for enquiry to be held de-novo. The then Committee noted that in extant case, 2 members of the Disciplinary Committee present in the meeting were same as that of old bench. During 2017, the then Presiding Officer did not participate in the proceedings of the case so effectively the then presiding officer in 2018 had chaired all the proceedings held during 2017. The then Committee clarified to the Respondents that since 2017, substantial time was invested in the case by scheduling the meetings seven times and holding the hearing five times on the matter wherein 83 charges against the Respondent were read out. Witness (es) from RBI, M/s M. Bhaskar Rao & Co., Respondents' witness CA. Jai Kumar Shah were examined by the Committee, cross examined by the Counsel for the Respondent and thereafter discharged. Further, examination of the Respondent,

CA. D.A.V. Rao was already complete by the Committee and only examination of another Respondent CA. Partha Ghosh was to be conducted. The then Committee viewed that eleven years had already elapsed, thus Institute is duty bound to bring the case to its logical conclusions. It was then viewed that if de-novo would be given, it will only result in repetition of entire proceedings already held as well as involve further utilization of resources also the time of parties with no positive development. In view of above and keeping in view the fact that new members of bench have already invested their time to understand the facts of the case as well as submissions made by the Respondents and the witness(es), partial change in constitution of the Committee would not affect the independence, fairness and objectivity of decision making. It was accordingly, informed to the Respondents that in the interest of natural justice and public interest, considering the facts that substantial evidences have already been recorded, repeated petitions filed before the Delhi High Court, health of CA. Partha Ghosh, the Respondent no.1, the then Committee viewed that there were no sufficient grounds to grant de-novo hearing and accordingly, it decided to proceed ahead from the stage of last hearing. Accordingly, on the said date, CA. Partha Ghosh was examined by the Committee.

F. On 16th April, 2018, the Respondents made their final submissions. Keeping in view the principles of natural justice, one more opportunity was given to the Respondent to give their final submissions on 27th April, 2018 which was accordingly held.

4.2 Hence, sufficient opportunity has been granted by the Disciplinary Committee to the Respondents to give their submissions on the charges leveled against them.

5. The Disciplinary Committee submitted its report dated 13th June, 2018 with a conclusion that the Respondents are guilty of professional misconduct falling within the meaning of Clauses (5), (6), (7), (8) & (9) of Part I of Second Schedule to the Chartered Accountants Act, 1949.

FINDINGS:-

6. The Respondents have submitted their written representations dated 14th December, 2018 and various representations /documents through e-mail dated 21st May, 2019. The Council considered the contents of the same.

7. It is also noted by the Council that the extent matters were fixed before it for hearings on 18th December, 2018, 10th January, 2019, 26th March, 2019 and on 16th April, 2019, but the said hearing were adjourned. While adjournments for

the hearings fixed on 18th December, 2018, 10th January, 2019, 16th April, 2019 were given on the request of the Respondents, the hearing on 26th March, 2019 was adjourned due to paucity of time by the Council.

8. It is noted that both the Respondents were persistently seeking adjournment of hearing(s) before the Disciplinary Committee and same were allowed by the Disciplinary Committee keeping in view the principle of natural justice. It is also noted that the Disciplinary Committee had concluded the hearing after providing ample and reasonable opportunity of being heard to both the Respondents.
9. It is noted that the matters relates to statutory audit of erstwhile Global Trust Bank (e-GTB) for the financial year 2002-03. The Respondent No. 2, CA. D. V. Prasada Rao along with CA. A.P. Singh (M. No. 51888), Common Counsel for both the Respondents appear before it on 22nd May, 2019. The Counsel for the Respondents initiated his oral representation before the Council with the reason of the Respondent no.1's absence from the hearing and the Respondent no.1's view of giving him an opportunity of personal hearing and stated that the Respondent no.1 vide his letter dated 28th March, 2019 had requested the Council not to fix the hearing during 20th May, 2019 to 10th June, 2019 as he was required to undergo for medical treatment during the aforesaid period.
10. The Council informed the Counsel that already an ample and reasonable opportunity has been granted to the Respondents. Since December, 2018, several opportunities have been granted to the Respondents to appear before the Council, however, instead of utilizing the said opportunities, the Respondents chose to seek adjournments which had been allowed keeping in view of principle of natural justice. The present hearing on 22nd May, 2019 has been fixed after giving advance notice dated 1st May, 2019 bearing ref no. 25-CA(S-26A&B)/2006/Rep. through e-mail on 1st May, 2019 and Speed Post A.D. wherein the Respondent may appear either in person or through his authorized representative for making oral submissions, if any. The Respondents have also given their written representations dated 14th December, 2018 and submissions / documents through e-mail dated 21st May, 2019. The Council confirmed from the Counsel whether he is prepared to give his submissions on behalf of the Respondent No.1 and 2, to which the Counsel for the Respondents assured and accordingly, the Council observed that since the Counsel is representing both the Respondent no.1 and 2, irrespective of whether they are present in person or not, it is noted that the Counsel is an 'authorized agent' of the Respondent so when the Counsel would be placing the submissions before the Council, the

Council would be hearing the Respondent whether present in person or not. Such authority has been assigned by the Respondent himself when he has signed and submitted the 'Vakalatnama' in favour of the Counsel. The Council decided to move ahead in the above matters.

11. The Council allowed the Counsel for the Respondents to make his submissions. The Counsel explained that written representations are divided into technical submissions and submissions on merit. He would initiate the submissions with the former, to which the Council agreed. After hearing for reasonable time to the Counsel for the Respondents on technical issues, the Council asked him to make his submissions on merits of the case. However, the Counsel for the Respondents impressed upon the fact that such representations are necessary for making his submissions. Accordingly, for more than four hours despite several requests of the Council, the Counsel for the Respondents made repeated submissions on technical issue. After hearing the Counsel, the Council requested the Counsel for the Respondents to make his submissions on merits of the case. The Council invited his attention on the charges leveled against the Respondents and sought his submissions on **each charge on merits**. The Counsel while giving his submissions on merits again came back to discuss technical matters. When Council noted that discussion on each charge is taking substantial time and that the Counsel for the Respondents had been just repeating his submissions, the Council asked the Counsel that considering the fact that out of remaining 22 charges, many of them being common by nature, the charges can be divided into five - six buckets so that the Council may appreciate the submissions being made by the Respondents for various nature of allegations wherein DC has found the Respondents guilty. But the Counsel for the Respondents continued to make his repeated submissions. The Council directed the Counsel to re-consider his approach in making submissions so that it may facilitate the proceedings. The Counsel for the Respondents demanded for a break by stating that he needs to take instruction from the Respondent no.1 for the same. On such demand made by the Counsel for the Respondents, the Council decided to allow him 15 minutes break.

11.1 After break, the Counsel for the Respondents as well as Respondent no.2 again appeared before the Council. The Counsel for the Respondents submitted a letter dated 22.05.2019 from the Respondents in the signature of the Respondent no.2 which inter-alia states that "*since the Council has instructed that it would allow an opportunity of presenting our defence only in respect of 5 to 6 charges (in summary form), this would be a case of clear cut denial of justice*". It is noted

that the Respondent no.2 has clearly mentioned in the letter that they will not make any further comments in the matter. The Council clarified the Counsel that already he is being heard for more than 6 hours and instead of arguing on merits, he is repeating his submissions on technical matters which are on record in form of his written representations and Council has very well taken note of the same. The Council, in any case, again asked the Counsel for the Respondents to keep his submission in a manner earlier suggested. The Counsel for the Respondents refused to make the submissions in the manner earlier suggested and stated that the written submissions made by the Respondents to the Council may be taken as submissions made on merits in place of oral submissions. The Council informed the Counsel for the Respondents and the Respondent no.2 that in view of their submissions, the Council concludes the hearing in the matter. It is further informed that the Council would decide on the matter based on oral submissions made thereat as well as their written representations dated 14th December, 2018 and various representations /documents submitted through e-mail dated 21st May, 2019. Thereafter, The Council asked the Counsel for the Respondents as well as the Respondent no.2 to withdraw from the hearing.

12. Thereafter, the Council considered the written representations of the Respondents on record and after deliberations decided to conclude the hearing(s). On perusal of the Disciplinary Committee report, the Council noted that the Respondents made submissions on certain broad aspects due to which reported divergence, as per them, had arisen which were dealt with by the Disciplinary Committee as under:-

i) The Respondents have argued that timing of conducting of audit and inspections were different. Both of them had different perspectives to deal with the matter and that auditor did not have access to certain information which the RBI Inspector had. It is viewed by the Committee that both the auditor and RBI Inspector were looking at status of assets and liabilities as on the balance sheet date. While dealing with various charges, the Committee has considered the quantum of information that was available with the Respondents at the time of audit. It is clear that at that point of time, RBI Inspections Report for the financial year 2001-02 and MBR's report on March, 2002 and December, 2002 were available. Considering the concerns being expressed by the RBI vide letter dated 9th May, 2003, it was clear that the classification of certain selected accounts were of primary consideration for RBI. Hence, the Respondents were under due obligation to adopt cautious approaches in their classification. D

Further, while the Committee agreed that the perspective of an Inspector conducting investigation would be different from that of a statutory auditor conducting audit yet the Statutory Auditor is required to give opinion on 'true & fair view' of the state of affairs of an entity based on outcome of his checking & verification of records / documents. The extent of checking and verifications depend on the efficacy of internal control and information and documents available with the Auditor at the time of auditing. While dealing with the each charge levelled against the Respondents, the Council notes that the Committee has kept in mind the above perspective and objective of both the audit and Inspection and after carefully going through the charges vis-à-vis duties and responsibility of the Respondents as auditor, in terms of various reporting requirements and submissions of the Respondents, has given its findings on each charge.

- ii) As regard contentions of the Respondents relating to :-
- a. RBI Inspector (PIO) having access to defaulter's list,
 - b. Questioning the professional background of RBI Inspector,
 - c. RBI Inspector (PIO) deviating from the principles of IRAC norms & other RBI guidelines and directions.
 - d. Non-production of working papers.

the Council notes that the Committee had considered each charge independently based on the then prevailing facts and circumstances and keeping in view various financial reporting regulations then applicable on bank vis-à-vis submissions of the Respondents on charges. Hence, such contentions are not tenable.

iii) The Council also notes that that although the Respondents have argued that PIO had ignored the valuations provided to the bank by expert valuers but when the Committee sought the valuation report relied upon by the Respondents, the same were not provided to the Committee.

iv) As regard the Respondents' argument regarding prima facie opinion formed by the then Council, the Council notes that all the documents considered by the then Council had been duly provided to the Respondents. Instead of making submissions on merits before the Committee, the Respondents chose to approach the Court and raised the aforesaid objection but failed to obtain any relief on the same. In view of the fact that all the documents considered by the Council were already provided to the Respondents and matter was already considered by the

Delhi High Court in a Writ Petition filed by the Respondents, the Committee did not find any merits in such argument.

v) The Respondents also argued on the difference in judgments arising on AFI 2002 report vis-à-vis MBR March, 2003 report, MBR December, 2002 vis-à-vis AFI 2003 report. The Council notes that as per the Disciplinary Committee, an auditor is required to assess the then circumstances independently so that the financial statements comply with the financial reporting requirements and that the financial statements give true & fair view of the financial results and positions. In the extant case, the concept of "true & fair" had also changed with the circumstances being then faced by the entity, when audit was being conducted. Considering the fact that MBR had twice reviewed the classification of 36 borrowers accounts of the bank for 31st March, 2002 and 31st December, 2002 had itself indicated that the matter required their special attention and risk involved in such assessment must have been considered by the Respondents. The Respondents cannot escape from their responsibility of being auditor of e-GTB by saying that the Special Auditor and/or the PIO had different opinion. The Council notes that if the Respondents have failed to produce before the Disciplinary Committee the key evidences based on which the classification were assessed, the related charges have accordingly been dealt with by the Committee. Even if there was difference in opinion of MBR vis-à-vis AFI, the Respondents were required to independently assess the classification and justify their assessment before the Committee. In case if they failed to justify the same, the charges have been accordingly been dealt with.

vi) The Council notes that in order to justify their assessment, the Respondents have brought on records RBI's letter dated 9th May, 2003 and internal circular dated 30th June, 2001 issued for the purpose of guiding inspecting officers of RBI with respect to financial inspection. As per the Committee, an auditor is required to carry out an independent assessment of the evidences available with him considering the requirements of various accounting standards, statements on auditing then applicable. The contentions of classifying various loan / investment accounts based on directions given by RBI to bank or inspector is not acceptable. An auditor is required to take an independent view on the facts rather than being led by directions of RBI to others and not to auditors.

vii) As regards other circulars / directions of RBI regarding classification of assets and provisioning requirements thereof, it is noted that all the charges made against the Respondents have been considered in view of the same. It is noted that in extant case there are departures from IRAC norms, the recoveries subsequent to balance sheet date have been considered in order to improve the quality / categorization of

assets though circular dated 10th February, 2003 states to only upgrade those loan accounts in cases where the arrears of interest and principles due as on the Balance Sheet are paid by the borrowers in entirety and not partially. Hence, adoption of such methodology of classification is against the said RBI circular.

viii) The Council notes that as per the Committee, there were cases of restructuring and rescheduling but the Respondents omit to consider such circumstances and classifying the loan accounts accordingly. If the accumulated amount of loan wherein non-compliance were observed and the reported divergence is considered, it involves **a divergence of Rs.308 crore approximately** in provision which directly impacts the figures of losses reported in profit & loss statement. Considering the materiality of the matter, the auditor should have considered to report it in the audit report by way of qualification and in case if he was not able to obtain sufficient / appropriate evidences, as often claimed by the Respondents, he should have made a disclaimer rather than giving the opinion that financials give true & fair view except a qualifications stated in his report. Such expression of opinion was against the then applicable standard on auditing "*Statement on Qualification in Auditor's Reports*"

13. The Council notes that the Disciplinary Committee has given its observations after considering the circumstances prevailing at the time of audit and the documents required for verifying the accounts for classification. The Committee has also considered the requirements of various accounting standards and auditing standards applicable at that time under which the Respondent was required to report on the true & fair view of the bank. It is noted that out of 83 charges alleged, the Disciplinary Committee has found the Respondents guilty in only 27 charges. Hence, the Council is of the view that it cannot be stated that Disciplinary Committee has not applied its mind while concluding the report. Apart from that the Council also notes that the Disciplinary Committee has provided a reasonable opportunity to both the Respondents to present their case and make submissions on merits of the case.

13.1 The Council notes that Respondents have also raised a question on jurisdiction of the ICAI to initiate the case on the basis of newspapers reports. As per the Respondents, enquiry could be initiated only on receipt of either a complaint or information. It is noted that similar question was raised before Delhi High Court in LPA No. 396/2010 dated 30th September, 2011 in ICAI Vs. Ramakrishna by another Respondent in GTB case who was the statutory auditor of financial year 2000-01 wherein the Honorable Court observed as follows ↴

"No doubt Section 21, both unamended and post amendment, refers to information and complaint but it would be incorrect to hold that the legislature wanted to make a distinction between complaint or information cases in Section 21D of the CA Act, 1949. Such distinction may be relevant and material as in the case of a complaint there is a complainant, a third party who wishes to prosecute and has an interest, whereas in the case of information the action may be suo motu or information may be provided by the third party who does not want to, for various reasons, file a formal complaint; but the said distinction is not relevant for Section 21D of the CA Act, 1949. In view of this difference between a complaint and information case, some specific procedure or requirement have been prescribed for complaint cases. In case of information, there is greater flexibility and latitude. Other than this, there cannot be any distinction between information which is made basis of disciplinary proceedings or enquiry and a complaint case. The object and purpose, both in an information case and in a complaint case, is to find out and enquire into the allegations, of professional or other misconduct. This is the purpose and the primary aim of the proceedings (Emphasis supplied)".

From the above, it is noted that even the Hon'ble Delhi High Court recognizes the fact that suo motu action can be taken by the Institute.

13.3 Attention was drawn to the order of the Appellate Authority in the matter of P. Siva Prasad v. Institute of Chartered Accountants of India Appeal No. 1/ICAI/2012 and Appeal No. 2/ICAI/2012 wherein similar plea regarding initiation of action based on newspapers in the case of Satyam Computers Limited was rejected. The following is extracted from the order of the Appellate Authority.

"44. ...the proceedings were initiated against the appellant without jurisdiction. The alleged information which formed the basis of enquiry was not "information" within the meaning of the Act and Rule-7. The element of information was missing and the Disciplinary Committee wrongly relied on Section-22 for expanding scope of information. It was submitted that the Directorate can invoke section 22 only upon receipt of information or a complaint. The Director (Discipline) does not enjoy a power to begin an enquiry suo moto. It is further submitted that Supreme Court has held newspaper reports were grossly hearsay and therefore inadmissible evidence.

45. Section 21 (2) of the Chartered Accountant Act, 1949 reads as under:-

"On receipt of any information or complaint along with the prescribed fee, the Director (Discipline) shall arrive at a prima facie opinion on the occurrence of the alleged misconduct".

It is apparent that Director (Discipline) has to act when it receives a complaint along with prescribed fee or it receives an information. Section 21 of the Act prescribe that the Council has a duty to establish disciplinary directorate headed by

a Director (Discipline) and having other employees for making investigations in respect of any information or complaint received by it (in respect of professional misconduct).

46. *The whole Disciplinary Directorate consisting of Director (Discipline) and employees working under him, Board of Discipline and Disciplinary Committee of the Institute are meant to take action in respect of professional misconduct of the Members. This professional misconduct may be brought to the notice of Director (Discipline) either by a complainant or the Director (Discipline) may receive information about the professional misconduct through any other source. Sources of information can be many, including a news report. News items appearing in print media, electronic media or internet media may be either truthful or may be altogether false. Director (Discipline) of the Institute cannot refuse to act on information about professional misconduct of a member, which comes to its notice through media, on the ground that every media report is merely hearsay and therefore cannot be acted upon. The primary role of Director (Discipline) in such a case would be to find out the truthfulness of the information and once Director (Discipline) comes to conclusion that the information which came to it through media was truthful, it has a duty to act on such information. The Director (Discipline) can refuse to act on false information. However, if the information has substance and is not false information, then the Director (Discipline) has to act on such information. It is not necessary that there has to be an informant to invoke Section 21 and that the Director (Discipline) cannot suo moto take action after coming to know of a serious professional mis-conduct of a CA through news report or media.The Director (Discipline) has to send its prima facie opinion even in respect of information received through media to the Board of Discipline or the Disciplinary Committee as the case may be. The action on the basis of information includes and means the information received from any source, including media. In the present case, the information of the letter written by Mr. Raju to the Members of the Board of Satyam had appeared in almost all newspapers and all channels of television in India as well as in all important media of foreign country. It would be travesty of justice to say that Director (Discipline) should have kept its hands off because there was no informant in this case (Emphasis supplied)."*

It is also necessary to note that the proceedings initiated in the light of the 'satyam' scam was challenged several times in the Hon'ble High Court in writ proceedings and the Court noticed that the proceedings have been initiated on basis of newspaper reports but did not deem it necessary to interdict proceedings on this account.

13.4 It will be relevant to note here that the Hon'ble Supreme Court in Union of India vs Kamalakshi Finance Corporation (AIR) 1992 SC 711 has observed as under :

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*"It cannot be too vehemently emphasized that it is of utmost importance that, in disposing of the quasi-judicial issues before them revenue officers are bound by the decisions of the appellate authorities; The order of the Appellate Collector is binding on the Assistant Collectors working within his jurisdiction and the order of the Tribunal is binding upon the Assistant Collectors and the Appellate Collectors who function under the jurisdiction of the Tribunal. **The principles of judicial discipline require the orders of the higher appellate authorities should be followed unreservedly by the subordinate authorities (Emphasis supplied).**"*

14. It is also noted that the Respondents have been held guilty only in 27 charges against total 83 charges leveled against them. On review of detailed DC findings against each charge with proper emphasise on applicable RBI Circulars, it is noted that DC has reached to a logical conclusion after application of mind.

14.1. While the Council agrees with the broad findings of the Disciplinary Committee, it has also evaluated independently each charge in view of the Respondents submissions.

15. Thereafter, the Council took up the charges wherein the Respondents were held guilty by the Disciplinary Committee. The Council after examining the matter in detail noted the reasoning / arguments of the Disciplinary Committee vis-à-vis submissions of the Respondents on record and accordingly, submit its findings as under:-

15.1 - Account No. 1.1-III.L.1.1

(Rs. In Crore)

	Bal. as on 31.03.20 03	Classificatio n as per auditor	Classificati on as per PIO	Provision by Bank	Provision as per PIO
III.L.1.1	25.01	Sub-Std.	Loss	2.51	122.40 (consolidated provision for account no.III.L.1.1,1.2 and 1.3)

a) **The charge (As stated by the PIO):**

"The facilities sanctioned were diverted to the Group concerns of Stockbroker.... In March 2002, the bank had allowed extension of time till December 2002 without any detailed analysis/concrete evidence of repayment capacity. Considering the overdue/recalled loan from August 2001 and in the absence of any securities, the advance was classified as a loss asset. **(Refer to page 1 of AFI Report as on 31.3.2003)"**

b) **Clarifications before Disciplinary Committee**

The Respondents submitted that the outstanding were fully secured. The account has been classified as sub-standard since the interest for the quarter ended September 2002 was overdue by more than 180 days as on March 31, 2003 as per IRAC norms then prevailing period. Further, as per AFI 2002 and Special Auditor (MBR), the accounts have been classified as Sub-standard assets as on March, 31, 2002 and December, 31, 2002 and RBI had vide letter dated May, 9, 2003 advised the bank to adhere to the classification of MBR. The PIO has not recognized the value of security and treated the accounts as loss assets.

c) **Findings of the Disciplinary Committee**

i) It is noted that the allegation against the Respondents is that the account was overdue/recalled loan from August 2001 and in the absence of any securities, the advance should have been classified as a loss asset instead of being classified as sub-standard asset. However, as per the Respondent, the outstanding was fully secured **(Page no.204)**. It was only interest for the quarter ended September 2002 which was overdue by more than 180 days as on March 31, 2003, hence, classified as **sub-standard**. Moreover, as per AFI 2002 and Special Auditor (MBR) **(Page no.210)** March, 31, 2002 and December, 31, 2002 reports, the account was recommended to be classified as Sub-standards asset and that the RBI had vide its letter dated May, 9, 2003 advised the bank to adhere to the classification of MBR. As per the Respondent, the PIO had not recognized the value of security **(Page no.1046)** and therefore treated the accounts as loss assets.

ii) It is noted from MBR Report Dec 2002 **(Pg 49)** which states that the Company enjoyed a short term loan of Rs.37 crores. MBR report further states that *"We also suggest a very close monitoring of this account as the financials of this account are fast deteriorating, the account needs a review as on 31.03.03 after considering the realizable value of securities."* It is viewed that such statement indicates concerns about loss in value of securities. It is noted that the Respondents have given the copy of provisional calculation sheet **(Page no.206 of Volume I)** as per which, 65 lac shares were held as security common to two accounts and Rs. 13 crore was considered as value of security held against the said loan accounts. This value was considered based on valuation reports **(Page 204 and 205)** and this report contains certain disclaimer viz. the valuer had not conducted review of business plan, he was not in a position to analyze projections, not got opportunity to discuss past performance, business plan and current operations. The Borrower Company was referred to BIFR, there were severe financial difficulties. It is noted that the Respondents on examination / cross examination have submitted that they had independently assessed the valuation of securities in view of explanation then given 8)

by the management of the Bank. However, neither the Respondents were able to provide those explanations given by the management nor able to provide the assessment then done by them to conclude that loan accounts were then fully secured.

iii) It was viewed that if the net worth of the Borrower Company was eroded then from investor's point of view (i.e. bank in extant case), book value was more appropriate which was to be considered by the Respondents in view of facts given by them in their written statements (**Pg 1046 of Vol 5**). As per document provided by the Respondents, shares of ABCL Corporation Ltd were held as security against the loan account. The intrinsic value of which was Rs.0.55/- per share as on 30th September, 2001 (**Page no.1046 of Vol 5**). Considering the fact that 50% of the stated value of 65 lakh shares, if considered against the outstanding, then the stated value is less than 10% of the outstanding. Hence, classification done was not in line with the requirements of then applicable IRAC norms.

iv) Accordingly, the Respondents are guilty of professional misconduct falling within the meaning of Clauses (7), (8) and (9) of Part I of Second Schedule to the Chartered Accountants Act, 1949 with respect to this charge.

d) Submissions of the Respondent before the Council

The Respondent stated that the following final submissions made to DC on 23rd April, 2018 (pages 61-62) had not been considered by the Committee:-

(i) Interest was outstanding for the quarter June 2002. Accordingly it is NPA – sub-standard from December, 2002 and continues to be sub-standard as at March 31, 2003 as per IRAC Norms.

(ii) MBR has classified the account as sub-standard as at March and December 31, 2002, accepting the value of security as per E&Y Report. The Bank has also adhered to the same classification as there were no adverse developments.

(iii) The allegation of AFI 2003 that the account is not secured is incorrect. As per the information made available by the bank the bank is holding pledge of 65 lac Equity Shares Valued at Rs.26 Crores as common security for this account with another borrower account in the group at 50:50. Accordingly the outstanding is secured for Rs.13 Crores which is more than 50% of the outstanding and is eligible to be classified as sub-standard as per IRAC norms.

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(iv) The pledged shares had been valued in January 2003 by Ernst & Young a reputed firm of Chartered Accountants. Based on the valuation the value per share is assessed at Rs.38.75 (Refer Page 204 of Volume 1) (Annexure 7, Page 173-179). While accepting the E&Y valuation, PW has made an internal assessment by the valuation team to ensure that they are not merely accepting the external valuation provided by the Bank.

(v) As per the PW assessment the value per share works out to Rs. 42.07 as per approved valuation methods viz. a) Discounted Cash flow Method b) Comparable Multiple Method and c) Net asset Value Method after taking into consideration various limiting factors for the valuation. Accordingly the auditors are justified in accepting the valuation considered by the Bank and there is no reason why the AFI 2003 did not consider any of these documents.(Refer Annexure 8, Page 180-181)

(vi) Accordingly, the classification of Sub-standard by the bank as at March 31, 2003 was appropriate.

As per the Respondents, the following are additional submissions to the Council:-

(vii) It is submitted that the allegation of PIO of RBI that the account was overdue/ recalled is not justified. As stated in Page 202 of Volume 1 (Refer Annexure 7, Page173-179) the earliest date of overdue of interest is of September 2002. Accordingly the account is classified as substandard as on 31st March 2003 as per Para 4.1.1 read with Para 4.2.7 and 5.4 of IRAC norms of 4th July 2002 (Refer Annexure). The Loan was secured by pledge of shares valued at Rs.13 Crores as per valuation report (Refer Page 206 of Volume 1 (Refer Annexure 7, Page 173-179). Hence classification of account directly as a loss assets since the value of security is less than 10% in terms of Para 4.2.7 is not justified.

viii) It is submitted that due to arrears of interest the account is already sub - standard and is secured by the pledge of shares valued at Rs.13 Crores (51.98% of the loan) as per valuation report. The IRAC norms by itself provide for further downgrading of account on time basis which take care of the impact of deterioration of account. Accordingly the observation of the Committee is not justified. 9

ix) It is submitted that to substantiate DC findings in para (ii) refers to comments by E&Y in valuation Report referred on page 205 of Volume 1 stated that the entity was under severe financial difficulties until 1999 and a revival scheme was prepared and has now turned around in 2001 and 2002. The company made a PAT of Rs. 581 lakhs in FY 2001 and Rs.2857 lakhs in FY 2002 as against losses in FY 97, 98 and 99. Refer Page24 of the Valuation Report (Refer Annexure 9, Page 182-219). The net worth of the company substantially increased in FY 2001 and 2002 at Rs.1,877 lakhs and Rs.3093 lakhs respectively as per page 23 of the valuation report (Refer Annexure 9, Page 182-219) as against Rs.526 lakhs in 1999. Accordingly at the time of valuation the financial condition of the company is sound to justify the worth of the share as per valuation report.

x) It is submitted that the Management of the bank provided valuation report by E & Y of January 2003. As stated in final submission to DC on 23rd April 2018 the PW valuation team had assessed the value per share at Rs.42.07 as per approved valuation methods viz. a) Discounted Cash flow Method b) Comparable Multiple Method and c) Net asset Value Method after taking into consideration various limiting factors for the valuation. Accordingly the auditors are justified in accepting the valuation considered by the Bank and there is no reason why the AFI 2003 did not consider any of these documents.(Refer Annexure 7, Page 173-179) Accordingly auditors had exercised their professional judgment in accepting the valuation of security for classification and provisioning.

xi) Further the valuation had been done in January, 2003, MBR report has been furnished by RBI on 9th May,2003. The is neither significant time gap nor any material adverse developments in the company referred for valuation when audit report issued on 30th September,2003 for ignoring or rejecting the valuation of the said security.

xii) The AFI 2003 has not quantified the Provision assessed borrower wise as required by Para 4.2.5 of the IRAC norms (Refer Annexure 6, Page 144-172). The Disciplinary Committee did not raise objection as regards borrower provision not been given by PIO, which is a mandatory requirement.

Findings of the Council on the above charge:-

i) It is observed that the Respondents have broadly repeated their submissions as made before the Disciplinary Committee. The Respondents further stated that the Company was in loss till 1999 thereafter, turned into profit in the financial year

ended 2001 and 2002. The Respondents argued to have relied upon valuation report of Jan 2003. After perusing the valuation report vis-à-vis findings of the MBR which states that the accounts needs to be reviewed as on 31.03.2003 after considering the realizable value of security, the Council asked the Counsel for the Respondents to state the relevance of methodology being used by it considering various disclaimers given in the report. The Council also drew attention of the Counsel to the fact that the Respondents themselves produced document on record wherein it is stated that intrinsic value of such shares was only Rs.0.55 per share and it is also mentioning that the borrower was continuously defaulting in payment of short term loan (**Page 1046 of Vol-5**). Accordingly, the Council sought the Counsel's submissions with respect to the same. The Counsel, however, failed to provide any submissions on the same.

ii) Accordingly, considering the disclaimers made in valuation report with respect to forecasted figures, recent annual report not available, realization value of sundry debtors, loan & advances subject to confirmation and auditors' qualifying the contingent liabilities, and the fact that that the stated value of share had been determined using only Discounted Cash Flow Method (DCF) and Comparable Multiples Method (CMM) and that the Intrinsic Value Method was completely ignored, the Council is of the view that in view of circumstances prevailing at the time of audit w.r.t. classification of account involved, the Respondents were required to exercise their professional judgment before relying on valuation report with said disclaimers and should have assessed as to whether methodology adopted therein gave fair valuation of security upon comparing net worth of the Company of Rs.296.23 lakh with outstanding loan amount of Rs.2500 lakh. It is also noted the Respondent have failed to provide details of PWinternal assessment as argued by them.

iii) In view of the above facts, the Council agreed with the findings of the Disciplinary Committee.

15.2 Account No. 6 – III.L.6

(Rs. In crore)

	Bal. as on 31.03.2003	Classification as per auditor	Classificatio n as per PIO	Provision by Bank	Provision as per PIO
III.L.6	55.80	Sub-Std.	D1	5.58	28.64

a) The charge (As stated by the PIO):

On account.....restructuring of the account was done after the account had turned NPA. The account was not backed by 100% tangible security as required for

restructuring of advances under IRAC norms. However, the Company was a trading concern. **(Refer to page 5 of AFI Report as on 31.3.2003)**

b) Clarifications before the Disciplinary Committee

The Respondent stated that at the time of completion of audit on September 30, 2003, interest for the quarter ended September 30, 2002 has not been serviced and the account was fully secured as the value of security was over 50% and the overdue interest has not exceeded the period of 18th Months as required and as such classified as sub standard while finalizing the accounts on September 30, 2003. Further, as per AFI 2002 and Special Auditor report (MBR), the account has been classified as Sub- Standards assets as March, 31, 2002 and December, 31, 2002 and RBI had vide letter dated May, 9, 2003 advised the bank to adhere to the classification of MBR.

c) Findings of the Disciplinary Committee:

i) It was noted that whereas the charge made against the Respondent states that it was a case of restructured account of a trading concern which was originally turned NPA in September, 2001 due to continuous overdue since March 2001. It is further stated that while restructuring, the account was also not fully secured. Hence, as per PIO the account should have been classified as D1 instead of Sub-standard. The Respondents have submitted that as per Special Auditor reports (MBR) for March, 31, 2002 and December, 31, 2002, the accounts were recommended to be classified as Sub-standard assets and that the RBI had vide its letter dated May, 9, 2003 advised the bank to adhere to the classification of MBR. Since there were no adverse developments till March 31, 2003 the recommendation of MBR was followed. Moreover, in the extant case, there was security of more than 50% of outstanding balance and that the overdue interest did not exceed the period of 18th Months, hence classified as sub-standard.

ii) In respect of above account, firstly, it was noted that the borrower entity was a stock broking company dealing in trading of shares and securities. Accordingly, it is

viewed that the relaxations in respect of restructured account is not available to it as envisaged in para 4.2.13(v)(b) of the applicable IRAC norms which states as under:-

"As trading involves only buying and selling of commodities and the problems associated with manufacturing units such as bottleneck in commercial production, time and cost escalation etc. are not applicable to them, these guidelines (upgradation of restructured accounts after the specified period i.e. period of one year after the date when first payment of interest or of principal, whichever is earlier, falls due, subject to satisfactory performance during the period) one year of restructuring should not be applied to restructuring / rescheduling of credit facilities extended to traders"

Hence, in the extant case, the classification will be guided by the facts of overdue period and security available with respect to original sanctioned loans/ facilities. It is further noted that date of sanction of original loan was 28th Feb 2001 and such facilities were valid upto March 31, 2001, the account was restructured in Sept 2002.

iii) As regards performance of the accounts during the period under audit, it is noted that MBR report for year ended 31st March, 2002 (Page 56, MBR March, 2002), in context of developments in the account after 01.04.2002 states that this overdraft account is restructured and the liability of Rs.55.80 Cr was transferred to the Term Loan account (in Sept 2002) which is repayable in 84 monthly installments of Rs.1 crore each. The Borrower Company was not honoring its commitments. There was only one credit of Rs.1.17 crore and liability in term loan account as on December, 31, 2002 was Rs.56.82 crore. So, it is viewed that in case of non-performance of accounts of a trading concern, period of overdue will be considered since the date when it was originally due i.e. March 2001. It is viewed that it is a case of continuous overdue since March, 2001 and in Sept 2001 it turned NPA and hence should have been downgraded as D1 on March 2003

which the Respondents failed to point out in his audit report and consequently resulted in lower provisions in the books of the bank.

- iv) **Accordingly, the Respondents are guilty of professional misconduct falling within the meaning of Clauses (6), (7), (8) and (9) of Part I of Second Schedule to the Chartered Accountants Act, 1949 with respect to this charge.**

d) Submissions of the Respondents before the Council

The Respondent stated that the following final submissions made to DC on 23rd April, 2018 (pages 61-62) had not been considered by the Committee

(i) Tangible security in the form of pledged shares was available for this account which was completely ignored by AFI Report 2003;

(ii) As on 31st March 2003 the value of the security by pledged shares (listed and unlisted) was Rs.37.40 crores against the outstanding exposure of Rs.55.80 crores. Of which value of listed and quoted shares valued at Rs.29.16 crores against the total outstanding. The total value of security available is 67.02% and quoted value of security is 52.26% against the loan, which in either case far in excess of 50% of the outstanding balance justifying the classification of the account as Sub-Standard asset. (Refer Pages 213 and 220 Of volume 1)(Refer Annexure 10, Page 220-227).

(iii) It is submitted that even as on 30th September 2003 (date of signing of Audit Report), the value of quoted pledged shares was Rs.29.93 crores and unquoted shares Valued at Rs.8.20 crores (Refer Page1047 of Volume 6) (Annexure 11, Page 228).

(iv) Therefore, the classification of the account by AFI Report 2003 as Doubtful-1 was incorrect. **In terms of Clause 4.2.7 of the IRAC Norms, the account can be classified as Doubtful-1 only if there is erosion in the value of security below 50% of the outstanding in the borrower account. However, as stated in Para (iii) since value of security is more than 50%, the allegation of AFI 2003 is , the allegation of AFI 2003 is not justified and is contrary to the IRAC norms as detailed herewith:**

As per IRAC norms a sub-standard account required to be downgraded to D-1 if:

- The value of the security falls short of 50% or

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- The overdue interest/principal continues to be outstanding for a period exceeding 18 months.

None of the events in the instant case took place warranting further down gradation of the account as at March 31, 2003 from sub-standard to D-1.

(v) It is submitted that this account was classified by MBR on March 31 and December 31, 2002 as sub-standard considering the value of security above 50%. However, AFI Report 2003 ignored the directions issued by RBI to Bank vide letter dated in 9th May 2003 to follow classification as per the MBR Report.

(vi) Also the observation of PIO that the account was restructured after the acquiring NPA status was not tenable. Also it is submitted that as per Para 4.2.13 (iii) of RBI Master Circular dated July 4, 2002 a sub-standard account can be restructured.

