

**CONFIDENTIAL**

**COUNCIL OF THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA  
383<sup>RD</sup> MEETING OF THE COUNCIL –21<sup>ST</sup> AND 22<sup>ND</sup> MAY, 2019  
FINDING OF THE COUNCIL – 22<sup>ND</sup> MAY, 2019  
UNDER SECTION 21 OF THE CHARTERED ACCOUNTANTS ACT, 1949**

**P. RAMA KRISHNA IN RE:**

**[25-CA(S-24B)/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. Pramod Kumar Boob  
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 13<sup>th</sup> June, 2018, namely, CA. Prafulla P. Chhajed, President in Office, Dr. P.C. Jain, CA. Nihar Niranjana Jambusaria were not present at the time of consideration of the Report on 22<sup>nd</sup> May, 2019 and the remaining fourth signatory namely CA. Naveen N.D. Gupta was no longer member of the Council. All the four signatories of the earlier Report of the Disciplinary Committee dated 2<sup>nd</sup> February, 2009 in the captioned case namely CA. Ved Jain, Shri O.P. Vaish, CA. Akshay Gupta and CA. J. Venkateswarlu in the captioned case were no longer members of the Council.]

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

1. Based on the letter dated 6<sup>th</sup> December, 2002 received from the Reserve Bank of India (hereinafter referred to as the "RBI") containing observations made by the then Department of Company Affairs (DCA) during its inspection of annual accounts of the Global Trust Bank (Bank) for the financial year 2000-01 u/s 209A of the Companies Act, 1956 relating to the violation of Sections 227,228,292 & 211 of Companies Act, 1956 by the Bank and the failure of the auditors, namely, M/s Lovelock & Lewes (Respondent firm) for the concerned year, to report the same. The matter was treated as "Information" under Section 21 of the Chartered Accountants Act, 1949. The specific charges and the Office views as mentioned in the Information letter dated 1<sup>st</sup> December, 2006 sent to the Respondents by the Office, are as under:

**1.1. Charge No. 1:**

**Violation of Section 227(1)/228 of the Companies Act, 1956 as regard non-reporting of audit of 80 Branches of the Bank**

The Bank had 80 Branches as on 31.3.2001 located in different parts of India. The Respondent-firm being the Statutory Auditors of the Bank have not in their report dated 30.04.2001 for the year ended 31.03.2001 stated whether the Accounts of all the Branches of the Bank have been audited under Section 228 of the Act and whether remarks made in respect of those branches have been taken into account while finalizing the Accounts of the Bank and at the time of preparation of Statutory Auditors Report. Therefore, it appears that the Respondent-firm being the Statutory Auditors has failed in its professional duties as the provisions of Sections 224, 227 and 228 of the said Act have been contravened.

**1.2 Charge No. 2:**

**Violation of Section 227 of the Companies Act,1956 as regards non-reporting of Advances made to Group Companies of Ketan Parekh & Bharat Shah and others.**

The Respondent-firm being the statutory Auditors, in its report dated 30.04.2001 on the Annual Accounts of the Bank for the year ended 31.03.2001 has not made any remark/qualified remarks about Advances made to Group Companies of Ketan Parekh and Bharat Shah and all other connected matters. Thus, the Respondent-firm as Auditors has failed in their duty to report to the Members of the Bank, the developments that had taken place from 1.4.2000 to 31.3.2001 relating to Scam matters, and other connected matters. Hence, the provisions of Section 227 of the Act have been contravened.

**1.3 The Office view, with respect to charges 1 & 2 were as under:**

**1.3.1 The provisions of Section 227(3)(b), (bb) and 228(3) of the Companies Act 1956 states as follows; -**

**Section 227(3)(b): -**

"Whether in his opinion, proper books of accounts as required by law have been kept by the company so far as appears from his examination of those books and proper returns adequate for the purpose of his audit have been received from branches not visited by him."