As per the Respondents, the following are additional submissions to the Council:-

vii) It is submitted that the bank has sanctioned the term loan of Rs.56 Crores on 22nd April 2002 refer page 219 of volume 1 (Refer Annexure 10, Page 220-227) The term loan has been utilized to close the Overdraft account. The finding of the DC that the account was continuous overdue refers to the overdraft account which has been closed in September 2002. Interest on term loan for the quarter ended September 2002 was due which resulted in classification of account as sub-standard. The account is secured by pledge of listed and unlisted shares. (Refer Annexure 10 Page).

viii) As stated in Para 1 there is no reschedulement and restructuring of account done as per Para 4.2.13(v)(b) of IRAC norms. The bank has disbursed term loan and the proceeds were partly used to close the overdraft account did not fall within the purview of restructuring norms.

ix) Since the overdraft account which was continuously irregular has been closed in September 2002 and the arrears of interest on term loan was from the quarter ended September 2002 which resulted in the basis for classification of NPA As stated earlier, the account **was not restructured but the overdraft account was closed out of term loan proceeds**. As stated in final submission to DC on 23rd April 2018, it is submitted that on 31st March 2003 the value of the security by pledged shares (listed and unlisted) was Rs.37.40 crores against the

outstanding exposure of Rs.55.80 crores. Of which value of listed and quoted shares valued at Rs.29.16 crores against the total outstanding. The total value of security available is 67.02% and quoted value of security is 52.26% against the loan, which in either case far in excess of 50% of the outstanding balance justifying the classification of the account as Sub-Standard asset. (Refer Pages 213 and 220 of volume 1 and Annexure)

x) It is submitted that the period of overdue has to be considered of the existing loan and not the loan which was granted in earlier years and closed during the year. Hence the overdue period considered by Hon'ble DC on the overdraft account from 2001 is not appropriate as the accounts was closed in 2002.

Findings of the Council on the above charge:-

i) The Council noted that the Respondents' contention was that it was new term loan which was used to repay the overdue amount of overdraft sanctioned on 22nd April, 2002 and hence, the period of overdue was considered with respect to the existing loan and not the loan which was granted in earlier years.

ii) The Council also noted that MBR in its December, 2002 specifically reported that the overdraft account was restructured in September, 2002 and a term loan account was opened. The term loan account was debited with Rs.55.80 crores on 29.09.2002 and the same was credited to overdraft account to bring the accounts into the credit. Therefore, the Respondents' submissions that it was a fresh loan and not restructured loan is not acceptable. Accordingly, the Council agreed with the observations of the Disciplinary Committee that relaxations in respect of restructured accounts was not available in the extant case being a trading concern.

iii) Further, it is also noted that the Respondents were merely arguing their view point to defend on the matter rather than corroborating the same with bringing on record the documents to prove the same. It is viewed that classification of an asset as sub-standard or doubtful primarily depends upon period of non-performance of account rather than security available against the said account. Incidentally, it is also noted from the details of shares held as security against the loan (Rs.55.80 cr.) that it includes certain shares which were not being actively traded at that time and volume of shares being traded was also less. Hence, in such situations, it would have been inappropriate to assume that the bank would have been able to fetch the last traded price by selling the shares was also not appropriate. It also raises question on adequacy of security available as being argued by the Respondents.

iv) Hence, in view of the above facts, the Council agreed with the findings of the Disciplinary Committee that the account should have been downgraded to D1 on March, 2003 which the Respondent failed to point out in his audit report.

15.3 Account No. 14 – III.L.14

(Rs. in cr.)

	Bal. as on 31.03.2003	Classification as per auditor	Classification as per PIO	Provision by Bank	Provision as per PIO
<u>III.L.14</u>	25.33	Standard	D1	0	15.53

a) Charge (As stated by the PIO)

The account was classified as NPA by the PIO during the last AFI as on March 31, 2002 and confirmed by the Special Statutory Auditor (MBR). There had been no positive development during the year. The project was yet to commence in full scale in the absence of approval from municipal authorities. The security available in the account was only 50% and hence it had been classified as Doubtful (D-I) as on March 31, 2003. **(refer to page 7 of AFI Report as on 31.3.2003).**

b) Clarifications before the Disciplinary Committee

The Respondents stated that as per Special Auditor (MBR) **(page no.237)**, the account has been classified as Sub-Standard as on 31.03.2002 and 31.12.2002. The contention of the PIO that that there was no positive development is incorrect as there have been payments by the borrowers resulting into the position where there was no overdue for more than 180 days. The RBI Circular dated 10.02.2003 directs the bank to reclassify by upgrading the account if there are payments **(page no.246)**. Further, Banks was holding by way of equitable mortgage of land of the company valued at 40.64 crore and hence the account was fully secured and hence classification of D1 is not justified.

c) Findings of the Disciplinary Committee:

i) It was noted that account under question relates to NCDs that were originally due for redemption in 8 quarterly installments commencing from June 2001 to March 2003. The Company failed to honour this commitment and account was rescheduled in July 2001 **(Pg 66 of MBR Mar 2002)**. Both MBR Reports of March 2002 and December 2002 recommended to classify the said loan account as sub-standard but in the extant case, the bank has classified the account as Standard. The Committee noted the submissions of the Respondent that "there have been payments by the borrowers resulting into the position where there was

no overdue for more than 180 days" (**Pg 236, Vol I**). However, they could not produce evidences viz copy of ledger accounts, to support their submissions for the same. Hence, the basis on which the Respondents have assessed the performance of the account as satisfactory is not clear.

ii) It is also noted from the office note submitted to Managing Director by the bank Asset Recovery Management Group (**Pg 238, Vol I**) that while providing the reasons for classifying the said account as NPA by MBR viz-a-viz being classified as Standard by the Bank, it is observed that no such information regarding payments were given in the said note. Further, it was observed that the same note also states that a provision of NPV which was due while restructuring NCCD on 28/07/2001 for bringing coupon rate down from 18% to 16% was made in Sept 2002. In other words, the provision required to be made against sacrifice as required in para 4.2.13(ii)(b) of applicable IRAC norms, were not made at the time of restructuring and this information was available with the Respondents. It is viewed that in case of restructuring either before or after the commencement of production but before the asset has been classified as sub-standard, it can continue to be classified as Standard subject to the condition that the amount of sacrifice, if any, in the element of interest measured in present value terms had been provided for. In the absence of such provisioning, the account was required to be classified as sub-standard. It is noted that similar view has been opined in MBR Report for the period ended 31st March, 2002 (**Pg. 67**). Hence, classification of said loan account as Standard is not as per then applicable IRAC norms.

iii) The Committee further noted that certain documents including GTB CAD Cell report dated 19th April, 2003 were brought on record by the Respondents with respect to this account (**Pg 1055-1056, Book 5**). On perusal of the recommendations as mentioned in point no.9 of the said report (**Pg 1055**) which states that "*after taking into fact the present position of the projects, the economics under the different scenarios, the past experience, the regulatory issues involved, it appears that the bank's position would be strengthened if the bank takes over the projects and completes the same through reputed builders despite inhibiting factors, legal issues and cost involved on following terms:.....*", it is viewed that when the bank was contemplating to take over the projects for realization from the said account then classification of such account as standard by the bank was not justified and the Respondent as statutory auditor failed to point out the same in his audit report. Accordingly, it was viewed that the Respondents are guilty of professional misconduct for this account.

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- iv) Accordingly, the Respondents are guilty of professional misconduct falling within the meaning of Clauses (7), (8) and (9) of Part I of Second Schedule to the Chartered Accountants Act, 1949 with respect to this charge.

d) Submissions of the Respondents before the Council:-

The Respondent stated that the following final submissions made to DC on 23rd April, 2018 (pages 53-54) had not been considered by the Committee:

(i) Although the MBR Report had classified the account as Sub-Standard, subsequently, as per the bank's records made available to the Respondents, the bank had classified the account as Standard asset as there were no over dues in the account for more than 180 days. There were recoveries in the account and other positive developments.

(ii) The AFI 2003 ignored recoveries made in the even though the same has been reported by MBR. The contention that there had been no positive development during the year is factually incorrect. There have been payments by the borrowers resulting into the position where there are no overdue for more than 180 days.

(iii) Under Clause 4.2.13 of the IRAC Norms, a restructuring of the interest element at the stage prior to commencement of commercial production will not cause an asset to be downgraded, subject to the amount of sacrifice in the element of interest is either written off or provision is made to the extent of the sacrifice involved.

(iv) The account has been restructured on 28th July 2001 by reducing the rate of interest from 18% to 16% retrospectively from April, 2001. Accordingly the sacrifice amount of interest from April, 2001 to June, 2002 of Rs.180.39 lakhs has been fully provided in July-Sept, 2002 quarter. As per IRAC detailed above the assets qualifies to be classified as standard.

(v) The value of security available is Rs.46.66 crores against exposure of Rs.25.33 crores based on average value of 3 independent valuation reports by: D.R.Shetty Rs.40.64 crores Kanti Karamsey Rs.49.11 crores Dalal & Joshi Rs.50.22 crores. The average of three values' was considered at Rs.46.66 crores [*Refer pages 1056 of Volume 5 read with Page 238 of volume I*]. (Refer annexure 11 Page 229) Accordingly the accounts have been classified as standard by bank.

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As per the Respondents, the following are additional submissions to the Council:-

vi) It is submitted that the bank has recovered Rs.0.60 Lakhs during the year against the part of the term loan disbursed. This has been verified during the course of the audit and based on checking notes and documents available in the work papers file 15 years back, this submission was made. The interest on the term loan is not material to take extract of the ledger account to substantiate the recovery. Further there are no specific mandatory guidelines or norms issued by ICAI, requiring to take on audit file extract of ledger account verified. Further the MBR report also stated that Rs.0.60 Lakhs recovered against the interest debit of Rs.1.63 lakhs which is part of their work paper files.

vii) It is submitted that 2002-2003 was the first year of audit of PW & Co. While reviewing this account the respondents observed that sacrifice of interest on NCCDs from 18 % to 16 % with effect from 1st April 2001 have been provided at the time of restructuring of NCCD. Refer page no. 238 of Volume 1 (Refer Annexure 11a, Page 229-230) during the Financial Year 2001-2002. This information is not available to Respondents, as in 2001-2002 the respondents did not conduct the audit. Based on their observation of the past error, the sacrifice of interest for April 2001 to September 2002 has been made in compliance with Para 4.2.13(ii)(b) of IRAC norms during their audit period i.e 2002-2003 for which the previous auditor should be held guilty but not the Respondent.

viii) It is submitted that the finding of DC that bank is contemplating to take over the project due to economic legal and regulatory concerns is a matter of Management's future plan of probable options which are neither addressed to borrower nor crystalized at the time of completion of audit. The IRAC norms are primary based on the historical data and not on the unpredictable, unknown, undecided, unapproved management plans. Accordingly even if the project may not be completed the Tangible assets were available to the bank in the form of immovable property as on the Balance sheet date justifies the classification of the account as standard. It is premature for an auditor to classify account as NPA in spite of the account fully secured and there is no overdue interest. It is a matter of professional judgment and not gross negligence to found Respondents guilty of professional misconduct.

Findings of the Council on the above charge:-



i) The Council noted that the Respondent reiterated his submissions as made before the Committee. The Respondent argued that the overdue amount did not exceed for period of not more than 180 days. However, in this case the matter pertains to its classification based on provisions of IRAC norms as well as the circumstances prevailing in respect of recovery from account.

ii) Further to the Disciplinary Committee's observation made in para (c)(ii) above, it is noted that provisions against sacrifice of interest rate was not made at the time of restructuring was evident from the submissions of the Respondents itself that "*Based on their observation of past error, the sacrifice of interest for April, 2001 to September, 2002 has been made in compliance with para 4.2.13(ii) (b) of IRAC norms during their audit period i.e. 2002-03*". Hence, the aforesaid submissions clearly establish that restructuring was not done as per the requirement of IRAC norms and accordingly, credit facility should not have been classified as standard. The argument of the Respondent that they adopted corrected measure by making a provision for sacrifice made in his period of audit cannot be accepted as such relaxation is not available in IRAC norms.

iii) In view of above facts, the Council agreed with the findings of the Disciplinary Committee.

15.4 Account No. 15.3 – III.L.15.3

(Rs. in cr.)

	Bal. as on 31.03.2003	Classification as per auditor	Classificatio n as per PIO	Provision by Bank	Provision as per PIO
<u>III.L.15.3</u>	9.97	SubStandard	D1	0.99	1.99

a) Charge (As stated by the PIO):-

The Company had not paid interest aggregating to Rs.0.64 crore in respect of NCDs since September 30, 2001. The CC account was continuously irregular from April 1, 2001. The account had been classified as NPA as on September 30, 2001 and Doubtful (D-1) as on March 31, 2003. **(refer to page 8 of AFI Report as on 31.3.2003)**

b) Clarifications before the Disciplinary Committee

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i) The Respondents stated that AFI 2003 is silent as to exposure of all the group companies and is assumed to be standard asset as the same was not classified as Non-Performing Asset. The observation of the learned PIO that the interest on NCD in respect of III.L.15.3 has not been paid is not correct **(Page no.1060 details of NCD redeemed)**. NCDs were not outstanding as on March 31, 2003 as compared to the corresponding date of the previous year on account of recoveries. The observation of the learned PIO that the CC account was continuously irregular from April 01, 2001 is not correct. The bank held security by way of pari passu charge on current assets of Rs.11.54 Crores and pari passu charge on fixed assets of Rs.5.35 Crores. Interest for the quarter ended June 30, 2002 has not been serviced and the account has been classified as sub-classified as sub-standard on December 31, 2002 as per IRAC norms **(Page no.264,para 4.1)**.

ii) The Respondents further stated that as per AFI 2002 and Special Auditor report (MBR) **(Page no.262)**, the accounts has been classified as Sub-standards assets as March, 31, 2002 and December, 31, 2002 and RBI had vide letter dated May, 9, 2003 advised the bank to adhere to the classification of MBR.

c) Findings of the Disciplinary Committee:-

i) It is noted that the Respondents has taken the argument that the RBI had advised to adhere to classification done by MBR who has recommended to classify the same as Sub-Standard which was duly followed by them in the absence of any adverse development during the period subsequent to the MBR Dec 2002 Report. However, it is observed that firstly, RBI had advised the Bank to classify the accounts and provide as per the recommendation of MBR which were not strictly followed by the Bank as per the observations made in other accounts. Moreover, an auditor is required to independently assess the appropriateness and reasonableness of the work done by an expert. It is noted that the Respondents have reported about recoveries of Rs.13.65 Cr against interest and principal whereas the allegation made is of irregular account. It is noted that there is nothing produced on record to corroborate regular performance of the account. Moreover, it is noted from MBR report for the period ended March 2002 **(Refer Pg 73)** that Rs. 13.22 crore were paid in October 2002 to close two facilities and Rs. 0.31 crore was paid against interest on cash credit upto March 2002. It is noted that these amounts to 13.53 crore and that amount paid to close other facilities cannot be used to classify the existing facilities as on the balance sheet date i.e. 31st March 2003. In view of the above,

the Respondent has not exercised the due diligence and due care while forming his audit opinion and simply relied on the classification adopted by the MBR.

ii) Accordingly, the Respondents are guilty of professional misconduct falling within the meaning of Clauses (7), (8) and (9) of Part I of Second Schedule to the Chartered Accountants Act, 1949 with respect to this charge.

d) Submissions of the Respondents before the Council:-

i) It is submitted that letters from RBI to the bank are mandatory in nature and not mere advise. Noncompliance is viewed seriously by RBI. In fact MBR recommendations in their report is clear substitution of AFI 2002 by RBI. Hence it is mandatory for the bank to comply with such recommendations without fail. The Respondents had deposed before the DC that they had independently assessed the appropriateness and reasonableness of the issues referring to the work done by an expert. Accordingly it is not appropriate for the DC to make such comments.

ii) It is submitted that the Respondents had submitted on pages 1054 to 1056 of Volume 5 (Refer Annexure 12a, Page 233a) to collaborate regular performance of account. It is submitted that they had verified the records of the bank with regard to MBR Report particularly on page 73 of 88 that after 1.4.2002 the bank received Rs.415.79 lakhs and Rs.874.92 lakhs for closure of Demand Loan and NCDs respectively (Refer Annexure 12a, Page 233a). Further Rs.31 lakhs received and adjusted towards interest for the quarter ended March 31, 2002. Accordingly following interest was due for the quarter ended June 30, 2002 and it became NPA Sub-standard as of December 31, 2002 and continued to be Sub-standard as at March 31, 2003. Accordingly MBR classified the account as sub- standard as at December 31, 2002 and was found to be in order by respondents as regards to classification as at March 31st 2003.

Findings of the Council on the above charge:-

i) The Council noted that the Respondents reiterated their submissions as made before the Disciplinary Committee about recovering of Rs.13.22 crore and the same is also stated in Annexure 12A (Page 233a) as referred by the Respondents. It is noted that the Respondents have submitted to follow the classification as recommended by MBR. It is noted that when representative of MBR was examined by the Committee, he had stated that MBR had evaluated the accounts with reference to circumstances prevailing as on March, 2002 and December, 2002.

2002. However, the auditor was required to independently assess the then prevailing circumstances as on March, 31, 2003 in order to classify the accounts. Accordingly, the Council agreed with the observations of the Committee that neither RBI letter nor MBR Report mandates the Respondent to adopt the classification made by the MBR. The Respondents were required to assess the appropriateness and reasonableness of the work done by an expert. Further, amount claimed to have been paid by borrower was rather paid to close the facilities. Using the amounts paid against facilities closed during the year to classify the facilities existing as on the balance sheet date viz March 31, 2003 was also not correct.

ii) The Council, accordingly, agreed with the findings of the Disciplinary Committee.

15.5 Account No. 18 – III.L.18 (Rs. in cr.)

	Bal. as on 31.03.2003	Classification as per auditor	Classification as per PIO	Provision by Bank	Provision as per PIO
III.L.18	11.88	Standard	Sub-Standard	0	1.19

a) Charges (As stated by the PIO):-

The term loan installments/interest were outstanding for more than 180 days. The advance was rescheduled but the Company failed to repay even as per the terms of revised repayment schedule. On the strength of the report submitted by MBR that the security was available in the account and the company did not meet the terms & conditions of the restructuring terms, the present inspection retained the classification of the account as sub-standard as on March 31, 2003 (refer to page 9 of AFI Report as on 31.3.2003).

b) Clarifications before the Disciplinary Committee:-

i) The Respondents stated that as per Special Auditor report (MBR) (Page no.301), the accounts has been classified as Sub-standards assets as on March, 31, 2002 and December, 31, 2002 and RBI had vide letter dated May, 9, 2003 advised the bank to adhere to the classification of MBR. The bank has recovered Rs.5.28 crores till the completion of audit as a result of which there are no overdue interest and installment prior to January 2003. The overdue are for 90 days only (Page 302-304). Hence, the account has been classified as Standard Assets. Further, the upgradation of this account was in accordance with RBI circular dated February, 10, 2003 (Page no.310). The bank was holding a security by way of second pari passu charge on the fixed assets of the borrower Company valued at Rs.385.52 Crores.

c) Findings of the Disciplinary Committee:

i) It is noted that MBR in Dec 2002 report has stated that the Company was sanctioned short term loan of Rs.25 crores during January 2001 repayable in 9 monthly installments. Since the monthly principal repayments were not paid from May 2001 onwards, the Bank rescheduled the loan in January 2002 converting short term loan into medium term loan. It also mentioned about NOC being received from other banks for ceding second charge on subsidy receivables and fixed assets. Accordingly, MBR Report classified the account as sub-standard as on 31.03.2002 and continued the same as on 31.12.2002 (**MBR, Dec 2002, Page 193**).

ii) In the extant case, the Respondents are alleged to classify the same as the Standard asset as stating in their written submissions (**Pg 300 of Vol I**) that the bank "has recovered Rs.5.28 cr till completion of audit as a result there are no overdue interest and installments prior to Jan 2003. The overdue are for 90 days only. Hence the account was classified as Std asset" vide RBI circular dated Feb 10, 2003.

iii) It is noted that the abstract of ledger of said account has been produced on record by the Respondent (**Vol I – Pg 305-306**) which clearly exhibits that from April 2002 to Sept 2003 (before completion of audit) Rs.5.28 crores were received. It is further noted that out of Rs.5.28 crores, Rs.1.26 crores were received only in Sept 2003 which signifies for the purpose of classification of the loan account as on the balance sheet date, the amounts received after the balance sheet date have also been considered. It is viewed that there is no RBI Circular that permits to consider the amount received after March 31, 2003 to re-compute the period of overdues and to classify the asset as on March 2002. As regards RBI Circular dated Feb 10, 2003 (on Pg 310 of Vol 1), it is noted that it pertains to those loan accounts which are classified as NPAs but 'if arrears of interest and principal are paid by the borrower', it should be classified as Standard account. It is viewed that such Circular is applicable only when 'interest and principal' due as on balance sheet date are paid in entirety and not partially. Hence, the methodology adopted by the Respondents to consider the amounts received after the balance sheet date till the date of completion of audit for computing the overdue period to classify the asset is not acceptable.

iv. It is further noted that extant case is that of rescheduling of sub-standard loan account and IRAC norms specifically lays down the principles for upgradation of restructured accounts in para 4.2.13(iv) of DBOD No. BP.BC.1/21.04.048/2002-2003 dated 4th July 2002. It states that sub-standard accounts which have been restructured would be eligible to be upgraded only after the satisfactory performance of the restructured asset for a period of one year from the date when

its first payment of interest or principal falls due. However, the asset was not satisfactorily performing as evident from the ledger account. Accordingly, it was viewed that the Respondents are GUILTY of professional misconduct in extant case.

- v. **Accordingly, the Respondents are guilty of professional misconduct falling within the meaning of Clauses (7), (8) and (9) of Part I of Second Schedule to the Chartered Accountants Act, 1949 with respect to this charge.**

d) Submissions of the Respondents before the Council

i) It is submitted that the finding of the DC that any recoveries from NPA account post the balance sheet are not to be considered is not appropriate. It is submitted that the objective of IRAC norms of 4th July, 2002 in Para 1.2 Page 104 of charge sheet states that "The policy of income recognition should be objective and based on record of recovery rather than on any subjective considerations." This clearly permits the banks to boost recoveries in assessing NPAs while presenting financial statements. (Refer Prudential Norms attached to Charge Sheet of 5th December, 2006) (Refer Annexure 6 144-17).

ii) RBI internal circular No.DBS.CO.PP./11.01.005/2000-2001 of 30th June 2001 in Para 3 (v) a) it is clearly stated where the date of balance sheet is 31st March, "the Inspecting Officers should, therefore confine their judgment on developments in the borrower account up to a maximum period of one month from the date of balance sheet (or up to the date of signing in the case of banks which are in a position to prepare balance sheet earlier). However, recoveries of dues in part or full after April 30 may be given the benefit. (Refer Annexure 4 138-14). In the instant case the accounts were finalized in September, 2003 with prior approval of RBI for extension of time post 30th June 30 till 30th September, 2003. Pursuant to the aforesaid circular in the light of extension granted by RBI till 30th September, 2003, since recoveries may be given benefit, the bank has considered recoveries till 25th September, 2003 the date close to signing of balance sheet.

iii) Further the accounting policy of the bank also states that provision for NPAs are made after considering subsequent recoveries. As per Schedule XIX significant accounting policies - Para 2.1 reads.

"Advances are recognized as non performing based on prudential norms for income recognition, assets classification and provisioning issued by RBI from time

to time after considering subsequent recoveries, regularities / creation of securities including assets acquired in satisfaction of that's subsequent to Balance Sheet Date. The related interest on doubtful advances is not recognizing as income until received".

This accounting policy consistently followed by the bank for numbers of year and there is no change in accounting policies during auditing period. Further none of the regulators including RBI objected to this accounting policy of accounting for recoveries subsequent to balance sheet while forming a true and fair view of financial statements it is appropriate to consider events subsequent to balance sheet.

iv) The RBI letter of September 7, 2003 to the bank advised to consider recoveries in MBR reported accounts. The Management Representation letter of 30th September, 2003. Refer pages 854-855 and 867-868 of Volume 4 respectively. (Annexure 13 Page 234-241). As per Para 8.2 of Accounting Standard of 4 (AS-4) "Adjustments to assets and liability are required for events accruing after the Balance Sheet date that provide additional information materially affecting the determination of the amount relating to conditions existing at the Balance Sheet date. For example, an adjustment may be made for a loss on a trade receivables account which is confirmed by the insolvency of a customer which occurs after the Balance Sheet Date." (Refer page 99 of Charge Sheet) Save otherwise considering the finding of DC that there is no RBI circular to consider amounts received against NPAs after the balance sheet date (even though there is an internal circular of RBI dated 30th June 2001) and at the same time IRAC norms are silent, in such scenario application of AS-4 referred above has been considered appropriate by the auditors. Accordingly, subsequent recoveries against NPAs taken into account by the Bank. This practice considering recoveries subsequent to balance sheet date has been followed by IndusInd Bank as stated in their accounting policy 5.1 on page 29 of Annual Report for 2004-05 and Para 5.1 of notes on page 157 of annual report 2017-18. There is no allegation in AFI 2003 for considering recoveries subsequent to balance sheet date.

v) It is submitted that based on multiple evidences submitted for considering recoveries during the year under audit and after the balance sheet date is justified. The restructuring of the account has been done in January 2002 when it was a sub-standard account. During the year 2002-03 the bank has recovered an amount of Rs.5.28 Crores and the interest for the December 2002 is in arrears. Since the account has performed satisfactorily till January 2003 and account is

not NPA, It has been upgraded to standard assets in compliance with Para 4.2.13(iv) of IRAC norms.

Findings of the Council on the above charge:-

i) It is observed that the submissions made by the Respondent is in context of whether the amount recovered during post balance sheet period that is in September, 2003 could have been considered for classification loan account. For this, the Respondents were observed to have earlier argued in terms of February 10, 2003 circular and now in terms of RBI advisory to Inspectors, GTB accounting policy and AS-4. MBR Report classified the account as sub-standard as on 31.03.2002 and continued the same as on 31.12.2002 but on account of such recovery, the Respondents contended to classify the same as standard.

ii) The Council noted the observations of the Disciplinary Committee that there is no RBI Circular that permits to consider the amount received after March 31, 2003 to *re-compute the period of over dues* and to classify the asset as on March 2003. As regards the RBI Circular dated Feb 10, 2003, it is noted that it pertains to those loan accounts which are classified as NPAs but 'if arrears of interest and principal are paid by the borrower', it should be classified as Standard account. It is viewed that such Circular is applicable only when 'interest and principal' are due as on balance sheet date are paid in entirety and not partially. Hence, the methodology adopted by the Respondents to consider the amounts received after the balance sheet date till the date of completion of audit for computing the overdue period to classify the asset is not acceptable.

iii) The Council also noted the observations that the extant case is that of rescheduling of sub-standard loan account and IRAC norms specifically lays down the principles for up-gradation of restructured accounts in Para 4.2.13(iv) of DBOD No. BP.BC.1/21.04.048/2002-2003 dated 4th July 7 (It states that sub-standard accounts which have been restructured would be eligible to be upgraded only after the satisfactory performance of the restructured asset for a period of one year from the date when its first payment of interest or principal falls due. However, in the extant case the loan account was not performing satisfactorily as evident from the ledger account.

iv) It was noted that AS-4 prescribes to classify events occurring after balance sheet date as adjusting events and non-adjusting events. Only those events are considered as adjusting that provides substantial information about condition of asset or liability existing on balance sheet date. Thus, any recovery made post

balance sheet date cannot be considered to be an adjusting event. Further RBI Circular will prevail over AS 4. The RBI Circular was not followed as discussed in para (ii) above.

v) The Council also noted that the Respondents were not bound by either RBI's advisory to Inspectors or accounting policy of GTB. In case, if the policy adopted is not in line with the provisions of then existing AS-4 or RBI Circular, it was duty of the auditor to report the same.

vi) Thus, the Council agreed with the findings of the Disciplinary Committee in respect of above charge.

15.6 Account No. 19 – III.L.19 (Rs. in cr.)

	Bal. as on 31.03.2003	Classification as per auditor	Classification as per PIO	Provision by Bank	Provision as per PIO
<u>III.L.19</u>	13.44	Standard	D1	0	2.93

a) Charges: (As stated by the PIO)-

The profitability of the Company came under severe stress due to depressed conditions in stock market. As the Company had no identifiable resources to service interest on NCD on annual basis, the bank converted it into rear-ended by making the interest payment due on redemption. The Company had posted operating loss of Rs.0.55 crores and net loss of Rs.1.92 crore for the year ended 31st March, 2002..... The bank had changed mode of payment of interest on NCDs from annual basis to rear ended not on any genuine business considerations but on grounds of liquidity problems faced by the Company.... (refer to page 10 of AFI Report as on 31.3.2003)

b) Clarifications before the Disciplinary Committee

i) The Respondents stated that as per Special Auditor (MBR), the account has been classified as Standard assets as on March, 31, 2002 and December, 31, 2002 and RBI had vide letter dated May 9, 2003 advised the Bank to adhere to the classification of MBR. Since there was no adverse development till March, 31, 2003, the classification confirmed by the Special Auditor was maintained as at March, 31, 2003.

ii) Change in the terms of payment of interest on NCDs is a matter of banking operation vested with the management of the bank and as auditors their responsibility was to test check whether the income is recognized in terms of

sanction and generally accepted accounting principles in India. Accordingly, the comments of the PIO are not required to be responded by them.

c) Findings of the Disciplinary Committee:

i) It is noted that as per PIO since the company failed to service interest the bank recalled advance in August 2001, pledged shares were sold to recover it but since the Company was accruing losses and had no identifiable resources to service the interest on NCD on annual basis, the bank converted it into rear ended by making interest payment due on redemption. PIO alleged it to be an attempt to evergreening the account. Further, it also finds it a prudent accounting practice to recognise interest income from such account. It is noted that the Respondents have classified said accounts as Standard stating that MBR Report Mar 2002 and Dec 2002 classified the same as Standard. Further, it is argued that change in the terms of payment of interest on NCDs is a matter of banking operation vested with the management of the bank and as auditors their responsibility was to test check whether the income is recognized in terms of sanction and generally accepted accounting principles in India.

ii) At the outset, it was noted that both MBR March 2002 Report and MBR December 2002 Report are silent about the classification of said account. Further, as regards stipulation of terms and conditions which as per PIO were leading to evergreening of accounts. It is viewed that the bank may stipulate the terms and conditions and payment schedule as it considers appropriate. As regards, the responsibility of classification of such loan account, it was viewed that the auditor should consider the financials of the borrower and adequacy of securities in determining its classification and provisioning. The fact that it had reported losses clearly indicates that said account cannot be classified as Standard.

iii) As regards recognition of interest income on such accounts when their payment falls due on redemption, it was viewed that a bank is required to recognize income based on the principles enunciated in AS 9 which states to recognize the same as accrued on time period basis until or unless there is uncertainty on its collection. It is noted that the Respondents have not provided the basis of recognition of such income. It is viewed that the fact that company was in distressed financial conditions had given risen to doubt the collectability of such income. Hence, income from such accounts should not have been recognized. This clearly indicate that the Respondents have failed to point out in his audit report the above irregularities. 87

iv) Accordingly, the Committee is of the considered view that the Respondents are guilty of professional misconduct falling within the meaning of Clauses (7), (8) & (9) of Part I of Second Schedule to the Chartered Accountants Act, 1949.

d) Submissions of the Respondents before the Council

i) It is submitted that as stated on page 1064 of volume 5 (Refer Annexure 14, Page 242-247) that the company is servicing interest on cash credit account regularly and the bank was confident of recovering interest on investment on its due date. The exposure is fully secured by pledge of securities worth Rs.107.67 Crores, (comprising of foreign currency receivables Rs.6.58 crores, equitable mortgage of property of Rs.5.88 crors, pledge of share Rs. 90 crores valued by independent consultant M/s Accenture and book dates Rs. 5.21 crores) The respondents' firm has considered these aspects in determining classification of the account as standard. There is no IRAC norms which suggest otherwise.

ii) It is submitted that the finding of the Hon'ble DC that interest accrued on NCDs is not recognized as per AS 9 is incorrect. The bank is accruing interest as per issue terms and is shown as interest accrued but not due and included under other assets. Accordingly there is compliance with the AS 9 and no requirement to report in the notes to Financial Statements and auditors report. The recognition of interest is also been covered by Para 5.1 of Schedule XIX-Significant Accounting Policies to the financial statements of the bank. Further, the findings of Hon'ble DC if the borrower is incurring book losses even though the loans are not due for payment are to be treated as NPAs is an interpretation by the PIO in contravention by IRAC norms. Business losses may lead to potential NPAs and assessment of NPA has to be judged at the time when there is due date. Accordingly it is to be closely monitored but not necessarily warrant a provision. It is a matter of difference in professional judgment by different persons at different point of time and facts. The Respondents professional judgment and submissions as aforesaid should be considered favorably.

Findings of the Council on the above charge:-

i) It was noted from the DC findings that both MBR March 2002 Report and MBR December 2002 Report are silent about the classification of said account. The Respondents chose to remain silent. It was further noted from the details of security and facility provided by the Respondents that there were other facilities taken by the loanee apart from NCDs as reflected from Annexure 14 of the

Respondents' submissions. The outstanding amounts is reported to be Rs.13.44 crore which is sum total of NCDs & NCCDs hence the Respondents' defense about adequacy of security or regular performance of cash credit account cannot be accepted. The valuation report as mentioned in the said Annexure was also not produced on record. Thus, the Committee agreed with the observation of the Disciplinary Committee that the classification of NCDs as standard was not correct. Further, recognition of income accrued on such NCDs in respect of which it was doubtful if the borrower could service the same is again against the principles enunciated in AS-9 which states that

*"13. Revenue arising from the use by others of enterprise resources yielding interest, royalties and dividends should only be recognized when no significant uncertainty as to measurability or **collectability** exists (**emphasis supplied**)."*

Hence, income accrued on such NCDs was to be recognized only if there is no uncertainty of its collection.

ii) Hence, the Council agreed with the observation that NCCDs were not correctly classified and that the fact that the Company in distressed financial conditions had given rise to doubt on the collectability of such income. Thus, income from such account should not have also been recognised.

iii) Hence, in view of the above facts, the Council agreed with the findings of the Disciplinary Committee.

15.7 Account No. 21– III.L.21 (Rs. in cr.)

	Bal. as on 31.03.2003	Classification as per auditor	Classification as per PIO	Provision by Bank	Provision as per PIO
<u>III.L.21</u>	4.18	D1	Loss	1.18	4.18

a) Charge (As stated by the PIO):-

The borrower had not serviced interest from March 31, 2001 onwards. Though the bank in its proposal for initiating legal action had shown the NPA, the bank classified the account as NPA only from Sep, 2001 ... the account was classified as a loss assets as the statement of outstanding debtors as on February, 2003 was not certified by CA. Since the security available (after deduction of debtors or Rs.6.24 crores) was less than 10%, the inspection had classified the account as a loss asset. (refer page 10 of AFI Report as on 31.3.2003)

b) The Clarifications before the Disciplinary Committee:-

i) The Respondents stated in this account there was one time settlement agreement between the Bank and the borrower. This one time settlement agreement was in accordance with the RBI guidelines. Under this agreement, the Bank agreed to accept Rs.3 crore in Installments. This resulted into sacrifice by the Bank of Rs.1.18 crores. As there was sacrifice by the Bank of Rs.1.18 crores, provision was required to be made of Rs.1.18 crores and accordingly, the same was made.

ii) The PIO in AFI 2003 has ignored security held by the bank by way of hypothecation of stock and book debts valued at Rs.6.24 crores as on February, 28, 2003 as declared by the borrower on the grounds that the same was not attested by a Chartered Accountant. Generally all stock statements submitted by the borrowers are not attested by the Chartered Accountants. Hence, the contention of PIO as the statement of stock and debtors was not certified by a Chartered Accountant should not be the basis for ignoring the value of security. It is the borrower who makes the declaration of the stocks and book debts held by him at periodic intervals which is an accepted practice.

iii) The Respondents stated that in view of above submissions, the classification of the account as D-1 by the bank considering the security level and making a provision for the sacrifice of Rs.3 crores is in order and this practice is prevalent and followed consistently by the banks.

c) Findings of the Disciplinary Committee:-

i) It was noted from the 'Comments of Auditor' (Vol 1- Pg 322) that the One Time Settlement being stated to be recognized by the Auditor was only a proposal as on Mar 31, 2003 which was approved on 29th April 2003. Rs.40 lakhs was recovered only between April 2003 to August 2003. It is accordingly viewed that the auditor has exercised his judgments based on conditions prevailing as on the date of completion of audit rather than date of the balance sheet which is in contravention to IRAC norms. Further, the Respondents relied upon declaration with respect to security (held in form of stock and debtors) which was not certified by the Chartered Accountant which also raises doubt on authenticity of documents relied upon.

ii) On perusal of OTS agreement (Pg 349) it was noted that as on 30th Sept⁰³

Rs.7.01 crore was payable and the Bank's MD agreed to settle at Rs.3 cr payable from 8th Nov 2002 (**para 3.1(i) on Pg 351**) and Rs.10 lacs on monthly basis from November 2002 onwards. The Office note to MD (**Pg 358**) clearly indicates that the current value of primary security was negligible and shares held as collateral security were proposed to be sold before Nov 2002. Hence, out of Rs.40 lacs recovered Rs.21 lacs were recovered from shares pledged (**Refer para IV (A) of Note on Pg 359**) and balance of stock and debtors being relied upon is not supported by related financials because the financials attached is that of March 2002 instead of March 2003. Hence, the Respondents failed to report the correct category of NPA and the same resulted in lower provisions against the account.

iii) **Accordingly, the Committee is of the considered view that the Respondents are guilty of professional misconduct falling within the meaning of Clauses (5), (7), (8) & (9) of Part I of Second Schedule to the Chartered Accountants Act, 1949.**

d) Submissions of the Respondents before the Council:-

The Respondent stated that the following final submissions made to DC on 23rd April, 2018 (pages 53-54) had not been considered by the Committee:-

i) The date of NPA considered by the AFI Report 2003 and the bank was not disputed.

(ii) There is no mandatory requirement issued by RBI / as per IRAC norms /guidance note on audit of banks issued by ICAI that the statement of outstanding debtors is to be attested by a Chartered Accountant. It is the borrower who makes the declaration of the stocks and book debts held by him at periodic intervals, which is an accepted practice.

(iii) The AFI 2003 failed to consider the One Time Settlement (OTS) agreed by bank in October, 2002 and approved by the Board on 29th April, 2003. Accordingly the bank had provided for the sacrifice amount of Rs.1.18 crores upfront. During April-September, 2003 Rs.40 lakhs recovered by the bank.

As per the Respondents, the following are additional submissions to the Council:-

iv) It is submitted that the auditor did not exercise his judgments based on conditions prevailing as on the date of completion of audit rather than date of the balance sheet since, the scheme has been implemented and operating effectively

from November, 2002 and the Board approved/ Ratified the OTS in April, 2003 with effect from November 2002 as detailed herewith. This is not a post balance sheet event at all.

v) It is further submitted that pursuant to the aforesaid agreement the bank has to receive Rs.300 lakhs of which Rs.40 lakhs in November, 2002 and the balance amount of Rs.260 lakhs to be received in 26 monthly installments of Rs.10 lakhs each. Accordingly as per Credit-Special Accounts memo (Refer page 357 of Volume 1) (Annexure 15, Page 248-252) and Minutes of Board meeting of 29th April,2003. (Refer page 361 of volume 1).

vi) Bank has received Rs.90 lakhs till 31st March, 2003 which includes Rs.40 lakhs down payment of November, 2002 and Rs.50 lakhs towards five installments from November 2002 to March, 2003 . Since the amount due was received before the balance sheet date it does not warrant any disclosure note/report by the statutory auditors.

v) Accordingly it is incorrect to say the auditor exercised judgment based on conditions prevailing on the date of completion of audit. The auditors exercised the judgment on the balance sheet date in compliance with IRAC norms and there is no contravention of said norms. The Hon'ble DC has misunderstood the facts of the charge while drawing their conclusions.

vi) As mentioned above the bank has recovered Rs.90 Lakhs up to March 2003 which includes Rs.21 Lakhs on sale of shares pledged with the banks for LC facility which is nil exposure. The finding of DC that against Rs.40 Lakhs only Rs.21 lakhs received and balance is in the form of stock and book debts is incorrect. As stated on page 357 (Annexure 15, Page 248-252) bank has recovered Rs.90 Lakhs against Rs.300 Lakhs in compliance with the OTS agreement. For the balance amount of Rs.210 lakhs the bank has received post-dated cheques and held security of stock and book debts as per latest audited accounts of 31st March 2002. The accounts for year ended March 31st 2003 was not available at the time of finalization of accounts. The loan of Rs.4.18 crores had been classified D -1 and fully secured by stock and book debts of Rs.6.52 Crores as of 28th February 2003 as stated on Page 321 of Volume 1 (Annexure 16, Page 253-258). Accordingly, as per IRAC norms provision required is Rs.0.84 crores whereas provision had been made as per the OTS terms the sacrifice amount is Rs.1.18 crores which is higher than prescribed IRAC norms. Accordingly, lower provision has not been made.

Findings of the Council on the above charge:-

It is noted that total outstanding was Rs. 4.98 crore (Annexure 15) as in October, 2002 and the amount recovered was Rs.90 lakhs. In view of the fact that the only security available with the bank was stock and debtors of the Company the statements of which were not unauthenticated by any professional, the Committee had advised to the Respondents to be more cautious. It is viewed that since it is only an advice benefit of doubt can be given to the Respondents. Accordingly, the Council decided to drop the said charge against the Respondents.

15.8 Account No. 24– III.L.24 (Rs. in cr.)

	Bal. as on 31.03.2003	Classification as per auditor	Classification as per PIO	Provision by Bank	Provision as per PIO
III.L.24	19.50	Standard	Sub-Stand	0	1.95

a) Charge (As stated by the PIO):-

The bank restructured the loan even though the advance was not covered by any tangible security. The restructured term loan was required to be repaid in 6 quarterly installments commencing from June, 2002. Assuming that the repayments were regular, the outstanding in the account should have been Rs.13 crore whereas the actual outstanding stood at Rs.19.5 crore as on March 31, 2003 representing unpaid dues of Rs.6.50 crores equivalent to defaults in repayments for 2.16 quarters. Hence, the account was classified as sub-standard... **(refer page 13 of AFI Report as on 31.3.2003).**

b) The Clarifications before the Disciplinary Committee:-

i) The Respondents stated that the observations of the PIO that restructuring of the loan without tangible security is not correct as the bank was holding hypothecation of machinery and equipment. During the year under audit, the bank has recovered around Rs.5 crores **(Page 1067)**. As a result, part of December, 2002 installment and interest for the quarter ended March, 2003 are overdue which are less than 180 days.

ii) The Respondents also submitted that the observations of PIO of RBI that the installment started from June 2002 quarter after restructuring is not correct. As

per the Minutes of the Committee of the Board dated 19th April, 2002, the Moratorium for payment of loan was upto June 2002. The installments of the loan start only from quarter ending September 2002.

c) Findings of the Disciplinary Committee:-

i) It was noted that in extant case whereas the PIO classified the said loan account as Sub-Standard, the Respondents classified the same as Standard. The Respondents have argued that the loan was due for repayment since Dec 2002 rather than June 2002 hence period of overdue is less than 180 days and that the account was secured by hypothecation of current assets and plant and machinery.

ii) It was noted that the Respondents have produced only an abstract of understanding with borrower which states the fact of recommending increase in moratorium period by six months but does not provide the remaining note which gives repayment schedule. In any case, it is observed that the said note clearly indicates inability of the borrower to meet the already sanctioned terms. So the Respondents were aware of rescheduled loan which even if commenced from June 2002 which was scheduled for quarterly payment by Sept 2002, the period of overdue was more than 180 days. Further, considering the fact that the Respondents have considered the payments received by the Bank till the date of completion of audit, they have not brought on record any evidence of the amount being due amount recovered after balance sheet date. Hence whether outstanding amount signifies 2.16 quarters due for payment or otherwise, it was not received. Further, the Respondents have not brought any evidence to show the documents relied upon by them for the security. Hence, in such case classification of loan account as standard is not acceptable and thus, the Respondent is guilty with respect to this account.

iii) Accordingly, the Committee is of the considered view that the Respondents are guilty of professional misconduct falling within the meaning of Clauses (7), (8) & (9) of Part I of Second Schedule to the Chartered Accountants Act, 1949.

d) Submissions of the Respondents before the Council

i) It is submitted that the finding of the committee that the evidence produce is recommendation to increase the moratorium period by 6 months to commence from June 2002 whereas the modification of sanctioned terms on page 363 of 8

volume 1 (refer annexure 17, Page 259-261) clearly states CoB approved the recommendation of the Bank to increase moratorium period by 6months till June 2002, without increasing tenure of loan accordingly there is revision dates of repayment due to moratorium only.

ii) Based on over dues statements item 2 furnish on page 1067 of volume 5 (Refer Annexure 18, Page 262) clearly states the overdue amount due as of 30th Sep 2002 and bank has received Rs.5 crores on balance sheet date. The Hon'ble DC has not considered the facts presented by the respondents. Accordingly interest of Dec quarter 2002 is outstanding which less than 180 days is and that account has been classified as standard assets by the bank.

Findings of the Council on the above charge:-

i) The Council agreed with the observation that even if the bank has acceded to increase the moratorium period by six months till June, 2002 and the payment was scheduled for quarterly payment by September, 2002, the period of overdue was more than 180 days as on 31.03.2003.

ii) As regards the Respondents' arguments to have received Rs.5 cr. in the account as on 31.03.2003, it is noted that the charge has been leveled on outstanding amount of Rs.19.5 cr which must have been derived after reducing stated payment if received before the balance sheet date. Further, there is nothing on record to show that outstanding of 2.16 quarters due for payment or otherwise, was received by the bank. The Respondents were required to ensure the recovery of outstanding amount be made as on balance sheet date but it appears that the Respondent failed to do so. It is also noted that the Respondent remained silent in respect of observation made by the Disciplinary Committee in respect of non-availability of documents for the security as well as considering the payments received by bank till the date of completion of audit as recovery till balance sheet date.

iii) In view of above, the Council agreed with the findings of the Disciplinary Committee.

15.9 Account No. 33 – III.L.33

	Bal. as on 31.03.2003	Classification as per auditor	Classificatio n as per PIO	Provision by Bank	Provision as per PIO
III.L.33	37.40	Standard	Sub- Stand.	0	3.74

a) Charge (As stated by the PIO):-

The Company included the stock lying idle at port due to non-payment of demurrage charges for arriving at the DP till June 2002. In August 2002, the branch advised the Company not to include the stock in the stock statement for computation of DP as it was in the nature of unpaid stock. From June to December 2002, the stock at port was not included in the stock statements. However, the outstanding exceeded DP from May 31, 2002 till February 20, 2003. It was brought within DP by inclusion of stock at port in the stock statements from February to March 2003 by the branch which was objected to by the same branch for earlier greening. Since the DP was not sufficient to cover the outstanding and the CC was irregular from May 2002 to February 2003, the account was classified as NPA as on December 31, 2002. **(refer to page 15 of AFI Report as on 31.3.2003).**

b) Clarifications before the Disciplinary Committee:-

i) The Respondents stated that PIOs observation that stock lying at the port was unpaid is not correct. The invoice value of the stock has been paid but the demurrage charges has not been paid to the port authority accordingly, the invoice value of the stock has been considered for drawing power by the bank.

ii) The exposure was secured with the first and exclusive charge on wind mills and property valued at Rs.49.13 Crores. Interest has been serviced upto 31.03.2003 which includes the arrears upto March 31, 2003. As there was no overdue for more than 180 days, the account has been classified as standard as per IRAC norms.

c) Findings of the Disciplinary Committee:-

i) The above charge is based on the view as to whether the stock lying at port due to non-payment of demurrage charges should have been included in stock statement or not because it will decide as to whether the outstanding amount exceeded DP or not. It was viewed that an asset is a resource controlled by the entity which provides benefit in future. It is viewed that until the demurrage is paid the said stock cannot be said to be under the control of the borrower. Hence, the account was NPA as on Dec 2002 and therefore the Respondents are guilty of professional misconduct with regard to the same.

ii) **Accordingly, the Committee is of the considered view that the**

Respondents are guilty of professional misconduct falling within the meaning of Clauses (5), (7), (8) & (9) of Part I of Second Schedule to the Chartered Accountants Act, 1949.

d) Submissions of the Respondents before the Council

The Respondents stated that the following final submissions made to DC on 23rd April, 2018 (pages 59-60) had not been considered by the Disciplinary Committee:-

i) The value of the entire stock could not be ignored merely because demurrage charges were unpaid. The estimated amount of demurrage payable is approximately Rs. 6.25 lakhs. Interest has been serviced up to 31st March, 2003.

(ii) Security was available in this account in the form of stock / inventories and receivables valued at Rs. 12.31 crores as well as an exclusive first charge on wind mill and property valued at Rs. 49.13 crores as on 31st March 2003.

(iii) It is clarified the Term Loan I & II and CC account were secured by equitable mortgage of fixed assets (Wind Mills) and current assets. The value of securities (held as of 30.09.2002) is as follows:

1. Fixed Assets Rs. 76.50 Crores
 2. Inventories Rs. 1.43 Crores
 3. Debtors Rs. 11,31 Crores
- Total value of security Rs. 89.24 Crores

iv) Total outstanding as at 31st March, 2003 was Rs.37.40 crores. Even if the inventory is not considered as security due to non-payment of demurrage charge the debtors and fixed assets as mentioned above are far in excess of the outstanding dues of Rs. 37.40 crores as at March 31, 2003.

v) As the interest was serviced up to March 31, 2003 accordingly the account has been classified as standard.

As per the Respondents, the following are additional submissions to the Council:-

vi) It is submitted that the finding of the committee that the stock lying in the bonded warehouse cannot be said to be under the control of the borrower. Non payment of Demurrage charges would not deprive the right of ownership of the borrower. The Bank always hold general lien on the hypothecated stocks and

would crystalize only if the bank had exercised the right to take the possession of such stocks.

vii) It is clarified the Term Loan I & II and CC account were secured by equitable mortgage of fixed assets (Wind Mills) and charged on current assets as per audited accounts for the year ended 30th September 2002 on page 1073 of volume 5 (Refer Annexure 19, Page 263-264) which are as under.

1. Fixed Assets Rs. 76.50 Crores
 2. Inventories Rs. 1.43 Crores
 3. Debtors Rs. 11.31 Crores
- Total value of security Rs. 89.24 Crores

viii) Even if inventory of Rs.1.43 crores was not considered for non-payment of Demurrage there is no change in the classification of account as standard since the fixed assets of Rs.76.50 crores alone cover the exposure of Rs.,37.40 crores by more than 204%.

ix) Also, interest on loan is serviced till March 31st 2003

Findings of the Council on the above charge:-

i) The Council noted that it is a case where the Drawing Power was not sufficient to cover the outstanding in the account and it was brought within the limit by inclusion of stock at port in the stock statement from February to March, 2003. The said stock was lying on port due to non-payment of Demurrage charges since June, 2002. Considering the time lapse between June, 2002 to March, 2003, the doubt arises on the condition of stock and further, non-payment of demurrage charges by the borrower since June, 2002 also raises doubt on his ability to repay its financial dues.

ii) Hence, in view of the above, the Council agreed with the findings of the Disciplinary Committee that such assets cannot be classified as standard assets.

15.10 Account No. 34 – III.L.34

(Rs. in cr.)

	Bal. as on 31.03.2003	Classification as per auditor	Classification as per PIO	Provision by Bank	Provision as per PIO
III.L.34	4.76	Sub-stand	D2	0.48	1.43

a) Charge (As stated by the PIO):-

"Since the loan of Rs.3.50 crore was sanctioned / disbursed for repayment of a loan

of Rs.2 Crore, which had already become NPA in December 1998, on account of overdue to the extent of Rs.1.85 crore, the present inspection had classified the account as NPA as on December 31, 1998 and D2 as on March 31, 2002. Though the loan accounts of the borrower at Bangalore was classified as NPA, the bank did not classify the loan accounts at Secunderabad branch as NPA. Accordingly, an additional provision of Rs.0.95 crore was to be made." (refer to page 14 of AFI Report as on 31.3.2003)

b) Clarifications before the Disciplinary Committee:-

i) The Respondents submitted that the observation of the PIO that the exposure at the Secunderabad Branch was not classified as NPA is incorrect. The balance outstanding of Rs. 4.76 crores includes Rs.1.26 crores of the Secunderabad branch.

ii) The Respondents further stated that as per AFI 2003, the account is classified as NPA in December, 1998 and the same has been classified by the bank as NPA in December, 2001. However, the difference in timing of NPA by the bank has not been questioned by the AFI reports of prior years. The Respondent further stated that they relied upon the date of classification of NPA made by the bank as per audited accounts for the year ended 31.03.2002. The account was secured by equitable mortgage of property valued at 10.77 crore which was more than 50% of the outstanding as on 31.03.2003.

c) Findings of the Disciplinary Committee:-

i) It was observed that stated allegation of PIO was also mentioned in AFI 2002 wherein the said account was codified as I.L.37. It is viewed that the Respondents had the copy of AFI 2002 Report wherein the PIO had clearly stated its views on the account stating it to be NPA since December, 1998 and classified the same as D2 as on March 31, 2002. Hence, the contention of the Respondents that they relied upon the classification of NPA by bank is not acceptable merely because as per the Respondents said account was secured by equitable mortgage of property which was more than 50% of the then outstanding. It is further noted from the schedule of interest and principal to be serviced (pg 392 Vol I) that interest and principal were overdue since Sept 2001 accumulating to 18 months NPA as on March 2003. Hence, in view of PIO observation given in AFI 2002, the loan account was doubtful and required to be provided with in accordance to the provisions of para 5.3 of the Circular. Hence, the Respondents were guilty of professional misconduct.

ii) **Accordingly, the Committee is of the considered view that the Respondents are guilty of professional misconduct falling within the meaning of Clauses (6), (7), (8) & (9) of Part I of Second Schedule to the Chartered Accountants Act, 1949.**

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d) Submissions of the Respondents before the Council

i) It is submitted that learned PIO had stated that the account is NPA since December 1998 is not correct since the PIO did not review consider the recovery of interest and principal as per terms. The detailed explanation of the same is given in the Para b.

ii) It is submitted that the DC had referred to Page No.392 of Volume I (Annexure 20, Page 265-273) but misinterpreted the date of servicing of installments and interest services which is an apparent error. The detailed position of accrual of interest, Principal and recovery of the same is given on Page 392 of Volume 1 is summarized.

iii) The divergence in the date of classifications of NPA by AFI 2003 is December 1998 whereas by the bank has classified NPA in December 2001. It is submitted that as per the interest debit and installment due as per re-schedule agreed and details of principal disbursed and schedule of payments furnished on page 392 and 393 of volume 1 respectively (refer Annexure 20, Page 265-273).

iv) The total interest due from quarter ending December 1998 till quarter ended June 2001 was Rs. 157.08 Lakhs and principal installment due during said period is Rs. 20 Lakhs aggregating Rs. 177.08 lakhs against which the bank has received Rs.178.28 lakhs during the period 15-02-1999 to 18-09-2001. Accordingly interest was due for the September, 2001 quarter onwards and account became NPA as on March 31st 2002 but the bank has classified as NPA in December 2001. Since the period of NPA for the aforesaid account is less than 18 months it was classified as sub-standard as at March 31st 2003.

Findings of the Council on the above charge:-

i) After considering the documents / submissions on record, it is noted that though the Respondents are claiming that interest and instalment upto June, 2001 quarter was paid yet there was no denial on the fact that this loan was sanctioned for repayment of existing NPA loan which amount to restructuring / rescheduling of loan.

ii) In case of restructuring / rescheduling of loan, status of account can be upgraded only after one year of satisfactorily performance but the documents on record, nowhere it appears that the account was regular for continuously for one year since disbursement in the account. Accordingly, the Committee agreed with

the observations of the Disciplinary Committee that the performance of loan account was to be considered with reference to the pre-restructuring payment scheduled and hence should have been classified as doubtful and required to be provided with in accordance to the provision of Para 5.3 of the Circular.

iii) Hence, in view of the above facts, the Council agreed with the findings of the Disciplinary Committee.

15.11 Account No. 39 – III.L.39

(Rs. in cr.)

	Bal. as on 31.03.2003	Classification as per auditor	Classificatio n as per PIO	Provision by Bank	Provision as per PIO
III.L.39 FCNR(B) 27.04 NCD 15.17	42.21	Standard	D1	0	8.44

a) Charge (As stated by the PIO):-

"The facilities should have been classified as NPA as on September 30, 2001 for non-payment of NCD of Rs.20 crores as on 31st March, 2001. However, the bank sanctioned a short term loan of Rs.20 crore for 90 days on 30th June, 2001 to enable toto repay the NCD dues of Rs.20 crore. But thefailed to meet is obligation again. Ascould not pay the dues and the Board sanctioned a corporate loan to evergreen the impaired asset. As the borrower did not pay the dues by 31st March, 2003, the bank converted the corporate loan to a foreign currency loan of Rs.27 crore on 6th March, 2003. As theaccount had migrated to NPA category as on 30th September, 2001 on account of non-payment of NCD dues of Rs.20 crore on 31st March, 2001, the present AFI classified the account as Doubtful – as on March 31, 2003. In respect of redemption of bonds of Rs.15.17 crores, the borrower failed to redeem them on due date on February 19, 2003 and the bank disbursed Rs.20 crore to two sister concerns to fund the redemption of bonds" **(refer to page 16 of AFI Report as on 31.3.2003)**

b) Clarifications before the Disciplinary Committee:-

i) The Respondents stated that the AFI 2002 was silent about the classification of the account. In the absence of information to the contrary, the account was considered to be a Standard Assets.

ii) The NCDs of Rs.15.17 crores were due and payable on February, 19, 2003

and as such are not overdue for more than 180 days as on 31st March, 2003. Hence, classification of NCDs as Standard Assets was as per IRAC norms. The advances are secured by charge on property valued at Rs.209.32 crores and foreign currency loan is covered by FCR deposits.

iii) Redemption of NCDs of Rs.20 crores in 2001 is irrelevant for the year under audit as the amount was not outstanding as at 31st March, 2003.

c) Findings of the Disciplinary Committee:-

i) On perusal of the allegations vis-à-vis submissions of the Respondents, it is noted that the account under question comprises of two types of loan facilities. One was Foreign Currency Loan of Rs.27.04 crore and second one was NCD of Rs.15.17 crore. During the course of hearing, the witness from the RBI reiterated the observation of AFI 2003. On the contrary, the Respondents stated that the redemption of NCDs of Rs.20 crore in 2001 was irrelevant for the year under audit as the amount was not outstanding as at 31st March, 2003.

ii) However, the Respondent did not deny the fact that NCD was due for payment in September, 2001. In this regard, it is noted that though the Respondent is not supposed to go beyond his audit period to verify the details of transactions, yet where documents on record (**Pg. 1082 of Vol-5**) produced by the Respondent itself indicating the current loan has been given in conversion of earlier existing loan, the Respondents was required to be more cautious /alert to check the transactions as the same would have been made in order to cover up the deficiency in old accounts. The Respondent ignored the provisions of IRAC norms as stated in para no.4.2.5 that all the facilities granted by a bank to a borrower will have to be treated as NPA and not the particular facility or part thereof which has become irregular. The Respondents could not bring on record as to what steps they had taken to verify the classification of old loan account. Rather it is apparent that the Respondents just relied upon the statement / information provided by the Bank and did not raise doubt on the presentation / window dressing made by the bank which resulted in classification of Assets as Standard in 2003 instead of D1 and consequently resulted in lower amount of provision. Since the Respondents failed to assess the correct classification of loan overdue/outstanding and on the contrary, agreed with the classification of the loan account as adopted by the Bank, the Respondents are guilty with respect to above allegation.

iii) **Accordingly, the Committee is of the considered view that the**

Respondents are guilty of professional misconduct falling within the meaning of Clauses (6), (7), (8) & (9) of Part I of Second Schedule to the Chartered Accountants Act, 1949.

d) Submissions of the Respondents before the Council

The Respondents stated that the following final submissions made to DC on 23rd April, 2018 (pages 60-61) had not been considered by the Committee:-

(i) By a Board Resolution, the Bank approved the application made by the borrower company allowing reschedulement and extension of the repayment terms as per sanction letter dated 12th January 2003 hold good for repayment in 12/24/36 months. Consequently, the account was classified as Standard asset by the bank.

(ii) The AFI 2002 Report was silent about the classification and has been assumed as standard. There was no mention in AFI 2002 that the term loan was identified as NPA in September 2001.

(iii) The NCDs of Rs. 15.17 crores were due and payable on February 19, 2003 and as such are not overdue for more than 180 days as on March 31, 2003. Hence, it was classified as standard asset.

(iv) Redemption of NCD's of Rs. 20 crores in 2001 is irrelevant for the year under audit as the amount was not outstanding as at March 31, 2003.

As per the Respondents, the following are additional submissions to the Council:-

v) It is submitted that as per document on record on page 1082 of volume 5 (Refer Annexure 21, Page 274-276), it is clearly stated that as per the original proposal to convert existing Corporate Loan limit of Rs.2,700 lakhs sanctioned in November,2002 but not disbursed in to Foreign Currency Loan. However the bank has cancelled the proposal for converting the existing corporate loan and decided granting directly foreign currency loan equivalent to Rs.2700 Lakhs. Accordingly, there is no deficiency in the old account (since the funds were not disbursed and loan did not exit) that which warrants more cautious/ alert checking of transactions.

vi) It is submitted that as stated above there is no existence old loan account. However by coincidence similar amount of fresh foreign currency loan has been

disbursed. There is no window dressing to avert classification of old loan as NPA. Accordingly the classification account is standard is in order.

Findings of the Council on the above charge:-

i) The Council noted that the Respondent has taken plea that Foreign Currency loan was a fresh loan and it was not sanctioned against conversion of Corporate Loan. However, when Council referred to Annexure 21 as submitted by Respondent in the resolution passed for the facility, it is clearly stated that foreign currency loan was conversion of corporate loan of Rs.27 Crore so the argument of Respondent that it was fresh loan cannot be accepted.

ii) Regarding NCDs, it is noted that though Respondent agreed that NCDs were due and payable in February, 2003 but as per them, redemption of NCD's in 2001 is irrelevant. However, failure to redeem debentures or conversion of one facility into another when more stringent measures were to be taken, the Respondent was required to adopt a cautious approach.

(iii) In view of above, the Council agreed with the observation of the Committee that the Respondent ignored the provisions of IRAC norms as stated in Para no.4.2.5 that all facilities granted by a bank to a borrower will have to be treated as NPA and not the particular facility or part thereof which has become irregular. The Respondent was required to raise doubt on the presentation of the bank which resulted in classification of Assets as Standard in 2003 instead of D1 and consequently resulted in lower amount of provision.


iv) Hence, in view of the above facts, the Council agreed with the findings of the Disciplinary Committee.

15.12 Account No. 41 – III.L.41

(Rs. in cr.)

	Bal. as on 31.03.2003	<u>Classification as per auditor</u>	<u>Classification as per PIO</u>	<u>Provision by Bank</u>	<u>Provision as per PIO</u>
<u>III.L.41</u>	7.37	Standard	Sub-Stand	0	0.74

a) Charge (As stated by the PIO):-

"The WCDL and RPC account were utilized in full during 2002-03. The CC account was continuously out of order from April 1, 2002 to March 31, 2003 except on October 29, 2002. The account was again out of order from April 1, 2003 onwards till September 2003, The account exhibited inherent weakness and hence it was classified as NPA as on September, 20, 2002" **(refer to page 17 of** 

AFI Report as on 31.3.2003)

b) Clarifications before the Disciplinary Committee:-

i) The Respondents submitted that the observation of PIO that the CC account was out of order was not acceptable. Further, the Comment on out of order condition during April to Sep, 2003 is irrelevant as the said period was outside the period of audit. The bank has granted WCDL, CC and RPC limit of Rs.6.75 crores which are interchangeable. In order to ascertain whether an account is out of order all the sub-limits within the overall limit are to be taken into consideration but not one of the accounts in isolation.

ii) The advances were fully secured by hypothecation of stock and book debts of value of Rs.14.45 crores and second pari passu charge on fixed assets and pledge of shares. As there were no overdue for more than 180 days the account has been classified as Standard as per the IRAC norms.

c) Findings of the Disciplinary Committee:-

i) It was alleged that CC account was continuously out of order from April 1, 2002 to March 31, 2003 except on October 29, 2002. It was again out of order from April 1, 2003 onwards till September 2003. Since the account exhibited inherent weakness, it was classified as NPA as on September, 20, 2002. The Respondent denied that CC account was out of order and stated limit of WCDL, CC and RPC accounts were interchangeable and the said fact was overlooked by the PIO. In support of his contention that they had verified the details of the said account, the Respondents produced copy of annexure to the LFAR with respect to this account. From the same, it is noted that all the loans were consortium advance and the following facilities were given by the Bank:

i) Cash Credit (CC)

ii) Working Capital Demand Loan (WCDL)

iii) Packing Credit (RPC)

ii) It is noted that RPC was granted as sub limit of CC / WCDL. If it is assumed that RPC limit was interchangeable with CC / WCDL but there was nothing on record which shows that limit of WCDL was interchangeable with CC account. It is also noted that CC account was out of order and RPC loan was fully utilized as on 31.03.2003 and there was no scope for interchange of limit as on 31.03.2003. The said fact support the observation of the PIO that CC account was out of order from 1st April, 2002 till October, 2002 and accordingly, it should have been classified as NPA w.e.f. September, 2002. In this regard, the Respondent could not bring on record any necessary documents to show that RPC account was not

fully utilized during the period from April, 2002 and October, 2002 and was having unutilized balance during that period to adjust the over limit of CC account.

iii) In view of above fact, it can be said that the Respondents failed to verify the details of the transaction of the loan accounts and failed to classify the accounts as Sub-Standard as required in terms of the provision of the IRAC norms. The said failure consequently resulted in non-provisioning in the accounts.

iv) **Accordingly, the Committee is of the considered view that the Respondents are guilty of professional misconduct falling within the meaning of Clauses (7), (8) & (9) of Part I of Second Schedule to the Chartered Accountants Act, 1949.**

d) Submissions of the Respondents before the Council

i) It is submitted that as detailed on pages 415-417 of volume 1 (refer Annexure 22, Page 277-283), the borrower account is a part of consortium with 13.38% of the bank and other seven banks. SBI with 18.36% is the lead bank. The share of bank's funded exposure as per sanctioned terms in the consortium is Rs.941 lakhs. The lead bank had not provided break up of funded facilities by each of the banks in the consortium but fix the total lending limit and the individual banks had to decide on granting various funded facilities. Accordingly the following are the facilities granted and outstanding thereon Facility limit (Rs.Lakhs) outstanding 31/3/2003 Rs. lakhs)

- a) CC 290 346.76
- b) WCDL 450 189.02
- c) RPC (sub limit) 201 201.96

ii) If WCDL is a onetime disbursement it would have full exposure but it is not the case. If one analyzes the position the current and noncurrent portion of working capital is by mutual terms between bank and borrower. The unutilized limit is reserve position to utilize as per business needs and is accordingly interchangeable. The account is operated at **78% of the sanctioned limit**. The financial position of the company is sound and there is nothing negative on record from any of the consortium banks. If it is a NPA account the borrower would have utilized WCDL to clear over dues.

iii) The provision assessed by PIO is Rs.0.74 Crores which is not material and the Hon'ble DC in a number of cases dropped the charges on materiality more than this amount. Accordingly they request the Council to give the same benefit in this case.

Findings of the Council on the above charge:-

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i) It is noted that the Respondents have stated that if one analyses the position, the current and noncurrent portion of working capital is by mutual terms between bank and borrower. The Respondents also stated that unutilized limit of WCDL is reserve position to utilize as per business need and is accordingly, interchangeable.

ii) It is also noted that the Respondents requested to drop this charge based on materiality as the provision assessed by the PIO was Rs.0.74.

iii) The Council noted the said submissions of the Respondents as well as the documents and decided to give benefit of doubt to the Respondent.

iv) Accordingly, the Council decided to drop the said charge against the Respondents.

15.13 Account No. 1.2 – III.L.1.2

(Rs. in cr.)

	<u>Bal. as on</u> 31.03.2003	<u>Classification</u> <u>as per auditor</u>	<u>Classification</u> <u>as per PIO</u>	<u>Provision</u> <u>by Bank</u>	<u>Provision as</u> <u>per PIO</u>
III.L.1.2	92.46	Standard	D1	2.51	122.40 (consolidated provision for account no.III.L.1.1,1.2 and 1.3)

a) Charge (As stated by the PIO):-

“The repayment schedule was not clearly specified i.e. it was indicated as three years after a five year moratorium in the agenda note and divergently “ as per consortium lender’s terms” in the sanction letter GTB/Credit/Board/342/01-02/KRK dated December, 27, 2001. No independent appraisal was carried out despite existence of several flaws / weakness in the lead lender’s appraisal and other adverse features relating to tie up of equity/loan. Incidentally, term loan exceeded the untied term loan of Rs.46 crores. Considering the persistence of actual overdue from August, 2001 and the forging features, the advance was classified as D-1.” **(Refer to page 1 of AFI Report as on 31.3.2003)**

b) Clarifications before the Disciplinary Committee:-

i) The Respondents stated that as per Special Auditor (MBR) **(Page no.428)**, the accounts has been classified as Sub-standards assets as March, 31, 2002 and

December, 31, 2002 and RBI had vide letter dated May, 9, 2003 (**Page 431**) advised the bank to adhere to the classification of MBR. However, the PIO of RBI has departed from its own directions to the Bank and treated the account as D-1.

ii) The Respondents further stated that the account has been classified as Standard since there were not overdue for more than 180 days (**Page no.429-430**). Further, the classification was supported by letter of IDBI and flash report submitted by IDBI to CDR cell (**Pg 433-436**).

iii) The PIO has observed in AFI 2003 that the repayment schedule was not clearly specified, is not factually correct as evident from Executive Summary of the Sanction letter dated 27.12.2001 (**Page no.432**). The facilities were granted based on the project appraised by the lead premier institution.

c) Findings of the Disciplinary Committee:-

i) Upon perusal of the submissions made by the Respondents, the Committee noted that at the time of completion of audit for the year ended March 31, 2003, interest was serviced upto Sept 2002 (**Pg 427 of Vol II**) and interest for the quarter ended Dec 31, 2002 was outstanding which is less than 180 days. Accordingly, the account has been classified as standard as on the balance sheet date (**pg 429-430**). Further the classification was supported by letter from IDBI to CDR cell.

ii) However, when the ledger abstract (**pg 429**) was considered it was noted that the interest amount due upto Sept Qtr of FY 02-03 was actually received after March 31, 2003. It is viewed that the status of an asset being non-performing asset or not should be based on the period of overdue as exist on the balance sheet date. Subsequent payments may be considered only in cases if all the arrears relating to overdue as on balance sheet date are received as envisaged in RBI Circular dated Feb 10, 2003 (**on Pg 310 of Vol 1**). Keeping in view the above, the classification of said loan account as standard is against the IRAC Norms and the Respondents failed to point out the same in the audit report.

iii) **Accordingly, the Committee is of the considered view that the Respondents are guilty of professional misconduct falling within the meaning of Clauses (7), (8) & (9) of Part I of Second Schedule to the Chartered Accountants Act, 1949.**

d) Submissions of the Respondents before the Council

The Respondents stated that the following final submissions made to DC on 23rd April, 2018 (pages 72-73) had not been considered by the Committee:-

- i. According to the records examined by us interest has been serviced up to September 30, 2002 and interest for the quarter ended December 31, 2002 which was outstanding which is less than 180 days from the year end. This has been confirmed by MBR in his observations also. Accordingly there are no over dues requiring the account to be classified as NPA. The NPA date assessed by AFI 2003 as August 2001 is not acceptable.
- ii. The special auditor MBR has classified this account as sub-standard as at March and December 31, 2002. There are recoveries in the account of Rs.307.36 through adjustment of margin money and from other group company deposit. However AFI 2003 classified as D-1.
- iii. The project of the borrower has been appraised by IDBI a premier Institution and at the same time bank has also done independent appraisal before granting credit facilities.
- iv. As per the flash report prepared by the Empowered Group in April 2003 for Corporate Debt Restructuring the borrower account has been classified as Standard Asset and is in line with the Bank's classification.

As per the Respondents, the following are additional submissions to the Council:-

- v) It is submitted that for the reasons submitted in account no.III.L.18 which had been squarely applied in this account and the bank had considered recoveries subsequent to the balance sheet date. It is submitted that the finding of the DC that recovery of interest for the quarter ended September, 2002 after the Balance Sheet date is not in compliance with RBI Circular dated Feb 10, 2003 (on Page 310 of Vol. 1) (Annexure 5, Page 143) and same should be reported by the auditors is denied and disputed.
- vi) It is submitted that the objective of IRAC norms of 4th July,2002 in in Para 1.2 read with Para 3.1.1 Pages 104 & 106 of charge sheet states that "The policy of income recognition should be objective and based on record of recovery rather than on any subjective considerations." This clearly permits the banks to boost recoveries in assessing NPAs while presenting financial statements. (Refer Prudential Norms attached to Charge Sheet of 5th December, 2006) (Refer Annexure 6, Page 144 - 172)

vii) RBI internal circular No.DBS.CO.PP./11.01.005/2000-2001 of 30th June 2001 in Para 3 (v) a) it is clearly stated where the date of balance sheet is 31st March, "the Inspecting Officers should, therefore confine their judgment on developments in the borrower account up to a maximum period of one month from the date of balance sheet (or up to the date of signing in the case of banks which are in a position to prepare balance sheet earlier). However, recoveries of dues in part or full after April 30 may be given the benefit. (Refer Annexure 4 Page 138-142)

viii) In the instant case the accounts were finalized in September, 2003 with prior approval of RBI for extension of time post 30th June 30 till 30th September, 2003. Pursuant to the aforesaid circular in the light of extension granted by RBI till 30th September, 2003, recoveries till 25th September, 2003 was considered. Further the accounting policy of the bank also states that provision for NPAs are made after considering subsequent recoveries. As per Schedule XIX significant accounting policies - Para 2.1 reads.

"Advances are recognized as non performing based on prudential norms for income recognition, assets classification and provisioning issued by RBI from time to time after considering subsequent recoveries, regularities / creation of securities including assets acquired in satisfaction of that's subsequent to Balance Sheet Date. The related interest on doubt full advances is not recognizing as income until received".

This accounting policy consistently followed by the bank for numbers of year and there is no change in accounting polices during auditing period. Further none of the regulators including RBI objected to this accounting policy of accounting for recoveries subsequent to balance sheet While forming a true and fair view of financial statements it is appropriate to consider events subsequent to balance sheet.

ix) The RBI letter of September 7, 2003 (Refer Annexure 23 Page 284-286) to the bank advised to consider recoveries in MBR reported accounts. The Management Representation letter of 30th September, 2003. Refer pages 854-855 and 867-868 of Volume 4 respectively. (Refer Annexure 24, page 287-301)

x) As per Para 8.2 of Accounting Standard of 4 (AS-4)" Adjustments to assets and liability are required for events accruing after the Balance Sheet date that provide additional information materially affecting the determination of the amount

relating's to conditions existing at the Balance Sheet date. For example, an adjustment may be made for a loss on a trade receivables account which is confirmed by the insolvency of a customer which accure after the Balance Sheet Date." (Refer page 99 of Charge Sheet)

xi) Save otherwise considering the finding of DC that there is no RBI circular to consider amounts received against NPAs after the balance sheet date (even though there is an internal circular of RBI dated 30th June 2001) and at the same time IRAC norms are silent, in such scenario application of AS-4 referred above has been consider appropriate by the auditors. Accordingly, subsequent recoveries against NPAs were taken into account by the Bank.

xii) This practice considering recoveries subsequent to balance sheet dater has been followed by IndusInd Bank as stated in their accounting policy 5.1 on page 29 of Annual Report for 2004-05 and Para 5.1 of notes on page 157 of annual report 2017-18.

xiii) MBR in Account No.III.L.3 has considered the short term loan as standard assets although it is an NPA as on 31st Mar 2002 since the same has been closed after the balance sheet date.

xiv) There is no allegation in AFI 2003 for considering recoveries subsequent to balance sheet date.