**Section 227(3)(bb): -**

"Whether the report on the accounts of any branch office audited under section 228 by a person other than the company's auditor has been forwarded to him as required by clause(c) of that section and how he has dealt with the same in preparing the auditors' report."

**Section 228(3)(c): -**

"The branch auditor shall prepare a report on the accounts of the branch office examined by him and forward the same to the company's auditor who shall in preparing the auditor's report, dealing with the same in such a manner as he considers necessary."

As per the Inspection Report, the Bank had 80 branches located in different parts of India as on 31.03.2001. A further observation as contained in the report states that there is no noting/resolutions passed either in the Board Meeting or in the AGM to the effect that the Chartered Accountants who have been appointed as statutory auditors to audit the annual accounts of the Bank for the year ended 31.3.2001 have also been appointed as auditors to audit all the branches of the Bank for the year ended 31.3.2001. They being the Statutory Auditors, in their report-dated 30.4.2001 on the annual accounts have not mentioned about the fact of audits carried out in the branches of the Bank.

In the Inspection Report given by the then D.C.A., it has been stated that in a Bank, it is the branches of the bank, which lend advances/loans to parties. It further stated that the Bank's Mumbai branches located at Fort, Nariman Point had advanced huge loans to parties such as Ketan Parikh Group of companies. If their reply is accepted to the effect that the Respondent-firm had audited the bank branches, then the default committed by the branches in the matters of sanctioning advances/recovery of loans granted against insufficient security should have been reported to the members in the main audit report by the Respondent-firm. It therefore seems that the Respondent-firm has failed in their professional duties to make any observation/adverse remark in this regard in their report to the members of the Bank.

Moreover, the Respondent-firm has not stated specifically/clearly in its Report dated 30.4.2001 on the Annual Accounts of the Bank for the year ended 31.3.2001 that all the branches of the Bank totaling to 79 (as per the Directors' Report) were audited by them and that the observations, made while auditing the Branches of the Bank were taken into consideration while finalizing Statutory Audit Report. Therefore, the Respondent-firm does not seem to have fulfilled the

reporting requirement as laid down in the Act and have consequently violated Clauses 7, 8 & 9 of Part I of Second Schedule to the Chartered Accountants Act, 1949.

#### **1.4 Charge No. 3:**

##### **Violation of Section 227 of the Companies Act,1956**

It is noticed from the Annual Accounts of the Bank for the year-ended 31.03.2001 that the amount due from Non-Performing Assets amounted to Rs.238.30 Crores. The Auditors have not in their report dated 30.04.2001 on the Annual Accounts of the Bank for the year ended 31.03.2001 explained the reason as to why the NPAs have gone up as compared to the previous years and what are those various important NPAs accounts and the steps taken by the Management of the Bank to recover the NPAs. Thus, the Respondent-firm as auditors have failed in duty to inform the Members of the Bank in their report about the various matters connected with NPAs addressed to RBI wherein the Respondent firm had clarified that they have certified the Annexure-II of the said Company on the basis of various details submitted by the Company. Further to that, they stated that the Company, by oversight, filed the details of investment as on 31.03.1999, instead of the figures of that of 31.03.2000. The Respondent firm had given the details of investments on the basis of which the Annexure-II was prepared, which does not include any investments in other NBFCs.