Findings of the Council on the above charge:-

i) The Council reiterated its findings as mentioned in respect of Account no.III.L.18 that no RBI Circular that permits to consider the amount received after March 31, 2003 to *re-compute the period of over dues* and to classify the asset as on March 2003. As regards the RBI Circular dated Feb 10, 2003, it is noted that it pertains to those loan accounts which are classified as NPAs but 'if arrears of interest and principal are paid by the borrower', it should be classified as Standard account. It is viewed that such Circular is applicable only when 'interest and principal' are due as on balance sheet date are paid in entirety and not partially. Hence, the methodology adopted by the Respondents to consider the amounts received after the balance sheet date till the date of completion of audit for computing the overdue period to classify the asset is not acceptable.

ii) It is noted that the Respondent have taken defense for the methodology adopted by placing the RBI Circular issued to its Inspectors, accounting policy of the bank and AS-4. It is viewed that an auditor conducts an independent

assessment as per IRAC norms. He cannot argue to follow advisory issued to RBI Inspectors. Further, the stated accounting policies against the provisions of AS-4, which prescribes to adjust for those events which relate to condition existed as on balance sheet date. Any recovery made thereafter cannot be presumed to be made on balance sheet date. Hence, the Council viewed that neither RBI circular dated 10th February, 2003 nor AS-4 permits to re-compute the period of overdue for the purpose of classification of any loan account.

iii) Hence, in view of the above facts, the Council agreed with the findings of the Disciplinary Committee.

15.14 Account No. 3 – III.L.3

(Rs. in Crore)

	<u>Bal. as on 31.03.2003</u>	<u>Classification as per auditor</u>	<u>Classification as per PIO</u>	<u>Provision by Bank</u>	<u>Provision as per PIO</u>
III.L.3	77.21	Sub-Standard	D1	7.72	15.44

a) Charge (As stated by the PIO):-

"The release of funds often preceded the sanctions in the account.... Overdue TOD was extended till September, 2001 without any comprehensive / realistic appraisal in March 2002, the dues were rescheduled again by converting the TOD into a short term loan of Rs.10.00 crores Considering the repeated re-schedulement without detailed appraisal, uncertain prospects of viability, continuous shortfall in DP, overdue TOD from January, 2001 and also re-phasing of interest without providing for the NPV, the account was classified as NPA as on September 30, 2001 and Doubtful (D-1) as on March 31, 2003."

b) Clarifications before the Disciplinary Committee:-

i) As per Special Auditor (MBR) **(Page no.428)**, the accounts has been classified as Sub-standards assets as March, 31, 2002 and December, 31, 2002 and RBI had vide letter dated May, 9, 2003 **(Page 431)** advised the bank to adhere to the classification of MBR. At the time of completion of audit, the interest for the quarter ended September, 2002 is overdue for more than 180 days and the account is continued to be Sub-standard as per IARC norms. As per aforesaid RBI letter, the adverse features in the account cited by PIO in respect of prior years are not relevant in downgrading the account from Sub-standard to D1.

ii) The Respondents further stated that the Statutory Auditor of the borrower Company had furnished a certificate dated April, 7, 2003 **(Page 445)** certifying that the borrower Company had not yet started commercial production as on 31st

Dec, 2002. As per the IARC norms, the account could have been treated as Standard assets for a period of 2 years from the date of commencement of commercial production. However, keeping in view of the RBI letter dt. 9th May, 2003, the account was treated as Sub-Standard Assets.

c) Findings of the Disciplinary Committee:-

i) It is noted from MBR Mar 2002 (**Pg 43**) that various facilities are reported to be out of order since Sept 2001. Further as per MBR as on Dec 2002, the security against the accounts was less than 10%. It is noted that the Respondents in their submissions have stated (**P. 437 Vol 2**) to have followed MBR, Dec 2002 classification in view of RBI letter dated May 9, 2003. They also reproduced the certificate stating that commercial production was not started. The Respondents has also stated that as per IRAC norms the account could have been treated as Standard asset for a period of two years from the date of commencement of commercial production.

ii) It is noted that as per para (iv) of 4.2.13 (**on pg 9**) of RBI Circular if after re-schedulement, the satisfactory performance during the one year period is not evidenced the asset classification would be done with reference to pre-restructuring payment schedule that is Sept 2001. Accordingly, period from Sept 2001 to March 2003 constitutes 18 months so classification should have been doubtful asset.

iii) On perusal of MBR Dec 2002 report, it is noted that it also states to have categorized said loan account as loss asset but since bank does not perceive threat of recovery therefore then classified as Sub-standard asset. In view of above, the asset was doubtful asset. Keeping in view the above, the Respondents are guilty of wrong classification and for not pointing out the same in audit report.

iv) **Accordingly, the Committee is of the considered view that the Respondents are guilty of professional misconduct falling within the meaning of Clauses (7), (8) & (9) of Part I of Second Schedule to the Chartered Accountants Act, 1949.**

d) Submissions of the Respondents before the Council

The Respondent stated that the following final submissions made to DC on 23rd April, 2018 (pages 64-65) had not been considered by the Committee:-

i. As per Special Auditor (MBR) the account has been classified as sub-standard asset as on March 31, 2002 and December 31, 2002. RBI vide letter dated May 9, 2003 advised the bank to adhere to the classification of MBR. At the time of

completion of audit the interest for the quarter ended September 2002 is overdue for more than 180 days and the account is continued to be sub-standard as per IRAC norms. Thus the date considered for classification of NPA by AFI Report 2003 being 30th September 2001 is incorrect.

ii. The date on which the account ought to have been classified as NPA is 31st March 2002 as the account was irregular and continued to be Sub-Standard on 31st March 2003. The account is fully secured by Pari-passu charge on current fixed assets of Rs.177.83 crores. (Refer page 438 volume 2 for security details).

iii. The learned PIO observed that the commercial production has started whereas the statutory auditor of the borrower company had furnished a certificate dated April 7, 2003 certifying that the borrower company had not yet started commercial production as on December 31, 2002. (Refer page 445 volume 2). As the commercial production was not started the account could have been classified as standard account as at March 31, 2003, but on abundant caution the bank classified the account as sub-standard.

As per the Respondents, the following are additional submissions to the Council:-

i) It is submitted that there is no reference to short fall in securities page no.43 of 88 MBR report. (Annexure 25 Page 302-308) The Hon'ble DC is commenting upon the conduct of the account for the past 2 years from the said report. However it is important to consider the ultimate conclusion of MBR and development after 1-4-2002. They had verified the records of the Bank with reference to the conclusions of MBR on page 44 of 88 clearly states that the fixed assets of company to adequate to cover all the 1st charge holder and its appropriate to consider to classify to sub-standard asset which is in order. It is also important to note that after 01-04-2002 the short term of loan of Rs.10 crores had been closed, the cash credit account has been brought down from Rs.20.97 crores to 14.58 crores which is within the sanctioned limit. They had considered the short term loan as standard asset since the same has been recovered and the account was closed after the balance sheet date for the reasons stated in accounts III.L.18 and III.L.1.2. This is the treatment given by MBR who had considered recovery subsequent to the balance sheet date.

ii) The contention of learned PIO that the commercial production has started is denied and disputed since the allegation is not substantiated with any supporting working papers or documents. The borrower had furnished on page no.445 of volume 1 (Refer Annexure 26, Page 309) a certificate from their Chartered Accountant dated 07th April, 2003 confirming that the Company had not commenced commercial production till December, 2002 and the expenditure incurred had been debited to "incidental expenditure during construction" forming part of "Capital work in progress" which is yet to be capitalized. Accordingly Para 4.2.13 (iv) is not applicable and this falls under 4.2.13(i) (a) read with (ii) (a) as

detailed in page no.110 to 112 of the charge sheet .However considering the interest for the quarter ended September, 2002 is outstanding on Balance Sheet date the account had been classified as sub-standard.

iii) It is submitted that referring to MBR comments on page 44 of 88 considering the restructuring dim future operating results vacuum in top management the account should be classified as NPA. However considering the value of security is adequate to cover the outstanding's the accounts is classified as sub-standard. The MBR has not made any comment as to loss assets but the DC misinterpret the MBR comment in the context of the deficiency assumed there is threat of recovery and classifying assets as loss assets. It is to be noted that even future projection did not materialize the bank held adequate security to cover the risk. Accordingly, the classification made by the bank is in order.

Findings of the Council on the above charge:-

i) Though the Respondent has pleaded that the commercial production had not yet commenced, it is noted that extant matter relates to rescheduling / restructuring before the commencement of commercial production which is dealt with in para 4.2.13 of IRAC norms. It is also noted that in extant case the loans were extended and thereafter restructured. The accounts were out of order since 2001. Though recoveries were made still it was out of order. As per detail given in MBR March, 2002 the facilities were rescheduled in September, 2001. So if such accounts were not able to satisfactorily perform (i.e. repaying the amount as and when it becomes due) the asset was required to be classified with reference to pre-rescheduling payment schedule as reported by Disciplinary Committee. So the asset had become NPA with effect from September, 2001 and therefore, classified as doubtful in March, 2003.

ii) Hence, in view of the above facts, the Council agreed with the findings of the Disciplinary Committee.

15.15 Account No. 4 – III.L.4

(Rs. in cr.)

	Bal. as on 31.03.2003	Classification as per auditor	Classification as per PIO	Provision by Bank	Provision as per PIO
III.L.4	58.09	Standard	D1	0	48.46

a) Charge (As stated by the PIO):-

"The terms of Sanction The account should have been classified as NPA as the overdue in the account were pending for more than two quarters. The bank instead of classifying the account as NPA, restructured them on March 27, 2003 (after the accounts acquired the status of NPA). Considering the meagre security

available in the account, the account had been classified as Doubtful (D-1) by PIO as on March 31, 2003”

b) Clarifications before the Disciplinary Committee:-

i) The Respondents submitted that the account is fully secured by first charge on fixed assets of the borrower. The borrower company has serviced principal and interest upto September, 2002. The principal and interest for December, 2002 quarter and March, 2003 quarter were due which were not overdue for 180 days and above.

c) Findings of the Disciplinary Committee:-

i) It is alleged that there were two term Loans TL1 and TL II and the installments that remain unpaid as on March 2003, represents 2.5 quarters due and for later 3.24 quarters due. As such the term loans should have been classified as NPA on December, 6, 2002. The bank restructured the account when it has already acquired the status of NPA and that there was meager security against loan comprising of shares of unlisted overseas entity and information in context of their credentials were not available on record.

ii) As per the Respondents, account was restructured and exposure was fully secured which includes the shares of unlisted overseas entity valued at Rs.63.63 crore (**Pg 446 Vol 2**). The loan serviced principal and interest upto September 2002. It is only Dec qtr and Mar Qtr installments which were due. It is noted that the Respondents have produced on record the outstanding note as on 30.06.2003 (**Pg. 447, Vol 2**) whereas PIO alleges regarding position as on March 2003. Further, it is noted that the Respondents have not produced on record any valuation report on basis of which shares of unlisted overseas entity were evaluated. Considering the fact that the said loan account has already slipped into NPA and thereafter it was restructured, hence, the asset cannot be classified as standard. Such practice was leading to evergreening of loan accounts which resulted in non-provisioning in the account.

iii) **Accordingly, the Committee is of the considered view that the Respondents are guilty of professional misconduct falling within the meaning of Clauses (7), (8) & (9) of Part I of Second Schedule to the Chartered Accountants Act, 1949.**

d) Submissions of the Respondents before the Council

The following final submissions made to DC on 23rd April, 2018 (pages 66-67) had not been considered by the Committee:-

(i) As on 31st March 2003, the borrower had serviced principal and interest up to December 2002 and in fact, for a part of interest due for the period ending March 2003 in respect of both the term loans has been recovered during the period under audit and accordingly principal and interest were not overdue for 180 days or more.

(ii) Therefore, at the time of restructuring on 27 March, 2003 interest up to September, 2002 was serviced and the account is a standard asset. As per the Board approval, restructuring the repayment of principal would commence from December, 2004.

(iii) Total security available in the account in the form of first charge on fixed assets of the borrower company and its subsidiary, pledged unlisted shares at audited book value and lien on deposits made in respect of immovable property in Bangalore was of an aggregate value of Rs. 157.85 crores which is far in excess of the outstanding of Rs. 57.95 crores.

(iv) The basis for making a provision of Rs. 48.46 crores by the PIO is not available.

As per the Respondents, the following are additional submissions to the Council:-

v) It is submitted that the observation of DC that position of the account on 30th June, 2003 but not of 31st March, 2003 is incorrect. The DC erroneously omitted to refer to page no.448 of volume 1 (Refer Annexure 28 Page) where the details of quarterly interest charged and recovery there of term loan I and II which covers the position during the audit period and subsequent to balance sheet date.

vi) As stated on page 447-448 of Volume 2 (Refer Annexure 27, Page 310-324). states that Interest on Term Loan I&II for the quarter ended September 2002 of Rs.52.23 lakhs and Rs.100.62 lakhs had been paid in full on 31st Oct 2002. Accordingly, account was considered standard on 27th March, 2003 at the time of restructuring and on balance sheet date.

vii) The interest on Term Loan I & II for the quarter ended December, 2002 of Rs. 53.27 lakhs and Rs.101.21 lakhs respectably paid in full on 30th June 2003. Interest on Term Loan I & II for the quarter ended March, 2003 of Rs. 46.96 lakhs and Rs.97.24 lakhs of which Rs. 39.65 lakhs and Rs.25 lakhs received till June 2003. Accordingly the account is not slipped into NPA on the balance sheet date. The value of unlisted shares has been considered at the time of the audit

15 years back and no exceptions were noted which they had verified during the course of audit.

viii) Based on the details furnished in Para (a) above the account has not slipped to NPA on the balance sheet date even without considering subsequent recoveries as detailed in page no.448 (Refer Annexure 27, Page 310-324). Accordingly the restructuring done on 27th March, 2003 was in compliance with IRAC norms and there was no ever greening of loan accounts to avoid non-provisioning in the financial statements.

Findings of the Council on the above charge:-

i) It is noted that the Respondents tried to establish that at the time of restructuring on 27th March, 2003, the accounts was regular by stating that as on 31st March, 2003, the principal and interest upto December, 2002 was serviced. However, it is noted from para 5 of the documents produced on record by the Respondent (Annexure 27) which clearly states that such recoveries were made during 01.01.2003 to 30.06.2003 which also corroborates the observation of the PIO stating as under:-

"The terms of sanction for preference shares (tenor 5 years) stipulated that the dividend was due for payment in March every year. The repayment of TL 1 @ 1.875 crore per quarter was to commence from March 31, 2002 after a moratorium of 12 months. At the end of March, 2003 (5 quarters) the borrower was required to repay Rs.9.375 crore whereas the borrower paid an amount of Rs.4.685 crore leaving a balance of Rs.4.69 crore which represented installment of Rs.2.5 quarters as on March 31, 2003. As such, the account should have been classified as NPA as the overdue in the account were pending for more than 2 quarters. The repayment of TL II @ Rs.1.6 cr. was to commence from June, 30, 2002 after moratorium of 15 months. The repayment due at end of 31st March, 2003 (4 quarters) aggregated Rs.6.40 cr. whereas the repayment at the end of March, 31, 2003 aggregated only Rs.1.22 cr. leaving a balance of Rs.5.18 cr which represented defaulted the payments equivalent to 3.24 quarters as on March, 31, 2003. As such the term loan should have been classified as NPA as on 31st December, 2002....."

From the above, it was noted that the difference in opinion is arising due to the payments received after March 31, 2003. It is viewed that a classification is required to be made based on payments received till the balance sheet date until or unless full amount due is received as envisaged in RBI Circular February, 2003. In extant case, the account has been claimed to be restructured on March 27, 2003 whereas on perusal of all the recoveries made till March 31, 2003 it is clear that account was NPA in Dec 2002. So, the Loan account had slipped as NPA before it was restructured further, the Respondent are also silent about the

valuation of unlisted share which constitute more that 91% of total security (refer Annex-27).

ii) In view of the above facts, the Council agreed with the findings of the Disciplinary Committee.

15.16 Account No. 16 – III.L.16

(Rs. in cr.)

	Bal. as on 31.03.2003	Classification as per auditor	Classification as per PIO	Provision by Bank	Provision as per PIO
III.L.16	49.48	Standard	D1	0	16.62

a) Charge (As stated by the PIO):-

"The Company could not complete the project as per schedule i.e., before March 2002.... The NCDs and Term loans were due for repayment from March, 31, 2002 onwards but there was no repayment. The Bank rescheduled the term loans and NCD on March 6, 2002 and granted additional facility of Rs.18.00 crore to complete the project. However, the borrower could not complete the project as the municipal authorities did not grant permission for construction of a Floor Space Index (FSI) of 21000 sq.ft. The property owner.....also refused to assign rights to.....for creation of mortgage for construction of additional FSI of 21,000 sq. ft. As the project was not completed till 31st March, 2002, the bank was compelled to pay unpaid dues of to various suppliers to keep the project afloat. On February, 3, 2003, the bank's Board was apprised of the impossibility of completion of project by the promoters despite the restructuring of repayment schedule. As the loan amount was not fully secured due to unclear/ defective title to the property in favour of, the bank was not in a position to sell the property to recover its dues."

b) Clarifications before the Disciplinary Committee:-

i) The Respondents stated that PIO's observation that project could not be completed before March, 2002 and bank rescheduling the NCDs in March, 2002 pertain to prior year and no adverse development has taken place during the year under review.

ii) As per AFI 2002, the NCDs were issued in the year 2000 and due for payment from the year 2002. NCDs were rescheduled in July, 2001. Since there were no principal or interest overdue at the time of re-schedulement, bank classified the accounts as Standard Assets. The rescheduling was as per IRAC norms since the account was fully secured. The PIO ignored the Board Memorandum dated April

19, 2003 which discuss about the legal opinions obtained from different counsels, who had opined positively about takeover of the property of the bank.

The Interest was outstanding for quarter ended December, 2002 which is for less than 180 days.

c) Findings of the Disciplinary Committee:-

i) After perusal of the allegation viz-a-viz the Respondents submissions and GTB note dated 19.4.2003 which the Respondents submitted in their defence. It appears from the Note that the project against which the loan was sanctioned, has been delayed beyond the reasonable period which has resulted in the cost overrun. The Note has pointed out that the delay is due to various reasons like delay in reaching agreement with the tenant on the plot, approval of the approach road by the Airport Authorities, delay in getting approval of BMC, as a result there is a delay of more than 18 months. The Bank in the said Note has listed out various options of taking over the project and as worked out the options of either handing/selling of the project to some other builder or development of the project as a joint venture. However, the note does not conclude with the any decision. It means that the Bank was itself not clear about what to do with the Project and consequently, the loan account. It appears that the RBI has rightly pointed out that the amount of the loan was not fully secured due to unclear/defective title of the property in favour of the bank and even the Bank was not in a position to sell the property.

ii) In view of the above, it was clear that the realizable value of loan was under jeopardy. The recommendations of the bank on the project position and its realization (**Vol 2 – Pg. 461, 463**) clearly indicate that there was clear loss on 'as is where is basis' and investment as well as uncertainty was involved in case of development of project by the bank. In any case, accordingly it is viewed that classification of such loan as standard was in no way warranted. It is accordingly viewed that the Respondents have failed to take a conscious view in the above matter.

iii) **Accordingly, the Committee is of the considered view that the Respondents are guilty of professional misconduct falling within the meaning of Clauses (7), (8) & (9) of Part I of Second Schedule to the Chartered Accountants Act, 1949.**

d) Submissions of the Respondents before the Council

The Respondents stated that the following final submissions made to DC on 23rd April, 2018 (pages 67-68) had not been considered by the Disciplinary Committee:-

- i. As per AFI 2002, the NCD's were issued in the year 2000 and due for payment from the year 2002. NCD's were rescheduled in July 2001. Since there were no principal or interest overdue at the time of rescheduling, bank classified the account as Standard Asset. The rescheduling was valid as per IRAC norms since the account was fully secured Rs. 46.26 crores.
- ii. AFI 2003 has overlooked the previous re-scheduling in July 2001 and considered re-scheduling in March 2002. The fact that the project could not be completed is irrelevant for classification of the account.
- iii. PIO's contention that the property has unclear/defective title to the property is not correct. Board Memorandum dated April 19, 2003 discussed about the legal opinions obtained from different legal counsels, who had opined positively about takeover of the property by the banks.
- iv. At the time of audit, the interest was outstanding for the quarter ended December 31, 2002 which if for less than 180 days and account has been classified as standard as per IRAC norms.
- v. Total security available in the account in the form of mortgage of land of the borrower company as per valuation report Rs.46.26 crores.

As per the Respondents, the following are additional submissions to the Council:-

vi) It is submitted that firstly this is the proposal submitted head office which is beginning of the process not a conclusion. The corporate office yet to decide the plan of action and obtain necessary board approval till such time the account position cannot be determined. As per the said proposal interest has been serviced partly till up to December 2002. Accordingly it is not NPA as on the balance sheet date. As per the said proposal the bank is holding mortgage of immovable property under legal opinion obtain from M/s Wadia Ghandy & Co. and M/s Manilal Kher Ambalal & Co., the best course available to the bank to takeover the assets and under normal sales on mutual consent terms. As per the valuation report obtain by the Company (Refer Annexure 28, Page 326- 334). The lowest value of property is valued at Rs.109.98 crores which may be considered as purchase value. The Corporate Office of the bank was yet to make decision at the time of audit. Accordingly it is not fair on the part of DC to come to a conclusion merely on the basis of the proposal unless and until such proposal is

approved by the Board of the bank. Based on above submission the charge should be dropped.

Findings of the Council on the above charge:-

i) In the extant matter it is noted that the Respondents are arguing on the basis of the period for which the loan account was overdue. As per them, the interest was outstanding for quarter ended December 31, 2002. However, on perusal of GTB office note dated April 19, 2003 (Annex-28) on page 327 while stating the position of loan on March, 2003 it states as follows:

"Balance Interest for September 02 and entire interest applied for..... December 02 and March 03 quarterly interest yet to be serviced."

ii) Considering the facts highlighted by Disciplinary Committee with respect to uncertainties attached to the project held, the Council agreed with the findings of the Disciplinary Committee.

15.17 Account No. 22 – III.L.22

(Rs. in cr.)

	Bal. as on 31.03.2003	Classification as per auditor	Classification as per PIO	Provision by Bank	Provision as per PIO
III.L.22	19.38	Standard	Sub-Stand	0	1.94

a) Charge (As stated by the PIO):-

"The project which was originally scheduled to be completed by March 31, 2002 could not be completed due to downturn in software industry. As the Company could not meet its revenue projections, it leased out its infrastructure to.....to establish a call center and other related activities. As the borrower was not able to pay the dues, the bank funded Rs.1.00 crore towards one installment (December, 2001 quarter) of NCD and capped the limit of Rs.16.00 crore. The NCDs which were to be paid in 16 quarterly installments of Rs.1 crore each commencing from December, 2001, could not be paid and the bank deferred the repayment schedule with repayments commencing from August, 9, 2002 (date of restructure) till March, 31, 2003 without effecting any change in the total tenor of NCD as originally scheduled. The account had already turned NPA as on June, 30, 2002 due to default in repayment of installments for the quarters ended

December, 2001, March, 2002 and June, 2002. Since the account was restructured after the loan acquired the status of NPA, it was classified as Sub-Standard as on June, 30, 2002 in terms of para 4.2.13(iii) of the Master Circular on IRAC norms. Further, the bank also violated para 4.2.13 (v) (b) of Master circular dated 4th July, 2002 on IRAC norms as the restructuring of the Company, engaged in software development, a non-manufacturing concern, did not qualify for restructuring as per the instruction.”

b) Clarifications before the Disciplinary Committee:-

i) The Respondent stated that as per para 4.2.15 of RBI Master Circular DBOD no.Bp.BC.1/21.04.048/2002-2003 dated July, 4, 2002, the amount can be classified as Standard assets for a period not exceeding two years beyond the date of completion of the project as originally envisaged at the time of initial financial closure of the project. Even assuming that the date of completion of the project was March, 2002, the account can be a standard asset upto March, 2004.

The Balance outstanding as on March 31, 2003 is much below the sanctioned unit of Rs.28 crores. As per the terms of restructuring on August, 2002, NCDs had been serviced upto December, 2002 quarter and the earliest due for payment of NCDs was March, 2003. Accordingly, the overdues were not beyond 180 days.

c) Findings of the Disciplinary Committee:-

i) It is noted that the PIO and the Respondents have referred different para of RBI Master Circular dated 4th July, 2002 to support their respective arguments. The PIO has stated that the account was restructured after the loan acquired the status of NPA, on the other hand, the Respondent had referred to the norms of para 4.2.15 of IRAC Norms that relates to project under implementation which are applicable only on industrial projects under implementation which involve time overrun. It is noted that in extant case, the said project is stated to have not been completed due to downturn in software industry; instead the infrastructure was leased out to the call centre. Accordingly, it is viewed that the Respondent's plea that the account would remain standard till 31st March, 2004 in spite of default in repayment is not tenable at all.

ii) Hence, the classification of said loan account as Standard is against the IRAC norms. Accordingly, the Committee is of the view that the Respondents are guilty of professional misconduct falling within the meaning of Clauses (7), (8) & (9) of Part I of Second Schedule to the Chartered Accountants Act, 1949.

iii) Accordingly, the Committee is of the considered view that the Respondents are guilty of professional misconduct falling within the meaning of Clauses (7), (8) & (9) of Part I of Second Schedule to the Chartered Accountants Act, 1949.

d) Submissions of the Respondents before the Council

1) It is submitted that the borrower company is in software industry and project could not be completed by 31st March, 2002 as originally planned due to down turn in software industry. Accordingly the account had been restructured as reported by AFI 2003. In this case the terms of restructuring applicable to projects under implementation as per Para 4.2.15 (Annexure 6), Category 1 where date of completion of project should be envisaged at the time of original financial closure in such cases account may be treated as standard assets for two years beyond the date of completion. In the present case financial closure envisaged 31st December, 2002 and can be classified as standard asset till 31st December, 2004. Accordingly the accounting is classified as standard as on Balance Sheet date.

ii) As per Para 4.2.13 (a) and (b) restructuring of principal and interest before commencement of commercial production or after commencement of commercial production but before asset is classified as sub-standard would not cause standard asset to be classified as sub-standard. However, in case restructuring of interest, provision should be made for the sacrifice amount.

iii) In the present at the time of restructure there are no overdues in the account and was classified as standard. Accordingly as per 4.2.13 (a) the NCD had been converted into a term loan on 28.3.2003 before the date of commercial production would not cause standard asset to be classified as sub-standard. (Refer Pages 1078 -1082 of volume 6) (Refer Annexure 29, Page 335-339). During the year the bank has recovered Rs.6.16 crores. The account is fully secured by charge on Fixed Assets of Rs.36.50 crores valued by Rangnath Kumar and charge on current assets of Rs.6.44 crores. Hence even following Para 4.2.13 of the IRAC norms, the classification of bank is in order.

Findings of the Council on the above charge:-

i) After perusing the observations of the Disciplinary Committee vis-à-vis submissions of the Respondents, the Council agreed with the observation of the Committee that norms of Para 4.2.15 of IRAC norms that relates to Project Under Implementation are applicable only on industrial projects under implementation which involve time overrun. It was noted that the extant project was stated to have not been completed due to downturn in software industry, instead the infrastructure was leased out to the call center. Accordingly, the relaxation available to Projects Under Implementation loan not available to such loan

account due to non-performance in respect of NCDs which although was converted into term loan on 28.03.2003, had already become NPA. The plea the Respondent that the said account would remain standard till 31st March, 2004 in spite of default in repayment is not tenable at all.

ii) In view of above, the Council also agreed with the observation that it is a case where the account was restructured after the account had become NPA due to non-payment outstanding. Hence, the effect of the requirement of para no.4.2.13 (a) & (b) cannot be given in the matter. Accordingly, the Council is of the view that the classification of said loan account as standard was against the IRAC norms.

iii) In view of the above facts, the Council agreed with the findings of the Disciplinary Committee.

15.18 Account No. 23 – III.L.23

(Rs. in cr.)

	Bal. as on 31.03.2003	Classification as per auditor	Classification as per PIO	Provision by Bank	Provision as per PIO
III.L.23	27.02	Standard	SubStandard	0	2.70

a) Charge (As stated by the PIO)

"The firm loan was required to be paid in four quarterly installments due from June, 2002. Though the entire loan was to be repaid by end of March, 2003, a balance of Rs.19.52 crore was outstanding in the account as on that date indicating heavy defaults in repayment schedule. The account should have been classified as sub-standard as on December, 31, 2002 as per para 2.1.2 (i) of RBI master circular on IRAC norms dated July, 4, 2002. Instead, the bank restructured / rephrased the repayment schedule on March 8, 2003 by funding interest for September, 2002 and December, 2002 in the form of a fresh term loan for Rs.6 crore (w.e.f June, 2002) and reducing interest without providing under NPV terms as per para 4.2.13 (i) of RBI master circular on IRAC. ... The bank took further exposure to diamond business (through real estate route) which was in violation of the guidelines of the bank.... there were no genuine repayments which could retain the amount in standard category."

b) Clarifications before the Disciplinary Committee:-

i) The Respondents stated that the overdue interest for the quarters ended September and December 2002 was funded by term loan and adjusting of

reduction in the rate of interest. On this basis, the repayment has been re-scheduled. The balance in TOD is outstanding since February, 2003. As per the terms of re-schedulement, the repayment of installments starts from September, 2003. The borrowing was secured by mortgage on property under construction valued at Rs.30 crores. They examined the outstanding borrower accounts as at March 31, 2003 and as per IRAC norms the asset is correctly classified as Standard Asset by the Bank.

ii) The Respondents further stated that they relied upon AFI 2002 which treated the account as Standard Assets for year 2002.

c) Findings of the Disciplinary Committee:-

i) Keeping aside the fact as to whether the overdue interest for the quarters ended September and December, 2002 was funded by term loan or otherwise, it is noted from the evidences produced by the Respondent that the Board had at its meeting held on 10th Feb 2003, inter-alia, decided to reduce the interest rate on existing loans to 12% (**Vol 2- Pg 467, 468**) which indicates restructuring against which it is alleged that no-provision was made for such sacrifice as required under IRAC norms. It is noted that the Respondents are silent in this respect. It is viewed that in the absence of such provision for sacrifice made the loan account cannot be classified as Standard account.

ii) **Accordingly, the Committee is of the considered view that the Respondents are guilty of professional misconduct falling within the meaning of Clauses (7), (8) & (9) of Part I of Second Schedule to the Chartered Accountants Act, 1949.**

d) Submissions of the Respondents before the Council

The following final submissions made to DC on 23rd April, 2018 (pages 69-70) had not been considered by the Disciplinary Committee:-

i) The allegation in the AFI Report 2003 that the title to the property is unclear / defective is without any basis; As per Board Memorandum dated 19th April 2003, the account is security by mortgage of property valued at Rs.46.26 crores; (Annexure 30, Page 340-350)

ii) As per AFI 2002, the NCD's were issued in the year 2000 and due for payment from the year 2002. NCD's were rescheduled in July 2001. Since there were no principal or interest overdue at the time of reschedulement, bank classified the account as Standard Asset. The rescheduling was valid as per IRAC norms since the account was fully secured Rs. 46.26 crores.

iii) AFI 2003 has overlooked the previous re-schedulement in July 2001 and considered re-schedulement in March 2002. The fact that the project could not be completed is irrelevant for classification of the account.

iv) PIO's contention that the property has unclear/defective title to the property is not correct. Board Memorandum dated April 19, 2003 discussed about the legal opinions obtained from different legal counsels, who had opined positively about takeover of the property by the banks.

v) At the time of audit, the interest was outstanding for the quarter ended December 31, 2002 which if for less than 180 days and account has been classified as standard as per IRAC norms.

As per the Respondents, the following are additional submissions to the Council:-

vi) It is submitted that the Board approved on 10.2.2003 for sacrifice of interest from January-March, 2003 quarter as per page no.467 of volume 2 (Refer Annexure 30, Page 340-350) and interest up to quarter ended December, 2002 was as per original terms. Accordingly the bank had accrued the interest for the January – March 2003 quarter at the revised rate of interest since the board approval was in February 2003. Hence, the question of provision for sacrifice did not arise. Accordingly the bank has correctly classified the account as standard.

Findings of the Council on the above charge:-

i) It is noted that DC had reported about non-provision of sacrifice made on loan account which warrant classification of loan account as sub-standard. However, the Respondent tried to argue that interest for the quarter of January – March, 2003 was booked in the books of account as per revised rate of interest since the Board approval was in February, 2003. Hence the question of provisions for sacrifice does not arise.

ii) It is noted that as per provisions of IRAC norms, for the purpose of calculation of the sacrifice, the future interest due as per the original loan agreement in respect of an account should be discounted to present value at a rate appropriate to the risk category of the borrower and compared with the present value of the dues expected to be received under the restructuring package, discounted on the same basis. In case there is a sacrifice involved in the amount of interest in present value terms, the amount of sacrifice should be either be written off or provision made to the extent of the sacrifice involved.

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iii) Accordingly, mere recognition of interest on revised rates for a quarter does not mean that no sacrifice was involved in the case. Total sacrifice based on future interest was required to be calculated and provided for which was not done.

iv) In view of above facts, the Council agreed with the observation of the Disciplinary Committee that in the absence of required provision for sacrifice made, the loan account cannot be classified as Standard Account.

15.19 Account No. 38 – III.L.38

(Rs. in cr.)

	<u>Bal. as on 31.03.2003</u>	<u>Classification as per auditor</u>	<u>Classification as per PIO</u>	<u>Provision by Bank</u>	<u>Provision as per PIO</u>
III.L.38	CC 2.54	Standard	SubStandard	0	0.75
	TL 4.99				

a) Charge (As stated by the PIO):-

"Owing to lack of interest by the Management, the Company suffered losses for 3 consecutive years and the bank restructured the account for the second time (first restructuring in February, 2000) on August, 26, 2002 and converted NCD dues to a term loan of 5 crore and sanctioned an additional working capital facility of Rs.2.50 crore to the A5 rated company. As the account was subjected to restructuring again on August, 26, 2002 without any tangible security (the NCD of Rs.5 crore was sanctioned outside the consortium and the consortium bankers did not cede the charge on fixed / current assets due to non-payment of interest / installment dues to them). The accounts migrated to NPA category as on March 31, 2003 in terms of para 4.2.13(ii) of RBI Master Circular on IRAC norms. The term loan of Rs.5 crore disbursed on 16th and 17th October was utilized to redeem the NCDs and additional working capital of Rs.2.50 crore was sanctioned to close the outstanding lease rentals of Rs.2.50 crore on March, 17, 2003."

b) Clarifications before the Disciplinary Committee:-

i) The Respondents submitted that at the time of restructuring of the account in August 2002, the bank was holding security by way of hypothecation of stocks and book debts valued at Rs.10.69 crores and first pari passu charge on fixed assets at Rs.5 Crores. As per records of the bank, these securities were verified on January, 06, 2003. Accordingly at the time of restructuring of the account in August 2002, the exposure is backed by 100% security and the observation of the learned PIO as to restructuring without tangible security is contradictory. The

CC account is overdrawn on March 31, 2003 on application of interest and the period of irregularity in CC account was less than 180 days. Based on the above submissions, the account has been classified as standard as per IRAC norms.

c) Findings of the Disciplinary Committee:-

i) As per the IRAC norm para 4.2.1(ii), a "standard asset where the term of the loan agreement regarding interest and principal, have been re-negotiated or re-scheduled, after commencement of production, should be classified as sub-standard and should remain in such category for at least one year of satisfactory performance". The above-said loan account was re-negotiated, however, the Bank did not change the category of the loan account which is a clear violation of the IRAC norms. The submissions of the Respondents that the loan was backed by 100% security, is not maintainable as per the IRAC norms, the restructuring is mandatory and the issue of security comes later on. In view of the above, the submissions given by the Respondent is not acceptable.

ii) Accordingly, the Committee is of the considered view that the Respondents are guilty of professional misconduct falling within the meaning of Clauses (7), (8) & (9) of Part I of Second Schedule to the Chartered Accountants Act, 1949.

d) Submissions of the Respondents before the Council

i) It is submitted that the DC inadvertently referred to Para 4.2.1(iii) instead of Para 4.2.13(i), the content however is in order. The DC had considered only first four line of Para 4.2.13(i) which is applicable till March, 2001. The above position had been modified by RBI on representation from Banks. Reference is made to Para 4.2.13(i)(b) on pages 111-112 of the charge sheet which is applicable for this account (Refer Annexure 6, Page 144-172). The restructuring of account done in August, 2002 as per aforesaid IRAC norms since the account is fully secured and classified as standard asset and there was no over dues.

ii) The finding of the DC the account was not backed by 100% security at the time restructuring is denied & disputed. This is a consortium account led by State Bank Of India and three other Banks. The value of security cover available to the bank as stated in page 521 of volume 2 (Refer Annexure 31, Page 351-357) comprise of current assets Rs.7 Crores and fixed assets of Rs. 6 crores which is far in excess of the outstanding. Accordingly, adequate security was available at the time of restructuring in compliance with IRAC norms, the account had been classified as standard asset.

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Findings of the Council on the above charge:-

i) After perusing the observations of the Disciplinary Committee on the charge vis-à-vis submissions of the Respondents, it is noted that it is a case where an account was restructured twice. First time in February, 2000 and second time on 26th August, 2002.

ii) It is noted that the commercial production of the Company had already been started as evident from the fact that the Company had suffered losses for 3 consecutive years. Since the account was restructured twice, the same indicates inherent weakness in the accounts. In this context, para (iv) of 9.2.13 of IRAC norms prescribed that in case, however, the satisfactory performance during the one year period is not evidenced, the asset classification of the restructured account would be governed as per the applicable prudential norms with reference to the pre-restructuring payment schedule.

iii) In the present case, since restructuring was done of already restructured account, classification would be done based on performance of the account with reference to pre-structuring payment schedule which did not appear to have been considered for the classification. Hence, the Council agreed with the findings of DC that this account cannot be classified as standard account.

15.20 Account No. 42 – III.L.42

(Rs. in cr.)

	<u>Bal. as on</u> <u>31.03.2003</u>	<u>Classification</u> <u>as per auditor</u>	<u>Classification</u> <u>as per PIO</u>	<u>Provision by</u> <u>Bank</u>	<u>Provision as</u> <u>per PIO</u>
III.L.42	3.36	Standard	Sub-Stand	0	0.34

a) Charge (As stated by the PIO):-

"The term loan which was to be fully repaid by September 2003 as per original repayment schedule revealed an outstanding of Rs.3.36 crores as on March 31, 2003 and Rs.2.86 Crore as on September 30, 2003. The Executive Credit Committee (ECC) rescheduled the term loan on November 11, 2002 when the account had already acquired the status of NPA... Since the restructuring was done after the account turned NPA, it was classified as sub-standard as on March 31, 2003."

b) Clarifications before the Disciplinary Committee:-

The Respondents submitted that the borrower is enjoying credit facilities under multiple banking with ICICI Bank and Bombay Mercantile Bank. As per terms of

re-schedulement by all the bankers, ICICI Bank has to maintain multiple escrow account and the relevant trust retention agreement was under finalization at the time of audit. At the time of restructuring the account in December 2002, the account was fully secured by mortgage of property valued at Rs.7.12 crores, charge on fixed assets at Rs.5.40 Crores and lien on FDR of Rs.0.48 crores. Based on their review there was no evidence on record that the account acquired NPA status before restructuring while finalizing the account classification and provisioning of the account. As there were no overdue installments/interest for more than 180 days, as on March 31, 2003, the account has been classified as standard asset as per IRAC norms.

c) Findings of the Disciplinary Committee:-

i) After perusal of the charge viz-a-viz the Respondent's submissions, it has been observed that the additional security held by the bank was outside the consortium and was for the purpose of evergreen to unpaid NCD by the borrowers. The same was taken on 13th March 2003 to avoid NPA classification, the bank converted the CC / WCDL loan of Rs.15 crore to foreign currency loan which was to be repaid from April, 2003 with monthly repayments. The account was itself became NPA in June, 2002. The Respondents should have taken the abundant caution and thought of re-classifying the loan account. Keeping in view the above, the Respondents have failed to classify the account properly as per the prevailing circumstances.

ii) **Accordingly, the Committee is of the considered view that the Respondents are guilty of professional misconduct falling within the meaning of Clauses (7), (8) & (9) of Part I of Second Schedule to the Chartered Accountants Act, 1949.**

d) Submissions of the Respondents before the Council

i) The DC has been misled by the PIO of RBI. It is submitted that the bank had not approved conversion of CC/WDL to liquidate Foreign Currency Loan and question of evergreening of loan facility does not arise. The bank has granted credited facility under multiple bank facility with ICICI Bank and Bombay Mercantile Bank. All the bankers rescheduled the account by converting of loan into equity in December 2002 to maintain multiple escrow accounts. The account is fully secured by mortgage property of Rs,7.12 crores and fixed assets of Rs.2.37 crores considering the value of the loan outstanding as at March 31st 2003 was 3.36 Crores as stated on Page 527 on Volume II. Accordingly, the account is fully secured at the time of restructuring and classified as standard asset. (Refer Annexure 31a, Page 362a).

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ii) Based on aforesaid submission the charge should be dropped. Further the provision assessed by PIO is Rs.0.34 crores higher than that assessed by the bank which is not material and the DC in a number of cases dropped the charges on grounds of materiality.

Findings of the Council on the above charge:-

i) After perusing the observations of the Disciplinary Committee on the charge vis-à-vis submissions of the Respondents, it is noted that the Respondents did not make any comments on the observation of the Disciplinary Committee that the account was itself became NPA in June, 2002.

ii) Since an NPA account was restructured, the Council agreed with the observations of the Disciplinary Committee that such loan account could not be classified as standard asset as per IRAC norms.

iii) In view of the above facts, the Council agreed with the findings of the Disciplinary Committee.

15.21 Account No. 43 – III.L.43

(Rs. in cr.)

	<u>Bal. as on 31.03.2003</u>	<u>Classification as per auditor</u>	<u>Classification as per PIO</u>	<u>Provision by Bank</u>	<u>Provision as per PIO</u>
III.L.43	4.57	Standard	D1	0	2.75

a) Charge (As stated by the PIO):-

“Two term loans for an aggregate amount of Rs.5 Crore without any specific purpose were sanctioned and the proceeds were sent to Vysya Bank Ltd. The term loan of Rs. 2.10 crore which was sanctioned against the personal guarantee was to be repaid in one bullet repayment on April, 27, 2002 but the same was not repaid by the borrower... Thus, the present AFI treated the facilities as doubtful 1 as on March 31, 2003 (Security available was Rs.2.26 crores which was less than 50% of the loan amount).”

b) Clarifications before the Disciplinary Committee:-

The Respondents stated that AFI 2002 was silent on the account and assumed to be a standard asset. Interest on the loan is outstanding as on December 31, 2002 and is not overdue for more than 180 days as on March 31, 2002. Accordingly, the account has been classified as standard as per IRAC norms.

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ii) Further, PIO comments relating to sanction of term loan in 2001 relate to prior years where they were not auditors of the bank. The observation of the learned PIO that the security is less than 50% is not correct and accordingly downgrading the account as D1 is not in order. As per communication from the Corporate office which has not been considered by the learned PIO which resulted in classification of the advance as NPA in October 2002. The bank is holding security by way of hypothecation of book debts and stock valued at Rs.11.54 crores and collateral mortgage on three galas and residential flats valued at Rs.2.95 Crores.

c) Findings of the Disciplinary Committee:-

i) On perusal of the AFI Report and Respondent's submissions on this account, the Committee is of the view that though the advances have satisfied the conditions of IRAC norms, yet a close scrutiny clearly shows that the bank has deliberately tried to keep the advances outside the scope of NPA classification by re-schedulement / deliberate payment before the Balance Sheet Date. It appears that the Respondents as the auditor have also accepted the re-schedulement / deliberate payments at its face value without due assessment/ judgment and without any disclosure /qualifications in the auditors' report. Para 4.2.13 of RBI Circular dated 4th July, 2002 clearly states that restructuring / reschedulement of loans will not change the category of loans at least for one year. Hence, the Committee is of the view that the Respondent's submissions do not clarify the issues clearly and are not substantiated by the documentary evidence on which they relied upon. Had they taken the list of loans rescheduled in immediate previous period, they would have been able to evaluate the performance of loan accordingly, to classify it. In any case, a rescheduled loan that was NPA cannot be classified as Standard.

ii) **Accordingly, the Committee is of the considered view that the Respondents are guilty of professional misconduct falling within the meaning of Clauses (7), (8) & (9) of Part I of Second Schedule to the Chartered Accountants Act, 1949.**

d) Submissions of the Respondents before the Council

i) It is submitted that the when the bank had complied with IRAC norms as per finding of DC then there is no charge for Professional Misconduct. There is stringent criteria detailed by IRAC regarding classification. The bank had not restructured the account and the question of deliberately tried to keep the scope of NPA did not arise. It is not known about the source where the DC has come to the conclusion that loan was restructured. It is further stated the account is fully

secured and interest for quarter December. 2002 was outstanding, which is less than 180 days and account is classified as standard asset.

ii) As stated on page 530 to 532 (Volume Annexure 31a, Page 363-365) the loan is fully secured by hypothecation of receivables of Rs.11.54 crores as at 31st March, 2003 and in addition there was a charge on office premises valued at Rs.0.35 crores, residential flat at Rs.1.89 crores and Rs.0.68 crores respectably valued by Alpha Consultant in October, 2002. The total value of security is Rs.14.46 as against loan of Rs.4.57 crores. A mere reschedulement of loan does not make it mandatory to classify the loan as NPA.

Findings of the Council on the above charge:-

i) It is noted that though the Respondent claimed that there was no restructuring in the account but on perusal of Account Sheet submitted by the Respondents for this account, it is noted that overdraft facility has been stated to be sanctioned on 27.09.2002 (Annexure 31/32 page 360/363) and at the same time, it also reports the outstanding amounts against such facilities for the previous year as well i.e. March, 2002 which clearly suggests that such facilities did exist in the previous year also and were not fresh sanctioned in September, 2002. The said fact substantiates the allegation of PIO that such facilities were due for repayment in April, 2002 which were rescheduled in September, 2002. It is noted that the said fact has not been disputed by the Respondents.

ii) In view of the above, it is opined that the existence of an overdraft facility with sanctioned date i.e.27.09.2002 clearly indicates that there was re-schedulement / restructuring in the loan account. However, the Respondent chose to remain silent on the same.

ii) Accordingly, the Council agreed with the observations of the Disciplinary Committee.

15.22 Account No. 46 – III.Inv.2

(Rs. in cr.)

	Book Value	Provision,if any, held by bank	Erosion in the value /Provision required as per PIO	Shortfall in provision
III.INV.2	60	-	12.00	12.00

a) Charge (As stated by the PIO):-

"The present liabilities were held by the borrower while the assets, supposed to have been created, therefrom were transferred tothe original exposure had

become insecure as a result of diversion of funds to its sister concerns engaged in the capital market activities. In view of the irregularities in repayment, it was restructured in 2001 though it was a trading concern... the primary securities against the exposure were 100% of equity of thewhich could not be sold to a strategic investor as per original plans. The collateral securities held by the bank was common for other group accounts as well. The bank has treated the accounts as irrecoverable and was understood to be in the process of entering into a negotiated settlement with sacrifice of more than 50%. Hence in view of the serious doubts about the recoverability of loan and large shortfall in the realizable value of securities, the investment was treated as doubtful...."

b) Clarifications before the Disciplinary Committee:-

i) The Respondents stated that as per Special Auditor (MBR) (Page 651-653), the account has been classified as Sub-standards assets as March, 31, 2002 and December, 31, 2002 and RBI had vide letter dated May, 9, 2003 advised the bank to adhere to the classification of MBR. Since there were no adverse developments till March 31, 2003, the classification confirmed by Special Auditor was maintained as at March, 2003.

ii) The Special Auditor Report has further confirmed that the NCDs are fully secured and interest has been serviced till December, 2002. The PIOs observation that the realisability of the security is not correct as the exposure was secured by land and building and stock of foreign currency and MBR has confirmed the value of security in full.

c) Findings of the Disciplinary Committee:-

i) On perusal of the Respondents submissions, it is noted that the Respondent mentioned that he has followed the categorization of loan account as done by MBR. It has been noted that there was circular dated 9th May, 2003 issued by RBI, advising the auditor of the bank to adhere to the classification done by MBR. Accordingly, the Respondent followed the same. Moreover, as per the terms of the agreement, the interest for the quarter ending December, 2002 and March 2003 was overdue.

ii) It is noted that the Company was incorporated in 1996. Due to losses the Company approached the bank for restructuring the loan on 31.12.2000. The Bank restructured the loan vide approval note dated 25.01.01. The salient features of restructuring were that the interest on existing NCDs aggregating Rs.40 crore was

reduced to 12% from erstwhile 16.5% and 15.5%. Terms of reference of payment of interest on NCDs amounting to Rs.40crores were modified to "rear end at the time of redemption" instead of "quarterly". The NCDs were secured by extension of charge on current assets and Residual fixed assets available after satisfying the Term Loan lenders. As regards MBR report, it is noted that **(Pg 105, MBR Report)** company has serviced interest towards its cash credit a/c and not NCDs. In any case, keeping in view the fact that it was trading concern and that loan was restructured in Jan 2001 by sacrificing rate of interest, further the security held against NCCDs of Rs.60 crore were only fixed assets worth Rs.5.88 crore and shares worth Rs.39.82 crore whose valuation reports of were not produced on record. Hence, provision was required against said investment which was not done in extant case.

iii) Accordingly, the Committee is of the considered view that the Respondents are guilty of professional misconduct falling within the meaning of Clauses (7), (8) & (9) of Part I of Second Schedule to the Chartered Accountants Act, 1949.

d) Submissions of the Respondents before the Council

The Respondents stated that the following final submissions made to DC on 23rd April, 2018 (pages 74-75) had not been considered by the Disciplinary Committee:-

(i) The AFI 2003 Report failed to appreciate that the NCDs were secured fully and interest had been serviced till December 2002 and that the exposure was secured by Property of Rs.5.88 Crores, Foreign Currency and book debts of Rs.11.22 Crores, Pledge of Shares valued at Rs.39.82 Crores and lien share capital of the Company of Rs.3.02 Crores aggregating Rs.59.94 Crores. (Refer page 101 of MBR report) (Refer Annexure 33, Page 366-371). The value of the security approximates the NCD outstanding of Rs. 60 crores as at March 31, 2003.

(ii) Additionally, this account was covered by MBR Report who has classified as standard as at March and December 31, 2002. and AFI 2002 as doubtful. AFI 2003 ignored the directions issued by RBI vide its letter dated 9th May 2003 to the bank to follow classification as per the MBR Report.

(iii) The MBR report at further confirmed the NCD's are fully secured and interest has been serviced till December 31, 2002.

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As per the Respondents, the following are additional submissions to the Council:-

iv) It is submitted that based on their review of records of the bank held security for which the value of fixed assets was Rs. 5.88 crores, value of shares worth Rs,39.82 crores, value of foreign equality of Rs.9.33 crores and extension of charge on current asset of Rs.71.15 crores which was based on valuation by E&Y. Accordingly total security available is adequate to redeem the NCDs on maturity in March, 2004. The interest accrued but not due on NCDs has been charges to Profit and Loss Account for the year and is payable on maturity. This is also been reported by MBR on page1 of 8 and page 47-48 of 88 (Refer annexure 34, Page 372-374).

Findings of the Council on the above charge:-

i) The Council noted the observations of the Disciplinary Committee that due to losses, the Company approached the bank for restructuring the loan on 31.12.2000. The bank restructured the loan vide approval note dated 25.01.2001. The salient features of restructuring were that the interest on existing NCDs aggregating Rs.40 crores was reduced to 12% from erstwhile 16.5% and 15.5%. Terms of reference of payment of interest on NCDs amounting to Rs.40 Crores were modified to "rear end at the time of redemption" instead of "quarterly".

ii) In respect of security, though the Respondents claimed that there was valuation report on the basis of which they have claimed NCDs to be fully secured. However, it is noted that copy of the said valuation report was neither brought on record before DC nor before the Council.

iii) In view of the above facts, the Council agreed with the findings of the Disciplinary Commilttee.

15.23 Account No. 47 – III.Inv.3

(Rs. in cr.)

	Book Value	Provision,if any, held by bank	Erosion in the value /Provision required as per PIO	Shortfall in provision
III.INV.3	20	9	20.00	11.00

a) Charge (As stated by the PIO):-

"The bank invested Rs.20.00 Crore in 12% Redeemable Preference Shares ofin March, 2000 which was classified as NPA in March 2001. While the bank provided for the non-performance asset at the rate of 15% for each for three years of default in paying dividends as per RBI guidelines on valuation of

preferential shares, there were certain unexplained material discrepancies in treatment of securities by the bank and by the Company.....There was accumulated loss of Rs.36.07 crore as on 31st March, 2003 and two of the group accounts were written off / classified as loss assets. There were no recovery measure initiated by the bank....the realizable value is considered to be nil and as per paragraph 3.82 (f) of the Master circular dated July, 11, 2002, the investment is recommended for full provision in line with recommendation made in previous AFI”

b) Clarifications before the Disciplinary Committee:-

i) The Respondents stated that there is non-divergence in identifying the accounts as NPA by the PIO and the bank and Special Audit Report. The provision made by the bank is in accordance with IRAC norms. NCDs were due for payment since 2001 and hence provisions at 45% of the preference shares have been made as per Master Circular dated. 11th July, 2002.

ii) The net block of the Company on March, 31, 2002 was Rs.283.09 crores and the net block of the Company after settling the dues and charges of the secured and unsecured lenders leave a surplus of Rs.200.83 crores which was far in excess of value of preference shares. Hence, there is no necessity of making additional provision as recommended by the PIO.

c) Findings of the Disciplinary Committee:-

i) It is noted that the Bank made investment in the preference shares of a Company which was classified as NPA in March, 2001. The PIO was of the view that such investments should be fully provided for though the bank had provided for at the rate of 15% for each of three years of default in paying dividend as per RBI guidelines on valuation of preference shares. On perusal of Master Circular – Prudential norms for classification, valuation and operation of investment portfolio by banks dated July 11, 2002, it is noted that as per para no.3.8.2 (e) of said , *"where preference dividends are in arrears, no credit should be taken for accrued dividends and the value determined on YTM should be discounted by at least 15% if arrears are for one year, and more if arrears are for more than one year...."*. Accordingly, it is noted that 15% was the least value of provision required. It is noted the PIO has brought on record the facts that the net worth of the Company was only Rs.36.07 crore whereas the preference shares themselves stand at Rs.20 crore. So there was doubt if such amount could be realized without liquidating the Company. The Group Company had already defaulted in redeeming the preference share. Further, no recovery action was

initiated by the bank in instant case. Considering such facts, the Committee is of the view that provision of only 45%, the minimum limit, is not justified in extant case.

ii) **Accordingly, the Committee is of the considered view that the Respondents are guilty of professional misconduct falling within the meaning of Clauses (7), (8) & (9) of Part I of Second Schedule to the Chartered Accountants Act, 1949.**

d) Submissions of the Respondents before the Council

The Respondent stated that the following final submissions made to DC on 23rd April, 2018 (pages 78-79) had not been considered by the Disciplinary Committee:-

(i) The AFI 2003 Report erred in recommending additional provisioning on the assumption that the preference shares could not be redeemed and without any other basis.

(ii) There is no divergence in classification of account as NPA by the bank and PIO and Special Audit Report (MBR).

(iii) The provision made by the bank is in accordance with IRAC norms and the PIO has recommended additional provision on the assumption that the preference shares could not be redeemed.

(iv) Preference shares were due for payment since 2001 and hence provision at 45% of the preference shares had been made as per Master Circular dated July 11, 2002.

(v) The net block of the company on March 31, 2002 was Rs. 283.09 crores and the net block of the company after settling the dues and charges of the secured and unsecured lenders leave a surplus of Rs. 200.83 crores which is far in excess of value of preference shares to be redeemed. Hence, there is no necessity of making additional provision on account of non-availability of security as recommended by the PIO.

As per the Respondents, the following are additional submissions to the Council:-

a) It is submitted that the DC is confirming that provision had been made as per RBI norms at the minimum required as the conditions then prevailing did not warrant additional provision.

As per terms of issue Rs.6 crores each to be redeemed in January 2004 and 2005 and the balance of Rs.8 crores at the end of 8th year i.e. 2008. The net worth of the company as at 31st March, 2002 is Rs.283.10 crores as stated on page 666 of volume 3 (Refer Annexure 35, Page 375-381) which has been referred by MBR in their report on Page 3 of 5 (Refer Annexure 36, Page 382-385). The bank has already made a provision of Rs. 9 crores as per the IRAC norms.

b) As per the records available with respondents and detailed in the submission to the DC Refer Annexure the net surplus was 283 crores as at March 31st 2002 while the DC has wrongly mentioned the net worth to be only 36.07 crores which resulted in difference in professional judgment whether the remaining Rs.11 Crores would be redeemed in the future. Such difference of opinion based on erroneous facts obtained by the DC would be considered by the council in dealing with the charge.

Findings of the Council on the above charge:-

i) The Council noted that para no.3.8.2 (e) of Prudential norms clearly states that *"where preference dividends are in arrears, no credit should be taken for accrued dividends and the value determined on YTM should be discounted by at least 15% if arrears are for one year, and more if arrears are for more than one year..."*. Accordingly, it is noted that 15% was the least value of provision required.

ii) It is also important to mention here that MBR Dec 2002 classified this account as Doubtful-I. The said MBR report also states that the provision in this account has to be made based on latest financials" and on perusal of Annexure 35 and 36 (page 375 to 385) as made available by the Respondent it is evident that only financials of 2002 were available with the Respondents. It is noted that though PIO has reported about accumulated loss of Rs.36.07 crore as on March 31, 2003. However, the financials of financial year 2002-03 are not available on record. The latest financials available pertains to financial year 2001-02 which do not give any indication of erosion of networth of the borrower company.

iii) Accordingly, the Council decided to drop the said charge against the Respondents.

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15.24 Account No. 48 – III.Inv.4

(Rs. in cr)

	Book Value	Provision,if any, held by bank	Erosion in the value /Provision required as per PIO	Shortfall in provision
III.INV.4	15	6.75	15.00	8.25

a) Charge (As stated by the PIO):-

"The bank had invested Rs.10.00 Crores in 12.5% Pref. Shares of ... The Company did not paid dividend for past three years as it had been continuously incurring losses.... Full provision was considered necessary by the PIO as the realizable redemption value was considered as nil....."

b) Clarifications:-

- i) The Respondents stated that there is non-divergence in identifying the accounts as NPA by the PIO and the bank. The captioned account consist of 12.5% Preference Shares for Rs.10 Crores due for redemption in December, 2001 and for Rs.5 Crores are due for redemption in June, 2005. Accordingly, as per IRAC norms provision has been made on the entire exposure of Rs.15 crores.
- ii) The Respondents stated that the net worth of the Company as on March, 31, 2002 as per the audited financial statements available at the time of audit was Rs.94.55 crores and is adequate for redemption in full.

c) Findings:-

- i) It is noted that the Bank made investment in two separate set of preference shares of a Company – one was redeemable in Dec 2001 and other in June 2005. The PIO was of the view that such investments should be fully provided for though the bank had provided for at the rate of 15% for three years of default. On perusal of Master Circular – Prudential norms for classification, valuation and operation of investment portfolio by banks dated July 11, 2002, it is noted that as per para no.3.8.2 (e) of said , "*where preference dividends are in arrears, no credit should be taken for accrued dividends and the value determined on YTM should be discounted by at least 15% if arrears are for one year, and more if arrears are for more than one year....*". Accordingly, it is noted that 15% was the least value of provision required. It is noted the PIO has brought on record the facts that the Company did not pay dividend as it was continuously incurring losses. So there was doubt if such amount could be realized. The dues of other Group Company had already been written off. The Committee was of the view

that though the IRAC norms are applicable borrower wise, but considering the facts available, provision @15% only for each year, the minimum limit is not justified in extant case.

ii) **Accordingly, the Committee is of the considered view that the Respondents are guilty of professional misconduct falling within the meaning of Clauses (7), (8) & (9) of Part I of Second Schedule to the Chartered Accountants Act, 1949.**

d) Submissions of the Respondents before the Council

The Respondents stated that the following final submissions made to DC on 23rd April, 2018 (pages 77-78) had not been considered by the Disciplinary Committee:-

i) There is no divergence in classification of the account as NPA between the bank and PIO.

(ii) The net worth of the company as on 31st March 2002 as per the audited financial statements available at the time of audit was Rs. 94.55 crores and was adequate for redemption in full (Only Rs. 5 crores of redemption of preference share capital was due on June 30, 2015);

(iii) Accordingly, provision was made as per the RBI Circular dated 11th July 2002 in view of arrears of dividend for 3 financial years i.e. at the rate of 15% every year.

As per the Respondents, the following are additional submissions to the Council:-

iv) It is submitted that the DC had confirmed that the bank has made a provision of Rs.6.75 crores required as per norms. As stated on page 673 of volume 3 the entire amount of Rs.15 crores is redeemable in three equal installments at the end of 3rd, 4th and 5th year from the date of allotment i.e. 30th June, 2000. The net worth of the company as per audited account on 31st March, 2002 is Rs.94.55 crores (including Reserves of 29.99 crores) as stated on page 674 of volume 3 (Refer Annexure 37, Page 386-392). Accordingly, redemption of Rs.5 crores on June 30th 2015 was not in doubt as per the Respondents.

v) It cannot be constitute of Professional misconduct when the provision are made as per IRAC norms and there were no reasonable doubts of the redemption

of 5 Crores as at Jun 30th 2015 when the reserves was Rs.29.99 crores. The IRAC norms deals with historical information and DC has taken the future events not due for payable at the Balance sheet date for the purpose of concluding whether the respondents are liable for Professional misconduct.

Findings of the Council on the above charge:-

i) The Council noted that as per para no.3.8.2 (e) of stated that prudential norms, "where preference dividends are in arrears, no credit should be taken for accrued dividends and the value determined on YTM should be discounted by at least 15% if arrears are for one year, and more if arrears are for more than one year...". Accordingly, it is noted that 15% was the least value of provision required.

ii) On perusal of Annexure 37 produced by the Respondents, it is also noted from pg-307 read with pg-390 that the Company had not paid dividend. It was continuously incurring losses including cash losses. Further, the preference shares of Rs.10 crore were redeemable in Dec 2001 which neither backed by Primary Security nor collateral security. (clause 13, Pg 386).

iii) In view of above facts, the Council agreed with the observations that the discounting rate should be more than 15% per year as per IRAC norms. Incidentally, it was noted from pg.389, that redemption of preference shares allotted in 98 were pushed forward which Respondent again failed to observe.

iv) In view of the above facts, the Council agreed with the findings of the Disciplinary Committee.

15.25 Account No. 55 – III.Inv.7

(Rs. in cr.)

	Book Value	Provision,if any, held by bank	Erosion in the value /Provision required as per PIO	Shortfall in provision
III.INV.7	6.00	0	0.90	0.90

a) Charge (As stated by the PIO):-

"The bank invested Rs.6.00 crore in 12.00% Preference Shares of HFCL on September 30, 1999 redeemable originally on March 30, 2002 being 30 months from the date of allotment. As per the Information Memorandum (IM) prepared by ... (the intermediary for arranging the issue) on the basis of which the sanction was made, the tenor of investment was 30 months with call and put

option at end of every 12 months. However, the issuer has not paid the redemption amount on the ground that the shares were issued for a tenor of 60 months, substantiating with contents of its own records (certified copy of the IM, its own balance sheet etc.). The bank has classified the account as standard. The dividend (paid up to 31.3.2001) was in arrears for two years as on March 31, 2003. However, while arriving at the current market value of the shares, the 15% + discount was not applied. The bank stopped recognizing income on accrual basis but did not classify the account as NPA. In line with the classification of its loans as Doubtful, this liability was identified as NPA and suitable provision recommended at 15% discount."

b) Clarifications before the Disciplinary Committee:-

i) The Respondent stated that there was clearly a disagreement in the Bank's view and the Auditors' view. Accordingly, they have given a qualification (**Para 5(h) of audit report**) in accordance with "The Statement on Qualifications in the Auditors' Report. The Bank maintained that it was a standard account, whilst the Auditors were of the view that it was an NPA. The quantification on provision was not possible in view of the stand taken by the Bank, and coupled with the fact that the interest was serviced upto 31st March, 2003.

ii) The Respondents further submitted that para 46 of AAS-28 which reads herewith has no application because these provisions were made available for F.Y. on or after April, 1, 2003.

"Paragraph 5(h) reads as follows – In our opinion and to the best of our information... As indicated in Note No. 9 on schedule XVIII with accounting principles generally accepted in India.

Paragraph 5(i) reads as follows – Note 7 of Schedule XVIII regarding restructuring of certain advances Till March 31, 2003 on restructuring".

iii) In respect of two restructured major borrowers accounts aggregating to Rs.311.61 crores, prima facie there is no divergence in classification between PIO and auditors whereas the bank treated the said account as standard. The PIO has overlooked the qualification made in audit report as aforesaid and reported divergence in classification by Rs.308.75 crores (reporting error balance by Rs.2.86 as compared to book balance on the part of PIO).

c) Findings of the Disciplinary Committee:-

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i) On perusal of the irregularities as mentioned in the AFI Report and submissions made by the Respondents, it is found that the Respondents' submissions are not tenable. In these matters, though their firm have qualified the Audit Report, yet the qualifications are not appropriate as per the requirement of AAS 28 The Auditor's Report on Financial Statements. They in their Audit Report mentioned "subject to paragraph (i) and (j), you referred to note 7 and note 13 respectively and mentioned that provision has not been considered necessary by the management.

ii) However, the Respondents in their clarifications submitted, "provision required is reported as indeterminate as the bank declined to provide or estimate the provision. As per Para 46 of the above standard gives the format of Audit Report for giving qualified opinion if the auditors do not agree with the management. Therefore, the qualification made by the Respondents is not as per the requirements laid out in AAS-28. They ought to have reported clearly that management has declined to provide the information and not made the provision as required by the law. Thus, the Respondents are guilty with respect to this charge.

iii) Accordingly, the Committee is of the considered view that the Respondents are guilty of professional misconduct falling within the meaning of Clauses (8) & (9) of Part I of Second Schedule to the Chartered Accountants Act, 1949.

d) Submissions of the Respondents before the Council

i) It is submitted that AAS-28 the provisions were made applicable for the financial year commencing on or after April 1, 2003. Accordingly, there is no valid charge since law is not applicable. The auditors while giving qualified opinion followed "The statement on Qualifications in the Auditors' Report" issued by ICAI. This exposure in account had been granted to borrower III.L.1.1. The audit qualification covers 2 borrower accounts (1) III.L.1, III.Inv.7 and III.L.2.1 and III.L.2.2.

ii) The DC had dropped both the borrowers' loan accounts in their Report as AAS-28 is not applicable for the year under the audit. Accordingly the present account which is a part of one of the borrowers also needs to be dropped in line with DC's earlier decision.

Findings of the Council on the above charge:-

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i) The Council noted that keeping aside whether AAS-28 was applicable or not, the qualification expressed was not in appropriate manner. It is noted that para 3.8 and 3.10 of the Statement on Qualifications in Auditor's Report clearly states to give full information about subject matter of the qualification. It is noted that even at the time of any previous submission, the Respondent had not pointed out to the fact that subject matter of such charge was a matter of qualification. This signifies the quality of qualification expressed. Accordingly, the Respondent ought to have reported clearly that management has declined to provide the information and not made the provisions as required by the law.

ii) In view of above reasons, the Council agreed with the findings of the Disciplinary Committee.

15.26 Account No. 65 – III OAintr.2

(Rs. in cr.)

	Book Value	Provision,if any, held by bank	Erosion in the value /Provision required as per PIO	Shortfall in provision
III.OAintr.2	17.05	0	17.05	17.05

a) Charge (As stated by the PIO):-

"While the bank booked these incomes on the rear-ended NCDs on accrual basis, the balance sheet of the company did not indicate any provisions on account of such accrued interest. While the entire Rs.60 Crore of NCCDs/Preference Shares were redeemable in February/March 2004, the debentures redemption reserves as on 31.3.2003 was to the extent of Rs.2.50 Crore only. The reversal of income is recommended in view of classification of the asset as NPA."

b) Clarifications before the Disciplinary Committee:-

i) The PIO has recommended reversal of interest since the account was classified by PIO as NPA. The Respondents submit that the special auditor (**Page no.802-804**) had classified the account as Standard Asset. Keeping in view the spirit of RBI letter dated 9th May, 2003 and considering the secured position of the assets, the account has been classified as Standard Assets by the bank.

ii) Further as per AS 1, Disclosure of Accounting Policies, As 9, Revenue Recognition and provisions of Section 209 of the Companies Act, 1956, books of account of the bank are required to be maintained on accrual basis. The bank has subscribed to NCDs with the clear terms of sanction that interest is due and

payable on maturity of the bonds. However, in compliance with the statutory requirements, the interest is accrued on a year to year basis, though it not due for payment.

iii) The due date for redemption of NCDs in February, 2004 which is much later than the year under audit and completion of audit on September 30, 2003. At the time of completion of audit, neither the principal nor the interest due for payment requiring provision as per RBI guidelines.

c) Findings of the Disciplinary Committee:-

i) It is noted from MBR, Mar 2002 that the Company was incorporated in 1996. Due to losses the company approached the bank for restructuring the loan on 31.12.2000. The Bank restructured the loan vide approval note dated 25.01.01. The salient features of restructuring were that the interest on existing NCDs aggregating Rs.40 cr was reduced to 12% from erstwhile 16.5% and 15.5%. Terms of reference of payment of interest on NCDs amounting to Rs.40crores were modified to "rear end at the time of redemption" instead of "quaterly". The NCDs were secured by extension of charge on current assets and Residual fixed assets available after satisfying the Term Loan lenders. As regards MBR report, it is noted that (Pg 105, MBR Report) company has serviced interest towards its cash credit a/c and not NCDs. In any case, keeping in view the fact that it was trading concern and that loan was restructured in Jan 2001 by sacrificing rate of interest, further the security held against NCCDs of Rs.60 crore were only fixed assets worth Rs.5.88 crore and shares worth Rs.39.82crore whose valuation reports of were not produced on record.

ii) It is viewed that their prior inability to meet its commitments against NCCDs. Further, MBR Dec 2002 report (**Pg 103**) clearly states that the borrower company was not providing for interest In its financial statements. The Debenture Rdemption reserve was also nominal in view of the fact that NCCDs were due for redemption in 2004, there was uncertainty on receipt of such interest. It is viewed that although AS 9 prescribes to recognize income on accrual basis, it also prescribes to provide for it if there is uncertainty on its receipt. Hence, the Respondents are held guilty of professional misconduct.

iii) **Accordingly, the Committee is of the considered view that the Respondents are guilty of professional misconduct falling within the meaning of Clauses (7), (8) & (9) of Part I of Second Schedule to the Chartered Accountants Act, 1949.**

d) Submissions of the Respondents before the Council

The following final submissions made to DC on 23rd April, 2018 (pages 87-88) had not been considered by the Disciplinary Committee:-

i) The AFI 2003 Report failed to appreciate that:

(a) As per AS 1 and, disclosure of Accounting Policies, AS 9 Revenue Recognition and provisions of section 209 of the Companies Act, 1956, books of account of the bank are to be maintained on accrual basis. Interest income needs to be accrued for standard assets.

(b) The bank has subscribed to NCDS with clear term of sanction that interest is due and payable on maturity of NCDS. It is rear ended liability.

ii) However, for the purpose of true and fair view of financial statements interest on NCDs is accrued but not due in accordance with the prevailing Accounting Standards, Provisions of the Companies Act, 1956 and the generally accepted accounting practices.

(iii) There was no objection in respect of the accrued interest in the previous AFI report

As per the Respondents, the following are additional submissions to the Council:-

iv) It is submitted that this account is related to III.Inv.3, based on their review of records of the bank the value of fixed assets is Rs. 5.88 crores, and value of shares worth Rs,39.82 crores, value of foreign currency equality of Rs.9.33 crores and extension of charge on current asset of Rs.71.15 crores, is based on valuation by E&Y. Accordingly total security available is adequate to redeem the NCDs on maturity in March, 2004. The interest accrued but not due on NCDs has been charges to Profit and Loss Account for the year and is payable on maturity. This is also been reported by MBR on page1 of 8 and page 47-48 of 88.

v) The bank has subscribed to NCDS with clear term of sanction that interest is due and payable on maturity of NCDS. It is rear ended liability. For the purpose of true and fair view of financial statements, interest on NCDs is accrued even it was not due in accordance with the prevailing Accounting Standards, Provisions of the Companies Act, 1956 and the generally accepted accounting practices. As stated in Paragraph above the bank is holding adequate security for redemption for NCDs together with interest on maturity. There is no uncertainty on receipt of interest to reverse the income as the security cover was adequate

Findings of the Council on the above charge:-

i) The Council noted the observation of the Disciplinary Committee that due to losses the Company approached the bank for restructuring the loan on 31.12.2000. The Bank restructured the loan vide approval note dated 25.01.01. The salient features of restructuring were that the interest on existing NCDs aggregating Rs.40 cr was reduced to 12% from erstwhile 16.5% and 15.5%. Terms of reference of payment of interest on NCDs amounting to Rs.40 crores were modified to "rear end at the time of redemption" instead of "quarterly".

ii) Further, it is noted that the Company has serviced interest towards its cash credit a/c and not NCDs. The Company was trading concern. Though the Respondents argued about availability of sufficient security against NCDs but valuation report was not produced on record.

iii) It is noted that charge herein is with respect to recognition of income on such NCDs which was not being provided for in the books of borrower as reported in MBR Dec 2002 report (**Pg 103**). The Debenture Redemption reserve was also nominal in view of the fact that NCCDs were due for redemption in 2004. So, there was uncertainty on receipt of such interest. It is noted that although AS 9 prescribes to recognize income on accrual basis, it also prescribes to recognize it if there is no uncertainty on its receipt. The fact that the borrower was not recognizing it based on accrual basis principal, its collections by the bank was doubtful.

iv) In view of above facts, the Council agreed with the findings of the Disciplinary Committee.

15.27 Account No. 69 –III.OAintr.6

(Rs. in cr.)

	<u>Book Value</u>	<u>Provision,if any, held by bank</u>	<u>Erosion in the value /Provision required as per PIO</u>	<u>Shortfall in provision</u>
<u>III.OAintr.6</u>	2.10	0	2.10	2.10

a) Charge (As alleged by the PIO):-

"The account has been identified as sub-standard and hence reversal of interest. The dividends in respect of the preference shares were not serviced since beginning i.e.,31.3.2002. The audited balance sheet of the company as of 31.3.2003 (schedule 16(2)(A)(1) stated that in view of losses no provisions were

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made in the accounts in respect of 9% redeemable preference shares. The reversal of income is recommended in view of classification of the asset as NPA."

b) Clarifications before the Disciplinary Committee:-

i) The Respondents referred account no.19-III.L.19 for submissions with respect to non-classification of the account as NPA. As per AS-1, Disclosure of Accounting Policies, AS 9, Revenue Recognition and provisions of Section 209 of the Companies Act, 1956, books of account of the bank are required to be maintained on accrual basis. The bank has subscribed to NCDs with the clear terms of sanction that interest is due and payable on maturity of the bonds. However, in compliance with the statutory requirements, the interest is accrued on a year to year basis, though it is not due for payment. The due date for redemption of NCDs in March, 2004 which is much later than the year under audit and completion of audit on September 30, 2003. At the time of completion of Audit, neither the principal nor the interest due for payment requiring provision as per RBI guidelines.

ii) With regard to dividend on preference shares, the same has to be accounted for only on declaration. No dividend has been declared for the year ended March 31, 2003 at the time of completion of the audit. As per financial statement of the borrower as on 31.03.2002, the net worth was Rs.8.52 and there was no reason to believe that the borrower would default in payment of the dues at the time of maturity.

c) Findings of the Disciplinary Committee:-

i) On perusal of AFI Report, it is noted that the PIO has considered the classification of the loans on which the stated income has accrued. However, the details of the loan account to which it pertains is not given. As regards circumstances due to which such reversal was recommended, it is stated that dividend on such preference shares were not serviced since 31.03.2002. Further the balance sheet of the borrower company as of 31.03.2003 states that in view of losses the provision were not made. It is noted that the Respondents have stated that net worth of the Company as on 31.03.2002 was Rs.8.52 crore. It is noted that the Respondents have not produced any documentary evidence to support the same. Moreover, net worth of Rs.8.52 crore does not guarantee payment of dividends. It depends on whether the Company had sufficient income to service its commitments on preference shares. Accordingly, the Respondents are held guilty of professional misconduct.

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ii) Accordingly, the Committee is of the considered view that the Respondents are guilty of professional misconduct falling within the meaning of Clauses (7), (8) & (9) of Part I of Second Schedule to the Chartered Accountants Act, 1949.

d) Submissions of the Respondents before the Council

i) It is submitted that this account is connected with borrower III.L.19. The borrower availed credit facilities including NCDs and Preference shares. The AFI 2003 extract for this account coded as other interest whereas the PIO and DC comment arrears of dividend. As stated on page 1064 of volume 5 (Refer Annexure 38 Page 393) the exposure is fully secured by pledge of securities worth Rs.107.67 Crores, (comprising of foreign currency receivables Rs.6.58 crores, equitable mortgage of property of Rs.5.88 crors, pledge of share Rs. 90 crores valued by independent consultant M/s Accenture and book dates 5.21 crores). There is no uncertainty as to payment cumulative dividend of redemption.

Findings of the Council on the above charge:-

i) The Council noted that the findings of the Disciplinary Committee with respect to Account no. III.L.19 which clearly state that both MBR March 2002 and Dec 2002 reports are silent on this account. Further, considering the distressed financial condition of borrower with no documentary proof about the net worth claimed by the Respondents which if exist was available to preference shareholders were required to be proved.

ii) In view of the above facts, the Council agreed with the findings of the Disciplinary Committee.

16. After considering the charges wherein the Respondents were held guilty by the Disciplinary Committee, the Council took up the following the charges wherein the Respondents were held not guilty by the Disciplinary Committee. The Council after examining the matter in detail noted the reasoning / arguments of the Disciplinary Committee vis-à-vis submissions of the Respondents, if any, on record and accordingly, submit its findings as under:-

16.1 Account No. 7 – III.L.7

(Rs. in cr.)

	Bal. as on 31.03.2003	Classification as per auditor	Classificatio n as per PIO	Provision by Bank	Provision as per PIO
III.L.7	26.50	Sub-Std.	Sub-Std.	2.65	5.30

a) **The charge (As stated by the PIO):**

The security available in the account was 51.13%. Though the account is classified as sub-standard, an additional provision of Rs.2.65 crore was suggested which was agreed to by the Bank (refer to page 5 of AFI Report as on 31.3.2003)

b) **Clarifications before the Disciplinary Committee:-**

The Respondents stated that the classification made by the bank has not been disputed by PIO. Further, the PIO has confirmed that value of security was more than 50% of the outstanding thereby the classification was in accordance with IRAC norms. There was no divergence in classification and provisioning as per IRAC norms and the learned PIO has recommended additional provision against the classified NPA in excess of the IRAC norms, arbitrarily.

c) **Findings of the Disciplinary Committee:**

It is noted that both PIO and the Respondent have classified the loan as sub-standard. Based on given facts, it appears that the difference in provisioning is arising due to difference in their judgment for estimating the same. It is noted that the additional provision estimated by PIO was only suggestive in nature so it cannot be held as charge of misconduct against the Respondents. Therefore, the Respondent is not guilty with respect to this charge.

Findings of the Council on the above charge:-

i) It is noted that the Respondents have not made any submissions on the above charge. On perusal of the findings of the Disciplinary Committee, the Council agreed with the findings of the Disciplinary Committee that the Respondents are not guilty with respect to above charge.

16.2 **Account No. 8 – III.L.8**

(Rs. In cr.)

	Bal. as on 31.03.2003	Classification as per auditor	Classification as per PIO	Provision by Bank	Provision as per PIO
<u>III.L.8.1</u>	43	D1	D1	10.17	12.03

<u>III.L.8.2</u>	5.40	D1	D1		
<u>III.L.8.3</u>	4.86	SubStandard	D1		

a) The charge (As stated by the PIO):

As the marketability of the property of the group was in doubt, the PIO had taken a holistic view and classified the group accounts as sub-standard. However, the bank treated III.L.8.3 as sub-standard as against the classification of D-1 by RBI. **(refer to page 6 of AFI Report as on 31.3.2003)**

b) Clarifications before the Disciplinary Committee

The Respondents stated that PIO has made the classification of the captioned three borrower accounts on a group basis whereas as per IRAC norms the classification has to be individual borrower basis. The Respondents also stated that there was no divergence in classification by the bank and the PIO in respect of accounts no. III.L.8.1 and III.L.8.2. In respect of account no. III.L.8.3, the bank has classified the account as sub-standard on March, 31st, 2002 and as per IRAC norms **(Page 233)**, it continuous for 18 months in same category till September, 30, 2003. The audit period was upto 31st March, 2003. The classification was made as per IRAC norms. Further, the bank was holding security and the valuation report **(Page 226-229)** was based on marketability of the property

c) Findings of the Disciplinary Committee:

i) It is noted that both the PIO and the Respondents have classified loan accounts nos. III.L.8.1 and III.L.8.2 as D1 (Doubtful asset). In respect of these two accounts, any difference in provisioning, if exists, has not been separately reported by the PIO in his observation. Hence, the charges against the said two accounts are not sustainable.

ii) As regards the account no. III.L.8.3, it is noted that the Respondents have stated that the contention of PIO regarding marketability of the property being in doubt is factually incorrect. The Bank held security valued at Rs.51.54 crore which was supported by valuation report dated June 23, 2003. However, it was noted that the referred valuation report dated June 23, 2003 had not been produced on records. It is noted that the extent case is of difference of opinion on classification on loan assets between sub-standard and Doubtful assets. In the absence of information regarding date of original sanction and period of overdue, the Committee decided to give benefit of doubt to the Respondents

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iii) Accordingly, the Respondents are Not Guilty of professional misconduct falling within the meaning of Clauses (7), (8) and (9) of Part I of Second Schedule to the Chartered Accountants Act, 1949 with respect to this charge.

Findings of the Council on the above charge:-

i) It is noted that the Respondents have not made any submissions on the above charge. On perusal of the findings of the Disciplinary Committee, the Council agreed with the observations of the Disciplinary Committee that the Respondents are not guilty with respect to above charge.

16.3 Account No. 9 – III.L.9

(Rs. In cr.)

	Bal. as on 31.03.2003	Classification as per auditor	Classification as per PIO	Provision by Bank	Provision as per PIO
III.L.9.1	28.20	SubStandard	D1	6.51	6.51
III.L.9.2	1.88	D1	D1	0.18	0.38

a) The charge (As stated by the PIO):

The proposed Calicut project never took off in view of objections raised by the Calicut Municipal Corporation. It had also rescheduled / extended the moratorium of the loans and also granted moratorium on the interest payments. However, even after the expiry of extended period of loan, recovery was not forthcoming. Interest was not serviced in the cases of WCTL /TL since the September, 2000. The account was classified as NPA as on March 31, 2001 during AFI 2001. However, the bank classified the account as NPA from September 30, 2001 / March 2002 only (**refer to page 6 of AFI Report as on 31.3.2003**)

b) Clarifications

The Respondents stated that there is no divergence in classification and provisioning (**page 235**) in respect of exposure referred in III.L.9.1 which constitutes 98% of the gross exposure. In respect of borrower account no. III.L.9.2, the Respondents stated that that it has been classified as sub-standard by the Bank in March, 2002. The bank is holding security by way of Mortgage of property valued at Rs.21 crores which substantially covers the exposures (**Page 1048-1052**).

c) Findings:

The Committee noted that that with respect to Account no.III.L.9.1, there was neither any divergence in classification nor in the amount of provisioning, hence,

allegation on the said account against the respondent is not sustainable. As regards Account no. III.L.9.2, it is noted that though there was no difference in classification of the account, yet the provisioning made by the PIO and the Respondents were different. The witness from the RBI could not explain as to under what circumstances the PIO chose to make extra provisions in the account. Moreover, it is noted that difference in the amount of provisioning was not material. Hence, the Committee is of the view that there was nothing on record which could establish that the Respondent were negligent in verifying the details of the account under question. Thus, the Respondent is not guilty with respect to this account.

Findings of the Council on the above charge:-

i) It is noted that the Respondents have not made any submissions on the above charge. On perusal of the findings of the Disciplinary Committee, the Council agreed with the finding of the Disciplinary Committee that the Respondents are not guilty with respect to above charge.

16.4 Account No. 15 – III.L.15.1

(Rs. in cr.)

	<u>Bal. as on 31.03.2003</u>	<u>Classification as per auditor</u>	<u>Classificatio n as per PIO</u>	<u>Provision by Bank</u>	<u>Provision as per PIO</u>
<u>III.L.15.1</u>	25.56	SubStandard	Loss	16.26	40.25

a) Charge

The residual 2nd charge on fixed assets available with the bank in the case III.L.15.1 was treated as NIL since the first charge may not be sufficient to service the dues of term lenders/working capital bankers (the bank had sanctioned the facilities outside the consortium). In the absence of security, the account had been calssified as a loss asset as against sub-standard classified by the bank.

b) Clarifications before the Disciplinary Committee:-

The Respondents stated that the interest was in arrears for the quarter ended September, 2002 and was overdue for more than 180 days as on March 31, 2003 and accordingly, the account was classified as substandard as per IRAC norms. According to the information furnished to them by the Bank supported by the audited financial statements of the Borrower Company **(Page no.249-260)** as at 30.06.2002, the residual value of the assets charged to the bank is Rs.34.88 crores, the details of which are as follows:-

Net Block of Fixed Assets: - Rs.197.88 cr
Debts due to Term Lenders – Rs.163.00 cr
Residual charge available to e-GTB - 34.88 cr.

The residual value of the secured assets covers more than 100% of the outstanding.

c) Findings of the Disciplinary Committee:-

i) It is reported that the residual 2nd Charge on Fixed assets available with the bank in the case was treated as NIL by PIO since the first charge may not be sufficient to service the outstanding. As per the Respondent, the residual value of the assets was sufficient to cover the outstanding. It is noted from the Provision calculation sheet that net block of the Fixed Assets has been adjusted by term lenders balances to determine the Residual Charge (**P.248 Vol I**). However, the components of net block and value of terms lenders is not explained to assess the sufficiency of residual value. Accordingly, it is viewed that neither the Informant has brought on records as to why the residual charge was found to be insufficient nor it is assessable from the information available on records.

ii) On the contrary, the Committee noted that the Respondents produced on record a copy of Modified Register of Charge registered on 7th April 2003 (**Pg. 251 of Vol I**). As per modified charge, the facilities was additionally secured by way of "*second charge by creating registered mortgage in respect of all those pieces or parcels of land situate at village Gareia, Taluka Jambusar, Dist. Bharuch, Gujarat admeasuring 119777 sq. mtrs (as per VF No.7/12) and 108753 sq. mtrs as per sale deed together with all building and structures, factory and office premises thereon and all plant & machinery attached to the earth and / or permanently fasten to anything attached to the earth*". As regard the name of the person who was entitled to charge, it is noted that the charge was created in favour of e-GTB. As per documents on record, it is not clear as to whether the PIO considered the modified charge on assets or not before arriving at conclusion that security was insufficient to cover the outstanding amount. In the absence of such information and given fact that the Respondent brought on record relevant documents to establish that the account was sufficiently secured by the security, it is viewed that allegation against the said account is not sustainable against the Respondents. Thus, he is not guilty with respect to the charge relating to this account.

Findings of the Council on the above charge:-

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i) It is noted that the Respondents have not made any submissions on the above charge. On perusal of the findings of the Disciplinary Committee, the Council agreed with the finding of the Disciplinary Committee that the Respondents are not guilty with respect to above charge.

16.5 **Account No. 17 – III.L.17**

(Rs. in cr.)

	Bal. as on 31.03.2003	Classification as per auditor	Classificatio n as per PIO	Provision by Bank	Provision as per PIO
<u>III.L.17.1</u>	20.45	D1	D1	10.96	12.31
<u>III.L.17.2</u>	3.73	D1	D1		
<u>III.L.17.3</u>	10.50	Sub-Stand.	SubStand.		

a) Charge (As stated by the PIO):-

The borrower No. 1 was not able to realize export receivable in time. Audited balance sheet as on March 31, 2001 was not obtained by the Bank. There were over dues in export receivables since October, 2000..... The account was classified as doubtful (D-1) as on March 31, 2003 (**refer to page 9 of AFI Report as on 31.3.2003**)

b) Clarifications before the Disciplinary Committee:-

i) The Respondents stated that the learned PIO has assessed the provision required on a group basis instead of borrower wise as contemplated in IRAC norms. There is no divergence in classification in account III.L.17.1 and III.L.17.3. The bank has downgraded the balance in account III.L.17.2.

ii) Special Auditor (MBR) has classified the account no.III.L.17.1 as Sub-Standard, account III.L.17.2 as Doubtful-1 and account III.L.17.3 as Sub-Standard Assets as on 31st March, 2002 and 31st December, 2002 and the RBI had vide letter dated 9th May, 2003 advised the bank to adhere to the classification of MBR. Since there were adverse developments in account no.III.L.17.1 and III.L.17.2 till March 31, 2003, the classification confirmed by Special Auditor (MBR) was downgraded as at March, 31, 2003. It appears that the PIO has not considered ECGC cover available (**Page no.267-296**) of Rs.13.33 crore in respect of export outstanding in III.L.17.1 account as per IRAC norms. As per IRAC norms ECGC cover is fully deductible as security and no provision required on this secured value. Accordingly, the unsecured balance after adjusting ECGC cover has been fully provided for. Further, the bank has not taken into consideration other securities such as value of inventory and export receivables as they are overdue since October, 2000 onwards as observed by PIO.

iii) In respect to account No.17.2, the provision made by the bank is more than that is required as per classification made by PIO.

iv) In account no.III.L.17.3, there is no divergence in classification and provisioning between the bank and PIO.

c) Findings of the Disciplinary Committee:-

i) It is noted that both PIO and the Respondent have classified loan accounts III.L.17.1 and III.L.17.2 as D1 and loan account III.L.17.3 as sub-standard. Any difference in provisioning, if exist, has not been separately reported for each account under the allegation. It appears that the extra provisiosn suggested by the PIO for same category of loans seem to be mere a precautionary step to secure the interest of the bank.. Hence, the charges against the said accounts are not sustainable and the Respondents is not guilty with respect to this charge.

Findings of the Council on the above charge:-

i) It is noted that the Respondents have not made any submissions on the above charge. On perusal of the findings of the Disciplinary Committee, the Council agreed with the finding of the Disciplinary Committee that the Respondents are not guilty with respect to above charge.

16.6 Account No. 20 – III.L.20

(Rs. in cr.)

	Bal. as on 31.03.2003	Classification as per auditor	Classificatio n as per PIO	Provision by Bank	Provision as per PIO
III.L.20	6.65	D2	D3	1.68	3.32

a) Charge (As stated by the PIO):-

The provision requirement had not been calculated correctly by the bank. Hence an additional provision of Rs.1.64 crore was suggested (**refer to page 10 of AFI Report as on 31.3.2003**).

b) Clarifications before the Disciplinary Committee:-

The Respondents stated that based on the observations in AFI 2002, the account was classified as sub-standard on March 31, 1998. However, bank has identified the account as NPA in September, 1999. The learned PIO has not objected the delayed classification by the bank in all its earlier report upto March, 2002. However, AFI 2003 has downgraded the account to D3 considering the date of NPA from as March, 31, 1998 and relied with the bank's

classification of NPA from Sep, 1999.

c) Findings:-

i) After perusal of the allegations vis-à-vis the Respondent's submissions, it appears that there is difference of opinion as regards the estimated amount of provision required against the said loan account. It is noted that PIO has only suggested for additional provision. Such suggestion does not indicate any act of professional misconduct on the part of the Respondents. Hence, the Respondent is not guilty with respect to this allegation.

Findings of the Council on the above charge:-

i) It is noted that the Respondents have not made any submissions on the above charge. On perusal of the findings of the Disciplinary Committee, the Council agreed with the findings of the Disciplinary Committee that the Respondents are not guilty with respect to above charge.

16.7 Account No. 25 – III.L.25

(Rs. in cr.)

	<u>Bal. as on 31.03.2003</u>	<u>Classification as per auditor</u>	<u>Classification as per PIO</u>	<u>Provision by Bank</u>	<u>Provision as per PIO</u>
<u>III.L.25</u>	4.82	Standard	D1	0	0.96

a) Charge (As stated by the PIO):-

The account was classified as NPA as on September 30, 2000 by the RBI AFI-2001 During 2002-03 also, the account was excess over limit from April 3, 2002 continuously for 180 days and instead of classifying the account as NPA restructured it on October 4, 2002 which was not in order.....Since the account exhibited traits of NPA from September, 2000 and the performance was not satisfactory, the same was classified as NPA on 30th Sep, 2000 and D1 on 31st March, 2003. **(refers to page 13 of AFI Report as on 31.3.2003).**

b) Clarifications before the Disciplinary Committee:-

i) The Respondents stated that as per PIO, the account was classified as NPA in September, 2000 but the bank treated it as Standard. The divergence in classification has not been questioned in AFI 2002 report i.e., the account was considered as Standard by the PIO. In absence of any contrary information either by AFI 2002 report or from their routine test checking of transactions and the balances, they as auditor relied upon bank classification. As there was no interest overdue for more than 180 days and the account was within the sanctioned limits

at the time of finalizing the accounts, the account has been classified as standard as per IRAC norm.

c) Findings:-

i) On perusal of the documents on record, it has been observed that there was unrealized interest of only Rs.9.66 lacs though the loan account was also restructured twice during the year 4th Oct, 2002 and May 2003. It was viewed that rescheduled loans can continue to classify as Standard only if they are fully secured but PIO has not raised any such concerns. Considering the fact that said account was not reported in AFI 2002 and that the Respondents may not be aware of the fact that stated account was classified as NPA as on September 30, 2000, benefit of doubt may be given to the Respondents in the extant case. Hence, the Respondents are not guilty with respect to this charge.

Findings of the Council on the above charge:-

i) It is noted that the Respondents have not made any submissions on the above charge. On perusal of the findings of the Disciplinary Committee, the Council agreed with the findings of the Disciplinary Committee that the Respondents are not guilty with respect to above charge.

16.8 Account No. 26 – III.L.26

(Rs. in cr.)

	<u>Bal. as on 31.03.2003</u>	<u>Classification as per auditor</u>	<u>Classification as per PIO</u>	<u>Provision by Bank</u>	<u>Provision as per PIO</u>
<u>III.L.26</u>	1.97	Standard	Sub-Stand	0	0.20

a) Charge (As stated by the PIO):-

The account was continuously out of order from September 29, 2002 to October 31, 2003 except on two days i.e. on October 4, 2002 due to a transfer from current account for Rs.6.50 lakh and on November 1, 2002 due to a transfer of Rs.5.00 lakh from..... by allowing an overdraft for Rs.9.65 lakh in the account. The account was therefore classified as Sub-Standard as on March 31, 2003 and a provision of Rs.0.20 crore was recommended. **(refer to page 14 of AFI Report as on 31.3.2003)**

b) The Clarifications before the Disciplinary Committee:-

The Respondents stated that the account was out of order from September, 29, 2002 to October, 31, 2003 is not relevant as half the period of the account is in post audit period as the statutory audit was conducted for the period ended March, 31, 2003. During the period under audit Rs.0.11 crores had been credited

in the current account in October and November, 2002 (duly authorized) and hence, the account was not irregular for more than 180 days to qualify as an NPA as per IRAC norms.

c) Findings of the Disciplinary Committee:-

It is noted that though the facts submitted by PIO and Respondents are same but the difference lies in interpreting the given circumstances. It is noted that the account was out of order except two days during the last 180 days as on balance sheet date. Hence, technically the account was not out of order for continuous period of 180 says. Moreover the amount involved is also not significant. Hence, the said charge cannot sustain against the Respondents, thus, the Respondents are not guilty with respect to this charge.

Findings of the Council on the above charge:-

i) It is noted that the Respondents have not made any submissions on the above charge. On perusal of the findings of the Disciplinary Committee, the Council agreed with the findings of the Disciplinary Committee that the Respondents are not guilty with respect to above charge.

16.9 Account No. 27 – III.L.27

(Rs. in cr.)

	Bal. as on 31.03.2003	Classification as per auditor	Classificatio n as per PIO	Provision by Bank	Provision as per PIO
III.L.27	2.64	Standard	Sub-Stand	0	0.26

a) Charge (As stated by the PIO):-

The dues in the Packing Credit account were not liquidated despite the extension of one year and the current account of the borrower remained continuously in debit balance for more than 180 days since September 29, 2002 and the account was classified as sub-standard as on March 31, 2003 (**refer to page 14 of AFI Report as on 31.3.2003**)

b) Clarifications before the Disciplinary Committee:-

The Respondent stated that the observation of the learned PIO that the current account is continuously in debit balance since September 29, 2002 is not correct as the current account has credit balance of Rs.0.02 Crore as on March 31, 2003. There were no overdue in packing credit account as on March, 31, 2003. Since there was no overdue in packing credit account as on March, 31, 2003, the classification of account was in accordance with IRAC norms.

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c) Findings of the Disciplinary Committee:-

i) The facts given by the PIO of RBI and the Respondents are contrary to each other and no evidence has been submitted by either the complainant or the Respondents. In any case, the amount involved is not significant. Hence, it is decided to drop the charge against the Respondents.

Findings of the Council on the above charge:-

i) It is noted that the Respondents have not made any submissions on the above charge. On perusal of the findings of the Disciplinary Committee, the Council agreed with the findings of the Disciplinary Committee that the Respondents are not guilty with respect to above charge.

16.10 Account No. 28 – III.L.28

(Rs. in cr.)

	Bal. as on 31.03.2003	Classification as per auditor	Classificatio n as per PIO	Provision by Bank	Provision as per PIO
III.L.28	2.00	Standard	Sub-Stand	0	0.20

a) Charge (As stated by the PIO):-

The term loan was to be repaid in 14 equal monthly installments of Rs.0.05 crore each but these were not paid from November 2001. The account was due for renewal in February 2002 but was not renewed. The account was classified as sub-standard as on August 1, 2002. The account was marked for recovery by the bank **(refer to page 14 of AFI Report as on 31.3.2003)**

b) Clarifications before the Disciplinary Committee:-

i) The Respondents stated that the observation of learned PIO that the installments of term loan are outstanding since November, 2001 is not correct. As per their audit working papers, interest for March, 2003 quarter was outstanding which was not overdue for 180 days and above. Hence, the account was classified as Standard Account.

ii) The bank had realized 0.22 crores in April, 2003 which has been taken into consideration and there were no overdue installments at the time of completion of audit and accordingly, the account was classified as standard by the bank. The observation of PIO that the account was due for renewal in February, 2002 is not correct and as per information available in audit file, the credit limits expired only in February, 2003.

c) Findings of the Disciplinary Committee:-

i) After perusal of the deposition made by the RBI's witness and the submissions of the Respondent, it has been noted that the recovery to the extent of Rs. 0.22 crore was made by the Bank in April, 2003 which was considered by the Respondents for classification of said loan account. It was viewed that such recovery is to be considered only in circumstances when all arrears of the principal and interest due as on balance sheet date are recovered. In the absence of any information to contradict the same, it is decided to drop the said charge against the Respondents.

Findings of the Council on the above charge:-

i) It is noted that the Respondents have not made any submissions on the above charge. On perusal of the findings of the Disciplinary Committee, the Council agreed with the findings of the Disciplinary Committee that the Respondents are not guilty with respect to above charge.

16.11 Account No. 29 – III.L.29

(Rs. in cr.)

	<u>Bal. as on 31.03.2003</u>	<u>Classification as per auditor</u>	<u>Classification as per PIO</u>	<u>Provision by Bank</u>	<u>Provision as per PIO</u>
<u>III.L.29</u>	1.46	Standard	Sub-Stand	0	0.15

a) Charge (As stated by the PIO):-

The Company was unable to manufacture the GS strips and market them on account of loss and non-realization of books debts. The bills developed under LC were debited to a separate account styled as Inland Cheques & Bills Overdue (INCBO) without fixing any limit instead of debiting the same to CC account for effective monitoring. The CC account was overdrawn from September 29, 2002 to March 31, 2003 except on March 29, 2003 when a cheque (197285 from Rs.11.00 lakh drawn on ABN Amro Bank) was purchased deliberately to regularize the account. The cheque, however, returned unpaid on April, 4, 2003. The account was continuously out of order for the entire 12 month period ended September, 30, 2003, hence it was classified as NPA as on March 31, 2003. (refer to page 14 of AFI Report as on 31.1.2003).

b) The Clarifications before the Disciplinary Committee:-

The Respondents stated that the contention of the PIO that the account is irregular for less than 180 days with exception of purchase of a cheque for Rs.11 lakh did not justify the account to be classified as NPA. As per IRAC norms, account is to be classified as NPA in case either interest or principal is

outstanding for more than 180 days. The observation of PIO that the bank has purchased the cheque deliberately has no locus standee since the transaction has been duly authenticated and it is a genuine realization.

c) Findings of the Disciplinary Committee:-

i) The Respondents in their submissions has mentioned that he relied on the cheque of Rs.11 lac purchased by bank for the concerned loan account, however, as a normal prudence and audit procedure, relating to bank reconciliation, the Respondent need to looked into when the cheque as purchased by him was cleared after 31.3.2003. As per the PIO of RBI, the cheques remain unpaid / dishonored as on 4.4.2003.

ii) It was noted that contradictory facts are being submitted herein. While the PIO reports that the single cheque received was returned unpaid as on April 4, 2003 however, the Respondents submit that the transaction was duly authenticated and it was a genuine realization. In the absence of any evidence, it is viewed that since the amount involved is not significant hence the said charge may be dropped against the Respondents.

Findings of the Council on the above charge:-

i) It is noted that the Respondents have not made any submissions on the above charge. On perusal of the findings of the Disciplinary Committee, the Council agreed with the findings of the Disciplinary Committee that the Respondents are not guilty with respect to above charge.

16.12 Account No. 31 III.L. 31

(Rs. in cr.)

	Bal. as on 31.03.2003	Classification as per auditor	Classificatio n as per PIO	Provision by Bank	Provision as per PIO
III.L.31	4.15	Sub-Stand	D1	0.33	1.68

a) Charge (As stated by the PIO):-

"The account was NPA from September 30, 2001 and classified as D1 as on March 31, 2003. Hence additional provision of Rs.1.35 crore suggested"

(refer to page 14 of AFI Report as on 31.3.2003)

b) The Clarifications before the Disciplinary Committee:-

The Respondents stated that as per bank, the balance as on 31st March, 2003 was Rs.3.33 Crores, whereas the PIO has reported the same as Rs.4.15 crores.

Though the learned PIO has identified the account as sub-standard in September, 2001, the bank has not classified it as NPA till March, 2002. The AFI report 2002, did not comment on this account i.e., the account was considered as a Standard Assets in the absence of any contrary information. They relied upon the AFI 2002 report regarding classification and provisioning of borrower accounts. It was not proper on the part of PIO to reopen the account and consider the NPA status since September, 2001. According to the information available in audit file, the Company defaulted in payment of dues since September, 2002 and the account has been classified as substandard as the overdues were for more than 180 days.

c) Findings of the Disciplinary Committee:-

i) Considering the fact that said account was not reported in AFI 2002 and that the Respondents may not be aware of the fact that stated account was classified as NPA as on Sept 30, 2000, benefit of doubt may be given to the Respondents in the extant case.

Findings of the Council on the above charge:-

i) It is noted that the Respondents have not made any submissions on the above charge. On perusal of the findings of the Disciplinary Committee, the Council agreed with the findings of the Disciplinary Committee that the Respondents are not guilty with respect to above charge.

16.13 Account No. 32 – III.L.32

(Rs. in cr.)

	Bal. as on 31.03.2003	Classification as per auditor	Classification as per PIO	Provision by Bank	Provision as per PIO
III.L.32	3.00	D1	D2	0.90	2.17

a) Charge (As stated by the PIO):-

The bank had classified the account as D1 instead of D2. Hence additional provision of Rs.1.27 crore was suggested (refer to page 14 of AFI Report as on 31.3.2003).

b) Clarifications before the Disciplinary Committee:-

The Respondents stated that there was no divergence in classification between RBI and Bank and the observation of AFI 2003 is factually incorrect. AFI 2003 made a mere suggestion to make additional provision not adhering to IRAC norms. The account is secured by equitable mortgage of property, land and flats valued at Rs.6.12 Crores. In accordance with IRAC norms, provision at 30% has been made on the entire secured outstanding.

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c) Findings of the Disciplinary Committee:-

i) It is noted that issue involved in the matter was that whether the aforesaid account was to be classified under D1 categories or D2 Category and consequently, the provisions was to be made on the outstanding amount of the account. It appears that the Bank had made provision at the rate of 30% which was applicable for the account remains doubtful for more than one year (**i.e. for D2 categories**). Therefore, there were no anomalies in respect of the provisions made by the Bank. Further, there was no material divergence in classification of the Account and during the course of hearing also, the witness from the RBI could not explain as to why they decide to make extra provisions for the aforesaid account. Therefore, keeping in view the facts that there was no material divergence in classification of accounts and the provisions was made as per requirement of IRAC norms, the Respondents are not guilty with respect to this charge.

Findings of the Council on the above charge:-

i) It is noted that the Respondents have not made any submissions on the above charge. On perusal of the findings of the Disciplinary Committee, the Council agreed with the findings of the Disciplinary Committee that the Respondents are not guilty with respect to above charge.

16.14 Account No. 35 – III.L.35

(Rs. in cr.)

	Bal. as on 31.03.2003	Classification as per auditor	Classificatio n as per PIO	Provision by Bank	Provision as per PIO
III.L.35	3.77	D3	D3	1.56	1.89

a) Charge (As stated by the PIO):-

"The bank had not made adequate provision depending on the age of NPA and hence an additional provision of Rs.0.33 crore was recommended." (**refer to page 14 of AFI Report as on 31.3.2003.**)

b) Clarifications before the Disciplinary Committee:-

The Respondents submitted that the contention of the PIO that the age of NPA had been incorrectly computed is not correct. There is no divergence in classification between the PIO and the bank. It appears that the PIO has erroneously, omitted to consider sale proceeds of Rs.0.64 Crores lying in the margin account while assessing the provision. The PIO overlooked the margin money available as security and recommended higher provision.

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c) Findings of the Disciplinary Committee:-

In respect of above charge, it is noted that there was no divergence in classification of the account and only provisions made against the outstanding in the account was under question. As regard the difference in the amount of provision, the Respondents stated that the PIO did not consider sale proceeds of Rs.0.64 crore lying in margin accounts while assessing the provision. The Respondents also stated that as per DRT order, the proceeds were deposited in a separate margin account. Though the Respondent did not bring on record necessary documents to support his above contention, yet looking into the difference which was not material, it is viewed that the allegation are more of suggestive in nature and the benefit of doubt may be given to the Respondents. Hence, the Respondents are not guilty with respect to above allegation.

Findings of the Council on the above charge:-

i) It is noted that the Respondents have not made any submissions on the above charge. On perusal of the findings of the Disciplinary Committee, the Council agreed with the findings of the Disciplinary Committee that the Respondents are not guilty with respect to above charge.

16.15 Account No.40 – III.L.40

(Rs. in cr.)

	<u>Bal. as on 31.03.2003</u>	<u>Classification as per auditor</u>	<u>Classification as per PIO</u>	<u>Provision by Bank</u>	<u>Provision as per PIO</u>
<u>III.L.40</u>	15	Standard	Sub-Stand	0	1.50
<u>FCNR(B)</u>					

a) Charge (As stated by the PIO):-

"The CC / WCPL facility of Rs.15 crore was sanctioned outside consortium not for any working capital purpose but to evergreen two unpaid NCDs by the borrower. In March, 2003, to avert NPA classification, the bank converted the CC/WCDL of Rs.15 crore to Foreign Currency Loan which was to be repaid from April, 2003 with monthly repayment by 31st December, 2003 As the account had become NPA category as on 30th June, 2002 on account of non-payment of NCD dues in January, 2002. The Present AFI 2003 classified the account as Sub-Standard as on March 31, 2003 as the account had become NPA category as on June, 30, 2002." **(Refer to page 17 of the AFI Report 2003 for detailed charges).**

b) Clarifications before the Disciplinary Committee:-

The statement made by the PIO that the working capital demand loan of Rs.15 crores was sanctioned for redemption of NCDs is factually incorrect since the

borrower Company has not issued any NCDs to the bank. The WCDL has been sanctioned on 19th April, 2002 by the board for a period of 1 year which falls due after the current audit period accordingly the classification of account as standard as at 31st March, 2003 is in order.

c) Findings of the Disciplinary Committee:-

i) It is noted that the Respondents denied the observation of the PIO of RBI that the demand loan of Rs. 15 cr. was given for redemption of NCDs. On the contrary, they have questioned the issuance of NCD by the Company to the bank. The witness from the RBI could not provide any documents to support that NCD was ever issued by the Company to bank. Hence, in absence of such vital information, it cannot be stated that the Respondents failed to verify the details of the accounts or classification made by the bank as Standard was incorrect. Hence, the Respondents are not guilty with respect to above allegation.

Findings of the Council on the above charge:-

i) It is noted that the Respondents have not made any submissions on the above charge. On perusal of the findings of the Disciplinary Committee, the Council agreed with the findings of the Disciplinary Committee that the Respondents are not guilty with respect to above charge.

16.16 Account No. 44 – III.L.44

(Rs. in cr.)

	Bal. as on 31.03.2003	Classification as per auditor	Classification as per PIO	Provision by Bank	Provision as per PIO
III.L.44	7.11	Standard	Sub-Stand	0	0.71

a) Charge (As stated by the PIO):-

"The term loan of Rs.1.48 crore which required to be paid in 36 monthly installments from January 2002 onwards could not be paid as per schedule as on March 31, 2003. The term loan remained unserviced for more than two quarters continuously. The net worth of the Company had been completely eroded and it was referred to CDR after acquiring the status of NPA" (refer to page 18 of AFI Report as on 31.3.2002)

b) Clarifications before the Disciplinary Committee:-

i) The Respondents submitted that the balance outstanding as per books of the bank is Rs.8.02 Crores whereas the balance reported by PIO is Rs.7.11 crores. The observation of PIO that the Term loan installments were outstanding from January, 2002 is not correct. As per the information made available during the

course of audit, the installment / interest are outstanding since November, 2002 i.e., less than 180 days at the year end. Accordingly, the account is classified as Standard.

ii) The observation of PIO that the net worth has been eroded and the account was referred to CDR cell is incorrect. As per audited financial statements of the Company on 31st March, 2002, the net worth was Rs.9.32 crores and till the completion of audit, they were not aware of any reference made to CDR cell.

c) Findings of the Disciplinary Committee:-

i) The Committee noted that in respect of above allegation, the Respondent produced copy of annexure to LFAR, Asset classification statement and position of accounts as on 17th September, 2003. In this regard, it is noted that the Respondent did not bring on record copy of ledger account which would have shown the recovery in the Term Loan Account. In absence of such vital document, the Committee perused the documents on record and noted that as per copy of annexure to LFAR, the account was Standard as on date of previous Balance Sheet and earliest overdue date was 29th November, 2002. Further, as per position of the Account as on 17th September, 2003, only party installment of March, 2003 was due as on 31.03.2003.

ii) In view of available information on record, it is viewed that benefit could be given to the Respondent as there was nothing on record which indicates that net worth of the Company was completely eroded and the installment of Term Loan was outstanding since January, 2002. In addition to above, the Respondents cannot be held responsible for the account becoming NPA after his period of audit. Thus, the Respondents are not guilty with respect to this allegation.

Findings of the Council on the above charge:-

i) It is noted that the Respondents have not made any submissions on the above charge. On perusal of the findings of the Disciplinary Committee, the Council agreed with the findings of the Disciplinary Committee that the Respondents are not guilty with respect to above charge.

16.17 Account No. 11 – III.L.11

(Rs. in cr.)

	Bal. as on 31.03.2003	<u>Classification as per auditor</u>	<u>Classification as per PIO</u>	<u>Provision by Bank</u>	<u>Provision as per PIO</u>
<u>III.L.11.1</u>	5.76	Sub-Standard	D1	0.57	1.15

a) Charge (As stated by the PIO):-

"The appraisal of the account was not done properly despite certain adverse features like persistent overdues in group accounts, high leverage, locking of funds in loans and advances, etc. The proposal was approved by circular resolution and an initial sanction of Rs.10.00 crores for the auto division was communicated to the branch of November 22, 1999In February 2000, the CMD of the bank permitted the Company to open LCs for import of ship sets contrary to the terms of sanction and it was not placed before the sanctioning authority for ratification Further basic safeguard of making the Company route the export bills through it was not stipulated. The LC was extended for a further period of 6 months by the bank's Board. A DO letter dated April ,6, 2001 addressed by the Company's Deputy Chairman to the bank's Executive Director revealed that the export proceeds were utilized to settle the (overdue) debentures and preference shares... Despite the persistence of dues under LCs from March 2001 onwards the bank had classified the account as sub-standard only in June, 2002." (refer to page 7 of AFI Report as on 31.3.2003).

b) Clarifications before the Disciplinary Committee:-

i) The Respondents stated that as per Special Auditor (MBR), the account has been classified as Sub-Standard assets as on 31st March, 2002 and 31st December, 2002 and RBI had vide letter dated 9th May, 2003 directed the bank to adhere to the classification of MBR. The Special auditor has further stated that in view of the developments in the account and as the bank does not perceive any threat to the recovery of balance the account can be upgraded as standard as on 31st March, 2003.

ii) This account has not been upgraded as recommended by the Special Auditor since there were overdue for the quarter ended September, 2002 at the year end and even after considering recoveries of Rs.26.75 crores during the year and Rs.3.74 crores in April, 2003. The adverse remarks of the PIO pertains to prior years and do not have a bearing on the classification and provisioning of the account in view of the developments took place during the period under review.

iii) In spite of substantial recoveries of Rs.30.40 crores during the period from April, 2002 to April, 2003, the account was not upgraded contrary to the recommendation of the Special Auditor in view of the outstanding overdue since September, 2002 and the bank had followed RBI letter dated 9th May, 2003 in classification of the account as Sub-standard account and made a provision of Rs.0.57 crore.

c) Findings of the Disciplinary Committee:-

i) In respect of above allegation, it is noted that the PIO classified the aforesaid account as **D1** due to the persistence of dues under LCs from March, 2001 onwards. The PIO also stated that the borrower was given favour by extending the period of Letter of Credit. On the contrary, the Respondents stated that the adverse remarks of the PIO pertain to the prior years and do not have a bearing on the classification and provisioning in the audit year. The Respondent also pointed out the equivalent classification given by the Special Auditor as on 31st March, 2002 and on 31st December, 2002 to the account. It is viewed that difference in classification arises depending on the time since when it should be considered as NPA. In any case, it was noted that MBR in his report has stated the outstanding amount as on 25.03.2003 as Rs. 6.14 crore vis-a-vis outstanding balance of Rs.11.68 crore as on December 2002. This indicates recovery and further the outstanding balance of Rs.5.76 crore as on 31.03.2003. In case the account was overdue for quarter ended Sept 2002, it signifies a position that despite such recoveries, the account has remained overdue since 180 days before March 31, 2002 (**MBR-144**) so it was a borderline case of 18 months as on March 31, 2003 that justifies its classification as Sub-Standard as on that date. Hence, the Respondents are not guilty with respect to above allegation.

Findings of the Council on the above charge:-

i) It is noted that the Respondents have not made any submissions on the above charge. On perusal of the findings of the Disciplinary Committee, the Council agreed with the findings of the Disciplinary Committee that the Respondents are not guilty with respect to above charge.

16.18 Account No. 36 – III.L.36

(Rs. in cr.)

	<u>Bal. as on 31.03.2003</u>	<u>Classification as per auditor</u>	<u>Classification as per PIO</u>	<u>Provision by Bank</u>	<u>Provision as per PIO</u>
III.L.36	102.46	SubStandard	D3	10.25	51.23

a) Charge (As stated by the PIO):-

"The bank did not have any exclusive security for enforcing recovery and it had only second charge on the property. The other consortium banks had proceeded against the Company under Securitisation Act. As second charge was not ceded by consortium banks in favour of GTB, the value of security was not ascertainable... Hence the account was classified as doubtful III and a provision of 50% as a special case, on the entire outstanding amount was suggested."

b) Clarifications before the Disciplinary Committee:-

i) The Respondents submitted that the special audit report by MBR (Pg 480) and AFI 2002 has considered these securities in classifying the account as sub-standard. The account continues to be substandard based on special auditors' report till September, 2003. They are not aware of the development took place which made the PIO to downgrade the account to D-3 categories.

ii) Second charge on the land and building valued at Rs.251.16 crores and necessary formalities of charge creation with ROC was available (Pg 506-508).

c) Findings of the Disciplinary Committee:

It is noted that allegation raised relates to security available against the loan account. It is stated that only second charge was available on the property. The other consortium banks had proceeded against the company under Securitization Act. The value of security available is not ascertainable, *therefore, as a special case, a provision of 50% of outstanding was suggested.* It is viewed that PIO has only suggested which cannot be held as an allegation against the Respondents. Therefore, the Respondents are not held guilty of professional misconduct in this case.

Findings of the Council on the above charge:-

i) It is noted that the Respondents have not made any submissions on the above charge. On perusal of the findings of the Disciplinary Committee, the Council agreed with the findings of the Disciplinary Committee that the Respondents are not guilty with respect to above charge.

16.19 Account No. 1.3 – III.L.1.3

(Rs. in cr.)

	Bal. as on 31.03.2003	Classification as per auditor	Classification as per PIO	Provision by Bank	Provision as per PIO
III.L.1.3	131.24	Standard	D-1	-	122.40 (consolidated provision for account no.III.L.1.1,1.2 and 1.3)

a) Charge (As stated by the PIO):-

"Considering the persistent overdue/recalled loan from August 2001 and the features mentioned above the advance was classified as D-1. The bank had classified the group accounts as standard despite RBI Central Office instructions and the observations made by Special Statutory Auditor that the account should have been classified as NPA as on March 31, 2002."

b) Clarifications before the Disciplinary Committee:-

i.) The Respondents stated that there was clearly a disagreement in the Bank's view and the Auditors' view. Accordingly, they have given a qualification (**Pg 535-538 and para 5(h) of audit report**) in accordance with "The Statement on Qualifications in the Auditors' Report. The Bank maintained that it was a standard account, whilst the Auditors were of the view that it was an NPA. The quantification on provision was not possible in view of the stand taken by the Bank, and coupled with the fact that the interest was serviced upto 31st March, 2003.

ii) The Respondents further submitted that para 46 of AAS-28 which reads herewith has no application because these provisions were made available for financial year on or after April, 1, 2003.

iii) It is submitted that the learned PIO has reported divergence in classification as NPA and provisioning without considering and understanding the impact of the qualifications made in the auditors' report as aforesaid.

c) Findings of the Disciplinary Committee:-

It was noted that the Respondent(s) submitted to have qualified the audit report in this respect. Hence, the charge leveled is not maintainable in extant case.

Findings of the Council on the above charge:-

i) It is noted that the Respondents have not made any submissions on the above charge. On perusal of the findings of the Disciplinary Committee, the Council agreed with the findings of the Disciplinary Committee that the Respondents are not guilty with respect to above charge.

16.20 Account No. 2.1 – III.L.2.1 and Account No. 2.2. – III.L.2.2 (Rs. in cr.)

	Bal. as on 31.03.2003	<u>Classification as per auditor</u>	<u>Classification as per PIO</u>	<u>Provision by Bank</u>	<u>Provision as per PIO</u>
<u>III.L.2.1</u>	114.51	Standard	D1	0	34.30
<u>III.L.2.2</u>	57.00				

a) Charge (As stated by the PIO):-

"The account exhibited traits of NPA and the facilities were overdue since August/September 2001. The bank had rescheduled/extended the repayment 7)

period from time to time without any comprehensive analysis and any identified source for expected repayment. The funds of the entities were locked in loans and advances, investments fixed assets resulting in uncertain generation of liquidity. The bank stipulated certain conditions from time to time such as closure of III.L.2.2. and ... security coverage, obtention of listed shares etc. of these, only ... was closed during 2002-03. The securities furnished by third parties were shares of unlisted companies, viz... and ... for which no valuation was available. Financial details of the issuing or the pledging entities were not available and adherence to the statutory requirements (under section 19 of BR Act, 1949) was not ensured. In case of certain shares, only letters of allotment were available and pledge was not created. The bank, however, obtained a security worth Rs.216.50 crore during 2002-03. Further, the securities were held / transferred by entities belonging to group and further legal complications could not be ruled out. As such, the advances were classified as NPA. The bank had classified the group account as standard despite RBI Central Office instructions and the observations made by Special Statutory Auditor that the accounts should have been classified as NPA as on March 31, 2002. The bank had been advised to classify the accounts as NPA as on March 31, 2003 and make suitable provision while publishing the financial results for the quarter ended December 31, 2003."

b) Clarifications before the Disciplinary Committee:-

- i) There was clearly a disagreement in the Bank's view and the Auditors' view. Accordingly, they have given a qualification (**Pg 570-580 and para 5(h) of audit report**) in accordance with "The Statement on Qualifications in the Auditors' Report. The Bank maintained that it was a standard account, whilst the Auditors were of the view that it was an NPA. The quantification on provision was not possible in view of the stand taken by the Bank, and coupled with the fact that the interest was serviced upto 31st March, 2003.
- ii) It is submitted that para 46 of AAS-28 which reads herewith has no application because these provisions were made available for F.Y. on or after April, 1, 2003.
- iii) It is submitted that the learned PIO has reported divergence in classification as NPA and provisioning without considering and understanding the impact of the qualifications made in the auditors' report as aforesaid.

iv) "Paragraph 5(h) reads as follows – In our opinion and to the best of our information.... As indicated in Note No. 9 on schedule XVIII with accounting principles generally accepted in India.

Paragraph 5(i) reads as follows – Note 7 of Schedule XVIII regarding restructuring of certain advances Till March 31, 2003 on restructuring".

v) In respect of two restructured major borrowers accounts aggregating to Rs.311.61 crores, prima facie there is no divergence in classification between PIO and auditors whereas the bank treated the said account as standard. The PIO has overlooked the qualification made in audit report as aforesaid and reported divergence in classification by Rs.308.75 crores (reporting error balance by Rs.2.86 as compared to book balance on the part of PIO).

c) Findings of the Disciplinary Committee:-

It was noted that the Respondent(s) submitted to have qualified the audit report in this respect. Hence, the charge leveled is not maintainable in extant case.

Findings of the Council on the above charge:-

i) It is noted that the Respondents have not made any submissions on the above charge. On perusal of the findings of the Disciplinary Committee, the Council agreed with the findings of the Disciplinary Committee that the Respondents are not guilty with respect to above charge.

16.21 Account No. 45 – III.Inv.1

(Rs. in cr.)

	Book Value	Provision,if any, held by bank	Erosion in the value /Provision required as per PIO	Shortfall in provision
III.INV.1	16.50	1.65	16.50	14.85

a) Charge (As stated by the PIO):-

"The bank invested Rs.16.5 crore in 15% NCD of the Company for the purpose of developing commercial cum office premises at Guindy, Chennai. The Project could not take off in view of the court cases in connection with non-payment of ECB loan of USD 3 Million by....., the borrower's associate. The repayment for both interest and principal due since March 2001, on not being serviced, was restructured to commence from June 2002 onwards. The charge over.....property was not executable in view of court cases.. In view of non-marketability of the security, the bank approved a settlement scheme involving debt-property swap (other than those held as security) and entered into an

agreement for the same in September, 2003. The bank was also proposing to reverse the provision held on registration of the property. However, in view of the position (rather than anticipated position) obtaining as on date of balance sheet / date of inspection, i.e. unsecured nature of the outstanding and three years of non-performance, the recommendation of the previous AFI for full provision is retained."

b) Clarifications before the Disciplinary Committee:-

i) The Respondents stated that there was non-divergence in identifying the accounts as NPA by the PIO and the bank. The PIO's observation that the NCDs are unsecured is denied and disputed. The bank is holding security by way of immovable properties valued at Rs.20.18 crores which is more than 100% of the outstandings.

ii) The Respondent further stated that NCDs were treated as credit like instruments (advances) and 10% provision was made by the bank in view of the securities available as per provision of Master Circular dated 11th July, 2002.

c) Findings of the Disciplinary Committee:-

i) It is noted that difference in opinion has arisen due to the difference in circumstances as on the balance sheet date vis a vis that exists on the signing date of the audit report. While as on balance sheet date as per the allegation made, investments made were not secured but as on the date of signing the balance sheet the bank had entered into the agreement due to which it was secured. In any case, it is noted that though AFI reported to retain recommendation of making full provision but it is not clear as to whether such recommendation was applicable despite entering the dent property swap agreement. In the absence of detailed information, it is noted that sufficient evidence is not produced to support the allegation made. Hence, the Respondents are not guilty with respect to this charge.

Findings of the Council on the above charge:-

i) It is noted that the Respondents have not made any submissions on the above charge. On perusal of the findings of the Disciplinary Committee, the Council agreed with the findings of the Disciplinary Committee that the Respondents are not guilty with respect to above charge.

16.22 Account No. 52 – III.Inv.8

(Rs. in cr.)

	Book	Provision,if any.	Erosion in the value /Provision	Shortfall in
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	Value	held by bank	required as per PIO	provision
III.INV.8	3	0.30	0.90	0.60

a) Charge (As stated by the PIO):-

"The NCDS matured on November 23, 2000 and interest serviced up to December 31, 2000."

b) Clarifications before the Disciplinary Committee:-

i) The Respondents stated that there is non-divergence in identifying the accounts as NPA by the PIO and the bank. The NCDs are in the nature of credit like instruments and for the purpose of provisioning IRAC norms are applied. The principals was overdue since November 2001 and interest from March, 2002. The date of NPA was May, 2002 and the account was classified as Sub-standard. Provision has been made as per IARC norms.

ii) The NCDs are 100% secured by mortgage of properties.

c) Findings of the Disciplinary Committee:-

The Committee noted that the amount of divergence was not material and hence, it decided to extend benefit of doubt to the Respondent in this allegation. Hence, the Respondents are not guilty with respect to this allegation.

Findings of the Council on the above charge:-

i) It is noted that the Respondents have not made any submissions on the above charge. On perusal of the findings of the Disciplinary Committee, the Council agreed with the findings of the Disciplinary Committee that the Respondents are not guilty with respect to above charge.

16.23 Account No. 53 – III.Inv.9

(Rs. in cr.)

	Book Value	Provision,if any, held by bank	Erosion in the value /Provision required as per PIO	Shortfall in provision
III.INV.9	1	0.10	0.30	0.20

a) Charge (As stated by the PIO):-

"The 14% preference shares were redeemable on December, 28, 2001 and dividends were received upto March 31, 2000. In view of the repayment outstanding beyond two years, the discount of more than 15% i.e., 30% is made for the purpose of revaluation as per the relevant norms."

b) Clarifications before the Disciplinary Committee:-

The Respondents submitted that this account has not been come within the scope of test check and as such they have accepted classification made by the bank.

c) Findings of the Disciplinary Committee:-

The Committee noted that the amount of divergence was not material and hence, it decided to extend benefit of doubt to the Respondent in this allegation. Hence, the Respondents are not guilty with respect to this allegation.

Findings of the Council on the above charge:-

i) It is noted that the Respondents have not made any submissions on the above charge. On perusal of the findings of the Disciplinary Committee, the Council agreed with the findings of the Disciplinary Committee that the Respondents are not guilty with respect to above charge.

16.24 Account No. 54 – III. Inv.10

(Rs. in cr.)

	Book Value	Provision,if any, held by bank	Erosion in the value /Provision required as per PIO	Shortfall in provision
III.INV.10	1	0.10	0.45	0.35

a) Charge (As stated by the PIO):-

"The bank had invested Rs.1.00 crore in 14% Redeemable Preference Share of III Inv.10, on December 28, 1998. The dividend was in arrears for two years since March 31, 2000. Further, the above preference shares were not yet redeemed. The valuation of the Preference shares under reference has been calculated on YTM basis in terms of paragraph 3.8.2 of the Master Circular dated July 11, 2002. Accordingly, an additional provision at the rate of 5% for a year of default was considered necessary in the matter."

b) Clarifications:-

The Respondents submitted that the captioned preference shares have been addressed by PIO in account no.53 – III.Inv. 9. Further, it is submitted that this account has not been come within the scope of test check and as such they have accepted classification made by the bank.

c) Findings:-

The Committee noted that the amount of divergence was not material and hence, it decided to extend benefit of doubt to the Respondent in this allegation. Hence, the Respondents are not guilty with respect to this allegation.

Findings of the Council on the above charge:-

i) It is noted that the Respondents have not made any submissions on the above charge. On perusal of the findings of the Disciplinary Committee, the Council agreed with the findings of the Disciplinary Committee that the Respondents are not guilty with respect to above charge.

16.25 Account No. 55 – III.Inv.11

(Rs. in cr.)

	<u>Book Value</u>	<u>Provision,if any, held by bank</u>	<u>Erosion in the value /Provision required as per PIO</u>	<u>Shortfall in provision</u>
III.INV.11	0.90	0.09	0.27	0.18

a) Charge (As stated by the PIO):-

"The 15% Preference Shares were redeemable on January 22, 2002 and dividends had been received upto March 31, 2002. In view of the repayment outstanding beyond one year, the discount of more than 30% is made for the purpose of revaluation as per the relevant norms."

b) Clarifications before the Disciplinary Committee:-

It is submitted that this account has not been come within the scope of test check and as such they have accepted classification made by the bank.

c) Findings of the Disciplinary Committee:-

On perusal of the irregularities as mentioned in the AFI Report and the clarifications submitted by the Respondents, the Committee is of the view that they are not tenable. Their clarifications are contrary with the observation of the PIO and they have not submitted any documentary evidence to substantiate their submissions. The Committee is of the view that the Respondent's submissions do not clarify the alleged irregularities clearly and the same have not been substantiated by the documentary evidence on which they have relied upon. Further, they are insufficient to negate the irregularities pointed out in the AFI Report as on 31.3.2003. However, the Committee noted that the amount of divergence was not material and hence, it decided to extend benefit of doubt to the Respondent in this allegation. Hence, the Respondents are not guilty with respect to this allegation.

Findings of the Council on the above charge:-

i) It is noted that the Respondents have not made any submissions on the above charge. On perusal of the findings of the Disciplinary Committee, the Council agreed with the findings of the Disciplinary Committee that the Respondents are not guilty with respect to above charge.

16.26 Account No. 56 – III.OA.1

(Rs. in cr.)

	Book Value	Provision,if any, held by bank	Erosion in the value /Provision required as per PIO	Shortfall in provision
III.OA.1	63.63	0	53.75	53.75

a) Charge (As stated by the PIO):-

The bank accumulated a total of advanced taxes paid / TDS amounting to Rs.63.63 crores during the financial years 1994-95 through 2002-03... There was net shortfall of Rs.53.75 crore (grosses excess assessment/claims: FY 1996-97 = Rs.23.81 Crore, 1997-98 = Rs.1.56 Crore, 1999-2000 = Rs.30.87 crore) between the assessed tax and tax provided for in the P&L accounts of the bank during the period where the bank preferred appeals... The bank transferred the whole amount off balance sheet as a contingent item and did not charge any provision on his account to Profits on the strength of a certificate dated August 5, 2003 from, Tax Consultants of the bank, stating that these cases were arguable.... In view of the same full provisions are recommended as per acceptable Accounting Standards (AS-4) until a reasonable estimate is made about the post appeal tax dues and prudential provisions are made.

b) Clarifications before the Disciplinary Committee:-

i) The Respondents submitted that the AFI 2003 has not considered Provision for Taxation held by the bank for the Financial Years 1994-95 to 2000 of Rs.94.07 crores. In respect of these tax provisions, bank has made advance tax / T.D.S. of Rs.63.63 crores and the same are shown in the Balance Sheet as Other Liabilities and provisions and Other assets respectively.

ii) The AFI 2003 has considered disputed tax liability of Rs.53.75 crores in respect of these years which are in appeal. The disputed tax liability has no relevance to erosion in advance tax paid. The Respondent furnished the break- up of disputed tax liabilities based on tax liabilities assessed as compared to provision held in books which has been disputed by the bank and is in various stages of appeal **(Page no. 705)** and the same was not considered by the bank and accordingly, the same was shown as contingent liability by the bank as per Guidance note on audit of banks.

iii) AFI Reports of prior years' do not comment upon the same. Neither the PIO explained the development took place during the current year leading to the recommendation of the provision.

c) Findings of the Disciplinary Committee:-

It is noted that the allegation has been made with respect to disputed tax liabilities which have been shown as contingent liability rather than providing for the same. It is also noted that PIO has also informed that such provision has not been made based on certificate of Tax consultants dated Aug 5, 2003 stating that such cases are arguable. In other words, as regards disputed tax liability neither there was any present obligation as on the balance sheet date with respect to them. The financial effect of such dispute ultimately then was dependent on the outcome of judgment of various cases. Moreover, considering the view of tax consultant there were basis based on which Respondents believe that it is less probable that economic resources will outflow. Accordingly, showing them as contingent liability is line with the paragraph 11 of AS 4. Therefore, the Respondents cannot be held guilty of professional misconduct.

Findings of the Council on the above charge:-

i) It is noted that the Respondents have not made any submissions on the above charge. On perusal of the findings of the Disciplinary Committee, the Council agreed with the findings of the Disciplinary Committee that the Respondents are not guilty with respect to above charge.

16.27 Account No. 57 – III.OA.2

(Rs. in cr.)

	Book Value	Provision,if any, held by bank	Erosion in the value /Provision required as per PIO	Shortfall in provision
III.OA.2	78.84	0	11.83	11.83

a) Charge (As stated by the PIO):-

"This asset, though in the nature of earnest money advance payment to MMRDA and deposit with the Mumbai High Court, representing installments of a lease contract payable to MMRDA plus interest charged for delay, has been shown by the bank under "Capital Works in Progress" as against expert opinions from (M.P. Chitala, CAs) on January 8, 2003 that it should be parked under "other assets" as a suspense item. It was essentially in the nature of an advance Capitalisation of such interest amounts spent for delayed payments of contracted installments did not conform to acceptable Accounting Standards (AS-10). This essentially set off the interest earned by the bank for the delayed period by postponing the

capital expenditure outgo, which any way would have been credited to the profits of the bank... Hence, provisions the erosion in the value of the asset to the suggested extent recommended."

b) Clarifications before the Disciplinary Committee:-

i) The Respondents submitted that the learned PIO has recommended for funding cost of acquisition of capital asset not to be capitalized and to be charged to Profit & Loss Account. The Bank has paid first installment of advance to MMRDA which includes Rs.8.18 Crores being the delivery interest charged by MMRDA as per terms of agreement. This disputed amount of second installment of Rs.37.42 Crores has been deposited together with penal interest as per terms of agreement with IDBI Bank as per the direction of the Hon'ble High Court of Mumbai.

ii) The Respondents submitted that in accordance with Para 6 and 8 of AS 16 on "Borrowing Cost" read with Para 9.2 of AS 10 on "Accounting for Fixed Assets", issued by ICAI, finance cost incurred during the period of construction of acquisition of asset can be capitalized. Further, the bank has paid the penal interest as per terms of agreement and partly as per directions of the High Court. Compliance with the terms of agreement, particularly when there is a dispute as to the right to use of the assets, the penal interest paid cannot be treated as revenue charge. The bank has also obtained opinion from M.P. Chitala & Co., a reputed firm of Chartered Accountants (**Page no.723-730**) regarding March 31, 2003. The learned PIO has not recognized the expert opinion, which was recommendatory in nature, and the directions of the Court as well as AS-10 issued by recommending write off of interest.

c) Findings of the Disciplinary Committee:-

i) It is noted that the extant matter pertains to amount paid to MMRDA for a commercial plot for which the bank had gone to the Court for rescinding the deal. In this respect, the bank has paid various installments, delayed penal interest and also made deposits with IDBI on directions of the High Court on which accrued interest has also been recognized. While the bank has shown installments paid and deposits made with IDBI as 'capital work in progress' interest earned has been routed through Profit and loss account and shown as 'other assets'. The expert has expressed the opinion that it should be shown as 'other assets' rather than being treated as fixed asset and shown as 'capital work in progress'.

ii) It is observed that the allegation is that interest paid on delayed payments cannot be capitalized instead it should be routed through Profit and loss account

when interest earned on deposits is being routed through Profit and loss account. It is noted that in paragraph 12 of said opinion it is stated that such interest on delayed payments should be capitalized to corresponding Property Suspense account. The only difference is that opinion prescribes to capitalize under the head 'Other Assets' while it has been capitalized under 'capital work in progress'. **(Vol 3 – Pg 724-728)**. As regards interest received on deposits it is viewed that the same should have also been credited to corresponding asset account rather than being routed through Profit and loss account. However, later is not the charge against the Respondents. Therefore, the Respondents cannot be held guilty of professional misconduct.

Findings of the Council on the above charge:-

i) It is noted that the Respondents have not made any submissions on the above charge. On perusal of the findings of the Disciplinary Committee, the Council agreed with the findings of the Disciplinary Committee that the Respondents are not guilty with respect to above charge.

16.28 Account No. 58 – III OA3

(Rs. in cr.)

	Book Value	Provision,if any, held by bank	Erosion in the value /Provision required as per PIO	Shortfall in provision
III.OA.3	5.10	0	5.10	5.10

a) Charge (As stated by the PIO):-

"In the case of acquisition of real estate property in a swap of debts, the bank deposited an amount of Rs. 5.10 Crore with Mumbai HC on 2.5.2002 which represented the claim amount filed by ... and .. on the bank. The amount was shown under 'other assets' in the bank's balance sheet under Suspense Account (also disclosed under contingent liability). Since the claim was admitted by the Court in view of the prima facie case against the bank and the deposit of the claim amount was insisted upon to permit the bank to further deal with the property, suitable provisions for the same were recommended."

b) Clarifications before the Disciplinary Committee:-

The Respondent Firm submitted that the bank is in the process to acquire the property in satisfaction of debts. The third party has obtained injunction against the bank to sell the said property. This amount represents amount deposited with High Court for obtaining vacation of aforesaid stay order. The amount will be recoverable once the principal debtors settles dues of the third party. As the matter is in dispute and there is no prima facie liability to the bank, this amount is good and recoverable. As a matter of prudence, the claim of third party not

acknowledged by the bank has been disclosed under Contingent Liabilities (**Page no.732-734**) in line with As-4.

c) Findings of the Disciplinary Committee:-

It is noted that in extant case the bank has deposited amount with High Court for obtaining vacation of stay order taken by third party against the bank to sell the property it was acquiring in satisfaction of debts. While PIO recommends to make the provision of said amount the Respondents informed that the same has been shown as 'claim of third party not acknowledged as debt' under Contingent liabilities. It is viewed that again the ultimate outcome of this depends on the judgment of High Court in the case. Hence it was a case of contingent liability which is appropriately shown. Therefore, the Respondents cannot be held guilty of professional misconduct.

Findings of the Council on the above charge:-

i) It is noted that the Respondents have not made any submissions on the above charge. On perusal of the findings of the Disciplinary Committee, the Council agreed with the findings of the Disciplinary Committee that the Respondents are not guilty with respect to above charge.

16.29 Account No. 59 – III.OA.4

(Rs. in cr.)

	Book Value	Provision,if any, held by bank	Erosion in the value /Provision required as per PIO	Shortfall in provision
III.OA.4	11.10	9.20	11.10	1.90

a) Charge (As stated by the PIO):-

“The application money for subscribing to the NCDs of the company paid in April/June 2000 was still pending. The bank held a provision of Rs.9.20 crore treating the account as Doubtful – 3 years as it held the security of certain land at Malad (East) in Mumbai valued in May 2002 at Rs.2.47 Crore (realizable value shown as Rs.2.00 crore) even though the bank recorded that owing to deficiencies in the documentation such as non-registration with ROC, non-availability of vacant possession etc., they were not enforceable. Hence, the account was considered a Loss asset and full provision recommended. As in October, 2003, the Board approved an OTS for Rs.3.00 Crore in 30 monthly installments however implementation of the same was yet to take shape. Hence, the asset is identified as a lost asset and full provision recommended.”

b) Clarifications before the Disciplinary Committee:-

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The Respondents submitted that the observation of learned PIO as to approving of ITS of Rs. 3 Crores in October, 2003 is after completion of audit in September, 2003 and they as auditor had no knowledge of the same. The above also indicates that there are positive negotiations with the company at the time of completion of the audit besides the security held being certain land valued at Rs.2.47 Crores in May 2002. Accordingly, recommending additional provision pending implementation of OTS is not considered appropriate.

c) Findings of the Disciplinary Committee:-

It is noted that the amount involved in allegation is not material hence the charges raised are decided to drop against the Respondents.

Findings of the Council on the above charge:-

i) It is noted that the Respondents have not made any submissions on the above charge. On perusal of the findings of the Disciplinary Committee, the Council agreed with the findings of the Disciplinary Committee that the Respondents are not guilty with respect to above charge.

16.30 Account No. 60 – III.OA.5

(Rs. in cr.)

	Book Value	Provision,if any, held by bank	Erosion in the value /Provision required as per PIO	Shortfall in provision
III.OA.5	4.06	0	1.60	1.60

a) Charge (As stated by the PIO):-

“The amount generally represented disputed/sticky receivable from dismissed employees pending over a period of time. (Viz. Rs.63.39 lakh, ... Rs.14.96 lakh, ...Rs.9.61 lakh,..Rs.16.89 lakh,Rs26.83 lakh,...Rs.24.58) and ex-employee from whom recovery had been difficult (viz... Rs..0.17 lakh).”

b) Clarifications before the Disciplinary Committee:

i) The Respondent Firm submitted that it is reported that the employees have made representation to the board for reinstatement and the same was in process. The loans were fully secured and management was confident of recovering the loans and in the event of any difficulty, the bank would recover the same by enforcing the securities.

ii) An amount of Rs.76.80 lacs was recovered till August 31, 2003. As such no provision is considered necessary.

c) Findings of the Disciplinary Committee:-

It is noted that the amount involved in allegation is not material hence the charges raised are decided to drop against the Respondents.

Findings of the Council on the above charge:-

i) It is noted that the Respondents have not made any submissions on the above charge. On perusal of the findings of the Disciplinary Committee, the Council agreed with the findings of the Disciplinary Committee that the Respondents are not guilty with respect to above charge.

16.31 Account No. 61 –III.OA.6

(Rs. in cr.)

	Book Value	Provision,if any, held by bank	Erosion in the value /Provision required as per PIO	Shortfall in provision
III.OA.	0.09	0	0.09	0.09

a) Charge (As stated by the PIO):-

“The amounts represent shortage/difference of cash Rs.5.00 lakh in Bangalore branch on 1.5.5.2000, Rs.2.29 in Visakhapatnam branch on 1.2.2002 and Rs.2.00 lakh in Churchgate branch on 27.12.2002. All the entries were debited to the Suspense Account and outstanding since then.”

b) Clarifications before the Disciplinary Committee:-

The Respondents submitted that as per the policy of the bank, all cash shortages are debited to suspense account and fully provided where there are no changes of recovery. The bank is holding provision of Rs.5 lakhs in respect of shortage at Bangalore Branch and in case of Vishakhapatnam and Churchgate branch, the balance amount is good and recoverable as per information furnished to them. The learned PIO has not considered the provision made in the books in reporting the shortfall in provision.

c) Findings of the Disciplinary Committee:-

It is noted that the amount involved in allegation is not material hence the charges raised are decided to drop against the Respondents.

Findings of the Council on the above charge:-

i) It is noted that the Respondents have not made any submissions on the above charge. On perusal of the findings of the Disciplinary Committee, the Council agreed with the findings of the Disciplinary Committee that the Respondents are not guilty with respect to above charge.

16.32 Account No. 62 – III.OA.7

(Rs. in cr.)

	Book Value	Provision,if any, held by bank	Erosion in the value /Provision required as per PIO	Shortfall in provision
III.OA.7	0.03	0	0.03	0.03

a) Charge:-

“(a).... Refund Orders for Rs.65,000 paid on 5.5.2000 at Connaught Circus Branch (b) Demat bill receivable for Rs.70,543 at Connaught Circus Branch. Since 29.6.2002 and for Rs.55.704 at Bangalore Branch since 19.8.2002 (c) Tour advances paid by Corporate Office to To NPT branch for Rs.90,000 on 18.7.2002 The amounts were parked in the Suspense Accounts.”

b) Clarifications before the Disciplinary Committee:-

It is submitted that since the amount is not material, while selecting the sample, the same is not considered and they have accepted the classification made by the bank.

c) Findings of the Disciplinary Committee

It is noted that the amount involved in allegation is not material hence the charges raised are decided to drop against the Respondents.

Findings of the Council on the above charge:-

i) It is noted that the Respondents have not made any submissions on the above charge. On perusal of the findings of the Disciplinary Committee, the Council agreed with the findings of the Disciplinary Committee that the Respondents are not guilty with respect to above charge.

16.33 Account No. 63 – III.OA.8

(Rs. in cr.)

	Book Value	Provision,if any, held by bank	Erosion in the value /Provision required as per PIO	Shortfall in provision
III.OA.8	0.72	0	0.02	0.02

a) Charge (As stated by the PIO):-

“This money represented withholding tax paid by the bank for VISA transactions. Instead of charging it to profits, the amount was parked in the Suspense A/c.”

b) Clarifications before the Disciplinary Committee:-

It is submitted that since the amount is not material, while selecting the sample, the same is not considered and they have accepted the classification made by the bank.

c) Findings of the Disciplinary Committee:-

It is noted that the amount involved in allegation is not material hence the charges raised are decided to drop against the Respondents.

Findings of the Council on the above charge:-

i) It is noted that the Respondents have not made any submissions on the above charge. On perusal of the findings of the Disciplinary Committee, the Council agreed with the findings of the Disciplinary Committee that the Respondents are not guilty with respect to above charge.

16.34 Account No. 64 – OAintr.1

(Rs. in cr.)

	Book Value	Provision,if any, held by bank	Erosion in the value /Provision required as per PIO	Shortfall in provision
III.OAintr.1	31.63	0	31.63	31.63

a) Charge (As stated by the PIO):-

"The amount represented accrued interest on installment money due the lessor, placed in the custody of Mumbai High Court... While the bank booked the said interest income on accrual basis, it did not factor in its own interest liability due to MMRDA amounting to Rs.48.05 Crore disclosed as a contingent liability. The Court had ordered deposit of the second installment, being the original deposit in the present case, along with interest @ 18% for delay. The ownership of the money depended on the decision of the Court. In absence of information exact period/rate of such liability and the fact that the bank had already disclosed on one-to-one contingent liability far in excess of the asset value, full provision is recommended."

b) Clarifications before the Disciplinary Committee:-

i) The Respondents stated that the Bank had given the bid to MMRDA to acquire the plot from MMRDA for itself and other banks/Institutions. This was a bid in consortium. The Bank's contribution for the first installment was Rs.37.72 crore. After the Bank had paid its contribution, it was discovered that the property was covered by CRZ notification (Coastal Regulation Zone). The property could not be developed. This was a willful and deliberate non-disclosure by MMRDA as contended by the Bank. The bank, therefore sought refund of the first installment and declined payment of the second installment. MMRDA declined to refund payment of the first installment and insisted on payment of the second installment.

ii) The Bank, therefore, approached the Court and the Bank was directed to deposit the amount in the Court. The amount represented the Bank's contribution

for the second installment and the same also included the small portion of interest on delay payment. Since the amount is deposited in the Court, there is no question of the Bank being held liable for paying any penal interest, as the amount is now held in the Court either for the benefit of MMRDA or for the benefit of e-GTB. The Bank has correctly shown the penal interest component on the second installment towards contingent liability as the Bank has disputed the payment of the Second installment itself on account of the aforesaid non-disclosure.

iii) The interest accrued on the deposit made in the Court is correctly shown as the Income of the Bank because interest did accrue and was received by the bank in the aforesaid fact situation the penal interest liability is correctly shown towards the contingent liability as this is a litigation matter.

iv) Opinion from CA. M.P. Chitale on Accounting for Interest on deposit with bank under high court order in connection with lease of land from MMRDA was obtained. **(Page no.789-796)**

c) Findings of the Disciplinary Committee:-

On perusal of the allegations vis-à-vis submissions, the Committee was satisfied with the treatment adopted by the bank. Moreover, the Respondents have taken third party opinion which states that the accounting treatment adopted by the bank is logical since interest income on IDBI bank deposit (which has been accounted for by the bank) and liability, if any for delayed payments to MMRDA arise from the same transactions and contractual obligations. In view of above, the Committee decided to hold the Respondents not guilty of professional misconduct.

Findings of the Council on the above charge:-

i) It is noted that the Respondents have not made any submissions on the above charge. On perusal of the findings of the Disciplinary Committee, the Council agreed with the findings of the Disciplinary Committee that the Respondents are not guilty with respect to above charge.

16.35 - Account No. 70 – OAintr.7

(Rs. in cr.)

	Book Value	Provision, if any, held by bank	Erosion in the value /Provision required as per PIO	Shortfall in provision
III.OAintr.7	0.46	0	0.46	0.46

a) Charge (As stated by the PIO):-

"In case of redemption of NCDs by converting it to term loans, as per para 2.8 of subscription agreement on appropriation of payment, any payment due and payable and payment of which is made by the company should be appropriated firstly towards cost, then towards interest and lastly towards principal. However, IBD had appropriated Rs.1 Crore received on 27.12.2001 towards principal rather than interest. As a result, principal outstanding as on 28.2.2003 was appearing as Rs.15 Crore and the Treasury appropriated the same towards balance principal of Rs.15 Crore. The reversal of income is recommended in view of classification of the asset as NPA."

b) Clarifications before the Disciplinary Committee:-

i) PIO's comments on appropriation of receipt of Rs.1 crore towards principal on 27.12.2001 by treasury department of the bank pertains to prior year. The incident does not relate to the period under review. The interest reversal suggested by PIO related to the interest accrual for March, 2003 quarter which was not overdue for more than 180 days.

ii) The PIO has recommended reversal of interest income since account classified as NPA by AFI 2003. Refer Account no.22-III.L.22 for reasons for not classifying the account as NPA.

c) Findings of the Disciplinary Committee:-

It is noted that the amount involved in allegation is not material hence the charges raised are decided to drop against the Respondents.

Findings of the Council on the above charge:-

i) It is noted that the Respondents have not made any submissions on the above charge. On perusal of the findings of the Disciplinary Committee, the Council agreed with the findings of the Disciplinary Committee that the Respondents are not guilty with respect to above charge.

16.36 Account No. 66 – III OAintr.3

(Rs. in cr.)

	Book Value	Provision,if any, held by bank	Erosion in the value /Provision required as per PIO	Shortfall in provision
III.OAintr.3	13.29	0	13.29	13.29

a) Charge (As stated by the PIO):-

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"The reversal of income is recommended in view of classifications of the assts as NPA."

b) Clarifications before the Disciplinary Committee:-

i) The Respondents stated that the PIO has recommended reversal of interest income in view of the investment being classified as NPA. Please refer to Account no.14-III.L.14 for reasons classifying the account as Standard assets by the bank. Once the classification is standard, there is no requirement for reversal of the income booked as per IRAC norms.

ii) The Respondents submitted that as per AS 1, Disclosure of Accounting Policies, AS 9, Reserve Recognition and provisions of Section 209 of the Companies Act, 1956, books of account of the bank are required to be maintained on accrual basis. The bank has subscribed to NCDs with the clear terms of sanction that interest is due and payable on maturity of the bonds. However, in compliance with the statutory requirements, the interest is accrued on a year to year basis, though it is not due for payment. The due date for redemption of NCDs in June, 2004 which is much later than the year under audit and completion of audit on September 30, 2003 (**Sanction details on page 806-811**). At the time of completion of audit, neither the principal nor the interest due for payment requiring provision as per RBI guidelines.

iii) The exposure of the borrower is fully secured (**Page no.812-814**) and there are no arrears of interest/installment requiring provisions as per IRAC norms. Accordingly, the exposure is treated as Standard and no provision considered necessary.

c) Findings of the Council:-

i) On perusal of AFI Report, it is noted that the PIO has considered the classification of the loans on which the stated income has accrued. However, the allegation made has not been substantiated with any documentary evidences to give the details of the loan account to which it pertains and the circumstances due to which such reversal was recommended. As regards the Respondents submission that it relates to III.L.14 it is already considered in previous observation. In the absence of complete information, the charge is dropped against the Respondents.

Findings of the Council on the above charge:-

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i) It is noted that the Respondents have not made any submissions on the above charge. On perusal of the findings of the Disciplinary Committee, the Council agreed with the findings of the Disciplinary Committee that the Respondents are not guilty with respect to above charge.

16.37 - Account No. 67 –III.OAintr.4

(Rs. in cr.)

	Book Value	Provision,if any, held by bank	Erosion in the value /Provision required as per PIO	Shortfall in provision
III.OAintr.4	6.93	0	6.93	6.93

a) Charge (As stated by the PIO):-

"The reversal of income is recommended in view of classification of the asset as NPA."

b) Clarifications before the Disciplinary Committee:-

i) The office view of the ICAI is that as per Para 12.27 and 12.28 of the Guidance note on Audit of Banks not followed which states that revenue cannot be recognized if there is a significant uncertainty about its collectibility.

ii) The Respondents submitted that as per AS-1, Disclosure of Accounting Policies, AS 9, Revenue Recognition and provisions of Section 209 of the Companies Act, 1956, books of account of the bank are required to be maintained on accrual basis. The bank has subscribed to NCDs with the clear terms of sanction that interest is due and payable on maturity of the bonds. However, in compliance with the statutory requirements, the interest is accrued on a year to year basis, though it is not due for payment. The due date for redemption of NCDS fall between December 2003 to June, 2005, which is much alter than the year under audit and completion of audit on September 30, 2003. At the time of completion of audit, neither the principal nor the interest due for payment requiring provision as per RBI guidelines. The exposure of the borrower is fully secured and there are no arrears of interest/installment requiring provisions as per IRAC norms. Accordingly, the exposure is treated as Standard and no provision considered necessary.

c) Findings of the Disciplinary Committee:-

On perusal of AFI Report, it is noted that the PIO has considered the classification of the loans on which the stated income has accrued. However, the allegation made has not been substantiated with any documentary evidences to give the details of the loan account to which it pertains and the circumstances due to which such reversal was recommended. In the absence of complete information, the charge is dropped against the Respondents.

Findings of the Council on the above charge:-

i) It is noted that the Respondents have not made any submissions on the above charge. On perusal of the findings of the Disciplinary Committee, the Council agreed with the findings of the Disciplinary Committee that the Respondents are not guilty with respect to above charge.

16.38 Account NO. 68 – III.OAIntr.5

(Rs. in cr.)

	<u>Book Value</u>	<u>Provision,if any, held by bank</u>	<u>Erosion in the value /Provision required as per PIO</u>	<u>Shortfall in provision</u>
III.OAIntr.5	6.68	0	6.68	6.68

a) Charge (As stated by the PIO):-

"The reversal of income is recommended in view of classification of the asset as NPA."

b) Clarifications before the Disciplinary Committee:-

The Respondents stated that the PIO has recommended for reversal of income in view of the classification of the assets as NPA which is factually incorrect. PIO in AFI 2003 has not classified the assets as NPA. Refer ICAI letter dated February, 25, 2005 for the list of accounts wherein divergence in asset classification and provisioning had been furnished.

c) Findings of the Disciplinary Committee:-

On perusal of AFI Report, it is noted that the PIO has considered the classification of the loans on which the stated income has accrued. However, the allegation made has not been substantiated with any documentary evidences to give the details of the loan account to which it pertains and the circumstances due to

which such reversal was recommended. In the absence of complete information, the charge is dropped against the Respondents.

Findings of the Council on the above charge:-

i) It is noted that the Respondents have not made any submissions on the above charge. On perusal of the findings of the Disciplinary Committee, the Council agreed with the findings of the Disciplinary Committee that the Respondents are not guilty with respect to above charge.

16.39 Account NO. 71 – III.UOL.1

(Rs. in cr.)

	Book Value	Provision,if any, held by bank	Provision required as per PIO	Shortfall in provision
III.UOL.1	1.37	0	1.37	1.37

a) Charge (As stated by the PIO):-

“With regard to acquisition of certain non-banking assets (viz. Mulund property), in response to a public notice by the bank, they made a claim of Rs.1.37 Crore on the bank for services provided in respect of escalation charges, pipe fittings, site expenses incurred by it in the construction and maintenance of property. ... The bank had disputed the claim amount on the grounds that the bank was not in privity to the contract for the maintenance and was agreeable for settling the amount at Rs.0.40 Crore which was not agreeable to by.....The bank did not disclose it under “Claims not acknowledged by the bank as debt”. The bank needed to make full provision for Rs.1.37 Crore before the mater gets settled.”

b) Clarifications before the Disciplinary Committee:-

i) The Respondents submitted that the expenditure incurred by the third party for maintenance of the non-banking assets prior to takeover by the bank are the liability by the principal debtors of the bank.

ii) Further, even it has to be considered. It has to be shown under Claims against the bank not acknowledged as debts as Contingent Liabilities as per form of balance sheet prescribed under the Banking Regulation Act, 1949 and no provision is required to be made in compliance with AS 4. This has no bearing on the expression of their audit opinion on the financial statements of the bank on that date. It is submitted that the learned PIO has not indicated the dates on which the claim was made and he negotiation by the bank for settlement, in the absence of which, they are unable to address the issue appropriately.

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c) Findings of the Disciplinary Committee:-

It is noted that the amount involved in allegation is not material hence the charges raised are decided to drop against the Respondents.

Findings of the Council on the above charge:-

i) It is noted that the Respondents have not made any submissions on the above charge. On perusal of the findings of the Disciplinary Committee, the Council agreed with the findings of the Disciplinary Committee that the Respondents are not guilty with respect to above charge.

16.40 Account No. 72-III.UOL.2

(Rs. in cr.)

	<u>Book Value</u>	<u>Provision,if any, held by bank</u>	<u>Provision required as per PIO</u>	<u>Shortfall in provision</u>
<u>III.UOL.2</u>	1.30	0	1.30	1.30

a) Charge (As stated by the PIO):-

"An LC for USD 267,000 was opened by Kolkata branch of the bank on May 20, 1996 covering demurrages payable by ..., Kolkata to ..., Italy. However, soon after invoked an arbitration clause in the agreement and claimed damages from..... The Supreme Court directed the bank to deposit the LC value with the Registrar, Supreme Court who in turn had been directed to deposit the same with UCO Bank in fixed deposit. In view of the prima facie admissibility of the claim by Supreme Court, a prudential provision for the amount was recommended."

b) Clarifications before the Disciplinary Committee:-

The Respondents submitted that the learned PIO has recommended provision against this item on prudence for which IRAC norms are not applicable. This matter is under litigation since 1996. The mere fact that Supreme Court requested for a deposit of Rs.1.30 crore does not mean that the amount is to be provided for. The purpose was to furnish a security to the claimant and the same does not make the bank to admit the liability

ii) Further, as admitted by the learned PIO, an amount of Rs.1.30 Crores has been deposited as per order of the Supreme Court in March 2002 and the matter is sub-judice. Accordingly, in compliance with AS 4, the liability has not crystallised and owing to uncertainty of the event, the bank is contingently liable as on the balance sheet date till the final outcome of the Court order. Under the

circumstances, disclosure of this item under contingent liability in their opinion, is in order and no provision is required to be made.

c) Findings of the Disciplinary Committee:-

It is noted that the amount involved in allegation is not material hence the charges raised are decided to drop against the Respondents.

Findings of the Council on the above charge:-

i) It is noted that the Respondents have not made any submissions on the above charge. On perusal of the findings of the Disciplinary Committee, the Council agreed with the findings of the Disciplinary Committee that the Respondents are not guilty with respect to above charge.

16.41 Account No. 73 – III.UOL.3

(Rs. in cr.)

	Book Value	Provision,if any, held by bank	Provision required as per PIO	Shortfall in provision
III.UOL.3	1.12	0	1.12	1.12

a) Charge (As stated by the PIO):-

"Kolkata branch of the bank had issued BG No. 98/1996 for USD 331721 favouring the Ministry of Food, Bangladesh on behalf of Through their correspondent bank viz., Standard Chartered Bank, Dhaka on September 09, 1998. The BG was invoked partially and payment was made to Standard Chartered Bank Ltd. By Kolkata branch on June 01, 1999. The remaining portion of the BG for USD 104255 was extended from time to time till November, 2001. Standard Chartered Bank was asked for remittance of the amount as beneficiary had invoked the BG. The bank had demanded Standard Chartered Bank to provide copy of invocation made by the Ministry of Food, Bangladesh. Meanwhile, the applicant contended that the BG given by Standard Chartered Bank to the Ministry of Food did not provide for partial invocation and that there may not be any claim on Standard Chartered Bank under the BG. Subsequently, the company had filed suit in Kolkata High Court for restraining the bank from making the payment... The bank has contended that no liability is likely to devolve on the bank. However, a prudential provision of Rs.1.12 Crore lakh was recommended to meet the liability."

b) Clarifications before the Disciplinary Committee:-

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i) The Respondents submitted that, the amount represents partial amount of guarantee invoked which has been extended till November 30, 2001. The bank has contested that the terms of guarantee did not provide for partial invocation and the claim of the counterparty bank is not admitted. The customer of the bank filed a suit in Kolkata High Court restraining the bank from making the payment

ii) This amount has been brought forward item as a Contingent Liability from the prior years. Since, the matter is under litigation, the liability is not established and as per AS 4, the uncertainty continues till the outcome of the Court. However, the learned PIO has recommended the provision of prudence, for which IRAC norms are not applicable, is not tenable. The balance reported by the learned PIO in local currency is Rs.1.12 Crores as against Rs.1.18 Crores reported by the bank.

c) Findings of the Disciplinary Committee:-

It is noted that the amount involved in allegation is not material hence the charges raised are decided to drop against the Respondents.

Findings of the Council on the above charge:-

i) It is noted that the Respondents have not made any submissions on the above charge. On perusal of the findings of the Disciplinary Committee, the Council agreed with the findings of the Disciplinary Committee that the Respondents are not guilty with respect to above charge.

16.42 Account No. 74 – III UOL.4

(Rs. in cr.)

	Book Value	Provision,if any, held by bank	Provision required as per PIO	Shortfall in provision
III.UOL.4	0.87	0	0.87	0.87

a) Charge (As stated by the PIO):-

“The bank had sanctioned on time FLC to the company for USD 76,95,000 in 1995 which had developed on the bank and the outstanding was gradually reduced and finally repaid in April, 1997. However, the company had filed a complaint in the Kolkata High Court against the bank for recovery of interest, penal interest, interest surcharge and the bank need to make a provision of Rs.0.87 crores to meet any eventuality in the matter.”

b) Clarifications before the Disciplinary Committee:-

The Respondents submitted that the amount represents complaint made by the borrower in Kolkata High Court against the bank for interest, etc. charged on funding the devolved FLC. As the matter is under litigation and in the normal court of business, the bank is not liable to refund the interest charged to the customers, it is appropriate as per AS 4 to disclose the claim as Contingent Liability and no provision is required to be made till the final verdict of the Court.

c) Findings of the Disciplinary Committee:-

It is noted that the amount involved in allegation is not material hence the charges raised are decided to drop against the Respondents.

Findings of the Council on the above charge:-

i) It is noted that the Respondents have not made any submissions on the above charge. On perusal of the findings of the Disciplinary Committee, the Council agreed with the findings of the Disciplinary Committee that the Respondents are not guilty with respect to above charge.

16.43 Account No. 75 – III UOL.5

(Rs. in cr.)

	Book Value	Provision,if any, held by bank	Provision required as per PIO	Shortfall in provision
III.UOL.5	0.69	0	0.69	0.69

a) Charge (As stated by the PIO):-

"In 1995 the Mumbai Metropolitan Regional Development Authority (MMRDA) had invited for bids for the proposed International Finance and Business Centre at Bandra-Kurla Complex. The bank had bid for the same and was allotted Plot No. C-29 by MMRDA ... The bank after remitting first installment of Rs.37.42 Crore to MMRDA rejected the bank's contention on the above Plot. However, MMRDA rejected the bank's contention in the matter. Subsequently the bank filed a suit against the bank for Rs.68.69 Lakh (Principal) Rs.28.89 Lakh plus interest Rs.40.00 Lakh)... To meet any eventuality, the bank has to make a provision of Rs.0.69 Crore."

b) Clarifications before the Disciplinary Committee:-

The Respondents submitted that the amount represents claims against the bank for interest in respect of acquisition of property from MMRDA and a suit has been filed. As a matter is under dispute the liability will not crystalise until the final

outcome of the verdict of the court and it is appropriate to disclose the same as contingent liability in compliance with AS 4. It is further submitted that learned PIO is recommending the provision to meet any eventuality, which will be dealt with when such eventuality crystallises as per AS 4.

c) Findings of the Disciplinary Committee:-

It is noted that the amount involved in allegation is not material hence the charges raised are decided to drop against the Respondents.

Findings of the Council on the above charge:-

i) It is noted that the Respondents have not made any submissions on the above charge. On perusal of the findings of the Disciplinary Committee, the Council agreed with the findings of the Disciplinary Committee that the Respondents are not guilty with respect to above charge.

16.44 Account No. 76 – III UOL.6

(Rs. in cr.)

	Book Value	Provision,if any, held by bank	Provision required as per PIO	Shortfall in provision
III.UOL.6	8.47	0	4.46	4.46

a) Charge (As stated by the PIO):-

"The bank had issued as BG on behalf of ..., BG for Rs.8.47 Crores valid till April 30, 1998 which was invoked by the beneficiary viz.,....., on April 29, 1998. The BG was towards 30% of the purchase consideration of Rs.28.25 Crore worth of landed property at Chandivily, Mumbai. .. Consequently, the BG was invoked... obtained a stay on invocation saying that the contract was void ab-initio as ... suppressed certain facts. Consequently the interim stay order was vacated by the Hon'ble Civil Judge, Aurangabad on August 26, 2003 for filing the same in Mumbai.. The total value of collateral was Rs.4.01 crores as the shares of are not being traded in the market, corporate guarantee was taken as NIL and hence the bank needs to make a provision of Rs.4.46 Crore for the BG. The bank had also not reported it under "Claims against the bank not acknowledge as debt in its balance sheets."

b) Clarifications before the Disciplinary Committee:-

The Respondents submitted that the invocation of guarantees has not been accepted by the bank. As there was no funding, the value of guarantee continues to be shown under item 4 of Schedule XII, Contingent Liabilities, Guarantees

given on behalf of Constituents in India. Accordingly, the interim notice of clam received from advocate of the b beneficiary ahs already been covered in the guarantee and the same need not be included under claims against the bank not acknowledged as debts, which tantamount to duplication. Further, the matter has been vacated from the jurisdiction of Court in Aurangabad and the court is still to give its verdict

c) Findings of the Disciplinary Committee:-

It is noted that since the matter was sub-judice, it was accordingly, been shown as contingent liability. The allegation is made that the same should have been shown as 'claim against the bank not acknowledged as debt'. It is viewed that in any case it will be shown off balance sheet item in notes to accounts. Thus, it does not materially affect the view shown in financial statements. Accordingly, the Respondents cannot be held guilty of professional misconduct.

Findings of the Council on the above charge:-

i) It is noted that the Respondents have not made any submissions on the above charge. On perusal of the findings of the Disciplinary Committee, the Council agreed with the findings of the Disciplinary Committee that the Respondents are not guilty with respect to above charge.

16.45 Account No. 77 – III UOL.7

(Rs. in cr.)

	<u>Book Value</u>	<u>Provision,if any, held by bank</u>	<u>Provision required as per PIO</u>	<u>Shortfall in provision</u>
<u>III.UOL.7</u>	2.10	0	2.10	2.10

a) Charge (As stated by the PIO):-

"The bank had issued BGs to the extent of Rs.2.73 Crores on behalf of..... favouring for various infrastructure projects. BGs worth Rs.2.33 Crore were invoked by the beneficiary in February 28, 2003 and Rs.0.40 Crore in July, 2003. Out of these Rs.0.64 Crores had been paid by the bank to the beneficiary by funding through the creation of demand loan ... the bank need to make the provision of Rs.2.10 Crore in the matter. The bank had also not reported it under Claims against the bank not acknowledged as debt in its balance sheet."

b) Clarifications before the Disciplinary Committee:-

The Respondent submitted that, the unpaid liability on account of the guarantees continues under Item 4 of Schedule XII, Contingent Liabilities, though there is an invocation. As explained in III.UOL.6, there is no need to disclose this amount

under claims against the bank not acknowledge as debts since the amount has already been disclosed as aforesaid. As the bank is contesting non-compliance of terms of guarantee, the liability is not crystallised as there is an uncertainty of the event and hence shown as Contingent Liability in compliance with As 4

c) Findings of the Disciplinary Committee:-

It is noted that since the matter was sub-judice, it was accordingly, been shown as contingent liability. The allegation is made that the same should have been shown as 'claim against the bank not acknowledged as debt'. It is viewed that in any case it will be shown off balance sheet item in notes to accounts. Thus, it does not materially affect the view shown in financial statements. Accordingly, the Respondents cannot be held guilty of professional misconduct.

Findings of the Council on the above charge:-

i) It is noted that the Respondents have not made any submissions on the above charge. On perusal of the findings of the Disciplinary Committee, the Council agreed with the findings of the Disciplinary Committee that the Respondents are not guilty with respect to above charge.

16.46 Account No. 78 – III UOL.8

(Rs. in cr.)

	Book Value	Provision,if any, held by bank	Provision required as per PIO	Shortfall in provision
III.UOL.8	0.27	0	0.13	0.13

a) Charge (As stated by the PIO):-

"Family members of were maintain three demat accounts with the Bandra Branch since June 2000. Branch issued the delivery instructions books to the bearer based on the Authorization letter. Using these Delivery instruction book, shares worth Rs.27 lacs (approx) had been moved from, the accounts of .. Later the customers denied for having requested for the delivery instruction book and also having requested for transferring the shares to the others DPs... The bank had moved the court for the recovery of balance amount from. The bank therefore, needs to make a provision of Rs.0.13 Crore in the matter."

b) Clarifications before the Disciplinary Committee:-

The Respondent submitted that the bank was able to recover Rs.0.13 Crolre from ICICI Ltd. and the balance amount was disclosed under contingent liabilities. The treatment by the bank to disclose the mater under Contingent Liabilities is in

compliance with the requirements of AS 4 as the liability will not be crystallised until the final verdict of the court. Under these circumstances, disclosure of this item under contingent liability, in your opinion, is in order and no provision is required to be made.

c) Findings before the Disciplinary Committee:-

It is noted that the amount involved in allegation is not material hence the charges raised are decided to drop against the Respondents.

Findings of the Council on the above charge:-

i) It is noted that the Respondents have not made any submissions on the above charge. On perusal of the findings of the Disciplinary Committee, the Council agreed with the findings of the Disciplinary Committee that the Respondents are not guilty with respect to above charge.

16.47 Account No. 79 – III UOL.9

(Rs. in cr.)

	Book Value	Provision,if any, held by bank	Provision required as per PIO	Shortfall in provision
III.UOL.9	0.05	0	0.05	0.05

a) Charge (As stated by the PIO):-

"..., Proprietor of and... maintained current accounts, personal accounts and fixed deposit accounts of their family members with the Vijayawada branch since October 1988 . On 23.-11.2002, ... sent 3 deposit receipts to the branch standing in the name of .. for closure to issue account payee pay order to the bearer of the deposit receipts. After satisfying the signatures, branch closed the deposit accounts and issued account payee pay orders in the name of Later .. filed a police complaint alleging that had forged his signature The bank needs to make a provision of Rs.0.05 Crores in this instant case."

b) Clarifications before the Disciplinary Committee:-

It is submitted that since the amount is not material, while selecting the sample the same amount is not considered and they have accepted the classification made by the bank.

c) Findings of the Disciplinary Committee:-

It is noted that the amount involved in allegation is not material hence the charges raised are decided to drop against the Respondents.

Findings of the Council on the above charge:-

i) It is noted that the Respondents have not made any submissions on the above charge. On perusal of the findings of the Disciplinary Committee, the Council agreed with the findings of the Disciplinary Committee that the Respondents are not guilty with respect to above charge.

16.48 Account No. 80 – III UOL.10

(Rs. in cr.)

	Book Value	Provision,if any, held by bank	Provision required as per PIO	Shortfall in provision
III.UOL.10	0.31	0	0.31	0.03

a) Charge (As stated by the PIO):-

"Family members of ... (NR) were maintain 4 demat accounts with the branch since January 2001. Branch issued delivery instruction books to the bearer based on the authorization letters purported to have been issued by the account holders. Using these delivery instructions books, the shares amounting to Rs.31.14 lacs(approx) were moved from the different accounts of ... & his family members as off market deals to other depository participants and finally sold in the market. Subsequently, the customer informed that he neither requested for Delivery Instruction book nor authorized for transfer of shares and the bank filed a complaint with Economic Offences Wing and registered the case as a fraud. The bank had made a provision of Rs.0.28 Crores and need to make a provision of Rs.0.03 Crore."

b) Clarifications before the Disciplinary Committee:

It is submitted that since the amount is not material, while selecting the sample the same amount is not considered and they have accepted the classification made by the bank.

c) Findings of the Disciplinary Committee:-

It is noted that the amount involved in allegation is not material hence the charges raised are decided to drop against the Respondents.

Findings of the Council on the above charge:-

i) It is noted that the Respondents have not made any submissions on the above charge. On perusal of the findings of the Disciplinary Committee, the Council

agreed with the findings of the Disciplinary Committee that the Respondents are not guilty with respect to above charge.

16.49 Account No. 81 – III UOL.11

(Rs. in cr.)

	Book Value	Provision,if any, held by bank	Provision required as per PIO	Shortfall in provision
III.UOL.11	0.02	0	0.02	0.02

a) Charge (As stated by the PIO):-

"One forged cheque in the account of ..., was encashed in the bank on 20th Sep 2002. The company had demanded refund of the amount, but the bank had refuted the liability upon which the company had approached the Banking Ombudsman. In view of the above the bank needs to make a provision of Rs.0.02 Crore to meet any eventuality."

b) Clarifications before the Disciplinary Committee:-

It is submitted that since the amount is not material, while selecting the sample the same amount is not considered and they have accepted the classification made by the bank.

c) Findings of the Disciplinary Committee:-

It is noted that the amount involved in allegation is not material hence the charges raised are decided to drop against the Respondents.

Findings of the Council on the above charge:-

i) It is noted that the Respondents have not made any submissions on the above charge. On perusal of the findings of the Disciplinary Committee, the Council agreed with the findings of the Disciplinary Committee that the Respondents are not guilty with respect to above charge.

16.50 Account No. 82 – III UOL.12

(Rs. in cr.)

	Book Value	Provision,if any, held by bank	Provision required as per PIO	Shortfall in provision
III.UOL.12	0.01	0	0.01	0.01

a) Charge (As stated by the PIO):-

"..... has made a claim for Rs.1.25 lakh against bank on ground that Mumbai, Ford branch of the bank had paid two forged cheques aggregating to Rs.1.25 lakhs by debiting to their account (Rs0.85 lakh paid on August 06, 1999 and Rs.0.40lakh paid on October 18, 1999). It was complained that the name of the

payee, amount and date were materially altered by using some chemicals.. The bank had not settled the claim on the grounds that the alternations were not visible to the naked eye... The bank has not made any provision in this regard the ground of contributory negligence of the customer..."

b) Clarifications before the Disciplinary Committee:-

It is submitted that since the amount is not material, while selecting the sample the same amount is not considered and they have accepted the classification made by the bank. These items are brought forward items from prior years and the same were not considered by the prior year AFI reports. Further there are no material development during the year under audit.

c) Findings of the Disciplinary Committee:-

It is noted that the amount involved in allegation is not material hence the charges raised are decided to drop against the Respondents.

Findings of the Council on the above charge:-

i) It is noted that the Respondents have not made any submissions on the above charge. On perusal of the findings of the Disciplinary Committee, the Council agreed with the findings of the Disciplinary Committee that the Respondents are not guilty with respect to above charge.

16.51 Account No. 83 – III UOL.13

(Rs. in cr.)

	Book Value	Provision,if any, held by bank	Provision required as per PIO	Shortfall in provision
III.UOL.13	0.02	0	0.01	0.01

a) Charge (As stated by the PIO):-

"An SB account was opened in the name of ... on 25.07.2000. The opening form was not supported by proper resolution for opening of account. Instead, a letter addressed to "Whomsoever it may concerned" signed by all the office bearers of the Society was obtained... The amount involved was Rs.1,56,740/- and the bank was having Rs.97,970/- deposited by the concerned negligent employees who had left the services in the bank. The bank therefore needs to make a provision for the remaining amount of Rs.58,770/-."

b) Clarifications before the Disciplinary Committee:-

It is submitted that since the amount is not material, while selecting the sample the same amount is not considered and they have accepted the classification

made by the bank. These items are brought forward items from prior years and the same were not considered by the prior year AFI reports .Further there are no material development during the year under audit

c) Findings of the Disciplinary Committee:-

It is noted that the amount involved in allegation is not material hence the charges raised are decided to drop against the Respondents.

Findings of the Council on the above charge:-

i) It is noted that the Respondents have not made any submissions on the above charge. On perusal of the findings of the Disciplinary Committee, the Council agreed with the findings of the Disciplinary Committee that the Respondents are not guilty with respect to above charge.

16.52 Account No. 84 –III UOL.14

(Rs. in cr.)

	Book Value	Provision,if any, held by bank	Provision required as per PIO	Shortfall in provision
III.UOL.14	0.01	0	0.01	0.01

a) Charge (As stated by the PIO):-

"Forged cheque had been honoured in the SB account. Amount has been reimbursed to the customer and the required provision was yet to be made by the bank."

b) Clarifications before the Disciplinary Committee:-

It is submitted that since the amount is not material, while selecting the sample the same amount Is not considered and they have accepted the classification made by the bank.

c) Findings of the Disciplinary Committee:-

It is noted that the amount involved in allegation is not material hence the charges raised are decided to drop against the Respondents.

Findings of the Council on the above charge:-

i) It is noted that the Respondents have not made any submissions on the above charge. On perusal of the findings of the Disciplinary Committee, the Council agreed with the findings of the Disciplinary Committee that the Respondents are not guilty with respect to above charge.

16.53 Account No. 85 – III UOL.15

(Rs. in cr.)

	Book Value	Provision,if any, held by bank	Provision required as per PIO	Shortfall in provision
III.UOL.15	0.01	0	0.01	0.01

a) Charge (As stated by the PIO):-

"At Pune (FC) Road branch, payment in cash was made on Jun 29, 2001 to bearer of Cheque for Rs.0.82 lakh drawn on the account of ..., maintain account with Pune (M.G.Road) branch. The above company subsequently claimed refund of the amount stating that the cheque was not issued by them. The company filed the complaint with the police authorities. In view of the foregoing, the additional provision of Rs.0.82 lakh is required in the matter."

b) Clarifications before the Disciplinary Committee:-

It is submitted that since the amount is not material, while selecting the sample the same amount is not considered and they have accepted the classification made by the bank. These items are brought forward items from prior years and the same were not considered by the prior year AFI reports. Further there are no material development during the year under audit.

c) Findings of the Disciplinary Committee:-

It is noted that the amount involved in allegation is not material hence the charges raised are decided to drop against the Respondents.

Findings of the Council on the above charge:-

i) It is noted that the Respondents have not made any submissions on the above charge. On perusal of the findings of the Disciplinary Committee, the Council agreed with the findings of the Disciplinary Committee that the Respondents are not guilty with respect to above charge.

16.54 Account No. 86 – III UOL.16

(Rs. in cr.)

	Book Value	Provision,if any, held by bank	Provision required as per PIO	Shortfall in provision
III.UOL.16	0.01	0	0.01	0.01

a) Charge (As stated by the PIO):-

"A cheque, pre-printed as "Account Payee and Order" for Rs.0.75 lakh down in the account... was paid in cash across the counter to the bearer of the cheque on July 11, 2001. It was later found that that signature of the drawer on the cheque

differed with the specimen signature of the account holder. The account holder lodged police complaint on July 12, 2001. The cashier who had made payment was a junior employee and the fraud had occurred on account of failure of filed level functionary to adhere to lay down systems and procedures. Accordingly, an additional provision of Rs.0.75 lakh is required in the matter."

b) Clarifications:-

It is submitted that since the amount is not material, while selecting the sample the same amount is not considered and they have accepted the classification made by the bank. These items are brought forward items from prior years and the same were not considered by the prior year AFI reports .Further there are no material development during the year under audit.

c) Findings:-

It is noted that the amount involved in allegation is not material hence the charges raised are decided to drop against the Respondents.

Findings of the Council on the above charge:-

i) It is noted that the Respondents have not made any submissions on the above charge. On perusal of the findings of the Disciplinary Committee, the Council agreed with the findings of the Disciplinary Committee that the Respondents are not guilty with respect to above charge.

16.55 Account No. 87 – III UOL.17

(Rs. in cr.)

	Book Value	Provision,if any, held by bank	Provision required as per PIO	Shortfall in provision
III.UOL.17	7.54	0	0	0

a) Charge (As stated by the PIO):-

"The bank intended to sub-lease portions of property being acquired on lease at Bandra-Kurla and had received advance payment towards the same which were reportedly paid to MMRDA as part of first installment/Ernst money. While the bank capitalized its own share of the first installment, it did not account for the advances received from the sub-leasees. The total such amount aggregated Rs.7.83 Crore out of which claim against the bank for principal Rs.0.29 Crore together with accrued interest @ 18% has been filed by SKFC in a court (hence disclosed as a contingent item), the claims of other have not been disclosed anywhere by the bank as the sub-leasor was directly liable to the parties, albeit in

line with the court decision. Hence this needed disclosure as per the terms of agreement between GTB and other banks under the head contingent liabilities.”

b) Clarifications before the Disciplinary Committee:-

The Respondents stated that there is no question of the bank giving any treatment to this amount of Rs.7.54 crores in as much as this amount of Rs.7.54 crores has been paid to MMRDA directly through eGTB, in addition to the amount of Rs.37.42 crores paid to MMRDA towards first installment due from e- GTB. The bank has not retained Rs.7.54 crores with it. A claim is made against the Bank by SKFC and that is why the claim is shown as contingent liability. At the time of signing the Balance Sheet, they were not aware of any other claim filed by other sub-lease.

c) Findings of the Disciplinary Committee:-

It is noted the allegation pertains to only disclosure in notes to accounts and does not pertain to any improper provisioning. Hence, the charge was dropped against the Respondents.

Findings of the Council on the above charge:-

i) It is noted that the Respondents have not made any submissions on the above charge. On perusal of the findings of the Disciplinary Committee, the Council agreed with the findings of the Disciplinary Committee that the Respondents are not guilty with respect to above charge.

17. In view of above, it can be surmised that though the Respondents are stating that they have independently reviewed the accounts as on 31.03.2003 yet they have failed to bring sufficient documentary evidence to establish the compliance of various requirement of IRAC norms specifically related to availability and valuation of security, restructuring of NPA accounts including trading accounts and provisioning requirement in case of failure to redeem / repay the dividend and installment against NCDs/preference shares of the borrower in which Bank had made investments. In addition to this, it is observed that the Respondent had considered the recovery held in some accounts after the balance sheet date in order to improve the category of their classification which is misinterpretation of 10th Feb 2003 Circular.

18. In view of above findings, the Council observed that total divergence in provisioning which was not reported by the Respondents were as under:-

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Sl. No.	Account No.		Provision as per PIO	Provision as per Respondent	Difference (In Cr.)
1	III	L.1.1	25.01	2.51	22.5
2	III	L.6	28.64	5.58	23.06
3	III	L.14	15.53	0	15.53
4	III	L.15.3	1.99	0.99	1
5	III	L.18	1.19	0	1.19
6	III	L.19	2.93	0	2.93
7	III	L.24	1.95	0	1.95
8	III	L.33	3.74	0	3.74
9	III	L.34	1.43	0.48	0.95
10	III	L.39	8.44	0	8.44
11	III	L.1.2	92.46	2.51	89.95
12	III	L.3	15.44	7.72	7.72
13	III	L.4	48.46	0	48.46
14	III	L.16	16.62	0	16.62
15	III	L.22	1.94	0	1.94
16	III	L.23	2.7	0	2.7
17	III	L.38	0.75	0	0.75
18	III	L.42	0.34	0	0.34
19	III	L.43	2.75	0	2.75
20	III	L.INV 2	12	0	12
21	III	L.INV 4	15	6.75	8.25
22	III	L.INV 7	0.9	0	0.9
23	III	O.AINTR 2	17.05	0	17.05
24	III	O.AINTR 6	2.1	0	2.1
Total					Rs.292.82 Cr.

18.1 It is viewed that qualification made in the audit report by the Respondent No.1 as Signing Partner in respect of certain accounts cannot be considered sufficient enough as material amount of divergence of Rs.292.82 crore occurring due to aforesaid 24 charges was not reported which caused material misstatement and the Respondent No.1 failed to report it in its audit report and the Respondent No.2 as Senior Audit Manager failed to discharge his professional duties. It is noted that the Counsel has argued with respect to Respondent No.2 that he was in employment of the Respondent firm while rendering his service so he cannot be held guilty under the said clauses. However, on perusal of ICAI records it is noted that he is holding Certificate of Practice since 1972 hence the related argument cannot be accepted.

19. Accordingly, the Council upon consideration of the Report of the Disciplinary Committee dated 13th June, 2018 in the captioned case along with written representations of the Respondents dated 14th December, 2018, various representations /documents submitted through e-mail dated 21st May, 2019 and the oral representations made by the Counsel before it, decided to accept the findings of the Disciplinary Committee holding the Respondents Guilty of professional misconduct falling within the meaning of Clauses (5), (6), (7), (8) & (9) of Part I of Second Schedule to the Chartered Accountants Act, 1949.

20. Further, the Council also decided to recommend to the Hon'ble High Court that the name of Respondent No. 1, CA. Partha Ghosh be removed from the Register of Members for a period of 05 (five) Years and the name of Respondent No. 2, CA. D. V. Prasada Rao be removed from the Register of Members for a period of 03 (three) years.

21. The Council further resolved that CA. Atul Kumar Gupta, Chairman of the meeting at the time of consideration of the report be authorised to sign the Finding of the Council in the case, on behalf of the Council.

Sd/-
(CA. ATUL KUMAR GUPTA)
CHAIRMAN

Certified to be true copy

By Secretary
**The Council of the Institute of
Chartered Accountants of India
New Delhi**

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Certified to be true copy
The Council of the Institute of
Chartered Accountants of India
New Delhi