#### **1.5 With respect to Charge No. 3 the Office view was as under:**

**1.5.1** As per annual accounts for the year ended 31.3.2001 gross non-performing assets amounted to Rs.238.30 Crores. The Respondent-firm vide its report dated 30.4.2001 has not brought out on the annual accounts of the Bank for the year ended 31.3.2001 the observation in this regard as to what are the important NPAs accounts, reasons as to why the NPAs had gone up considerably and if any steps were taken to realize the dues before the accounts were classified as NPAs. At the time of Inspection under section 209A of the Companies Act 1956, it was noticed that that the Bank has not taken proper action in recovering the advance granted to various parties. As a result, the amount relating to gross NPAs as on 31.3.2001 amounted to Rs.238.30 Crores as compared to Rs.49.33 Crores as on 31.3.2000. As per the Directors' Report, the net NPAs have increased from Rs.27.86 Crores to Rs. 153.82 Crores as of 31<sup>st</sup> March 2001 on account of additional NPAs in the sectors of agriculture, distilleries and gem and Jewellery. Accordingly, the ratio of NPAs to net advances stood at 3.75% as of March 31,2001 against 0.87% at the previous year-end. Section 30(3)(e) of the Banking Regulation Act 1949 envisages that any other matter, which the auditor consider, should be brought to the notice of the shareholders of the company. This sharp erosion in the net worth of the Bank ought to have been adequately disclosed and commented upon by them being the statutory auditors of the Bank. The reply given by them that the adequate disclosure in this regard was already made in the Annual Report under the Directors' Report

does not discharge them from their responsibility to disclose it to the members in the main report. The scope of Directors' Report is not similar to the reporting requirement as that of the statutory auditors, which is to the extent of certifying whether the Financial Statements of the Bank give a true and fair view. The shareholders and other interested parties were, therefore, denied the benefit of knowing the above position of the net worth because they as Auditors failed to discharge their duties diligently by not reporting the above matter in their Report dated 30.4.2001. The Respondent firm is charged for professional misconduct falling within the meaning of Clauses 7, 8 & 9 of Part I of the Second Schedule to the Chartered Accountants Act, 1949.

#### **1.6 Charge No. 4:**

##### **The Respondent-firm as the Statutory Auditors has failed in its duty to comment in its Statutory Audit Report for the year ended 31.03.2001 on the following :-**

Mis-utilisation of loan by the Parties especially Ketan Parekh, Bharat Shah Group Companies to whom huge advances were lent by the Bank, (b) Diversion of funds by Ketan Parekh Group of Companies and other parties as in most of the cases the end use of loans has not been known to the Bank, (c) Critical comments were not made about large borrowed accounts, group exposure norms, (d) closure of NPAs, Write off of assets, (e) rise and fall in the price of bank's scripts leading to stock market scam. Thus, the Respondent-firm as the Auditors has failed to make critical comments on the above important matters affecting the Bank. Therefore, the Respondent-firm has violated the provisions of Section 30 of B. R. Act and 227 of the Companies Act, 1956.

#### **1.7. With respect to charge no. 4, the Office view was as under:**

**1.7.1** Section 227(2) of the Companies Act 1956 cast a duty upon the Statutory Auditors to make a report to the members of the Company on the accounts examined by them as to whether in their opinion and to the best of his information and according to the explanations given to them, the said accounts give the information required by the Act in the manner so required and give true and fair view: -

- (i) In the case of the Balance Sheet, of the state of the company's affairs as at the end of its Financial Year and
- (ii) In case of the profit and loss account, of the profit and loss for its financial year.

Section 30(3) of the Banking Regulation Act, 1949 states that the auditor shall in addition to the matters which under the aforesaid Act is required to state, in case of a banking company incorporated in India, in his report –

- (a) Whether or not the information and explanation required by him have been found to be satisfactory;
- (b) Whether or not the transactions of the company which came to his notice have been with the powers of the company;

- (c) Whether or not the returns received from branch offices of the company have been found adequate for the purposes of his audit;
- (d) Whether the profit and loss account shows a true balance [or profit or loss] for the period covered by such account;
- (e) Any other matter, which he considers, should be brought to the notice of the shareholders of the company.

Thus, the primary purpose of a statutory audit is to enable those having a proprietary interest in the company to have access to independent view on financial information of the company. As per their clarifications, the Respondent-firm has commented on the matters relating to internal control weaknesses and procedural lapses in the case of advances etc., in the LFAR, but the Respondent-firm did not consider it fit to report these material discrepancies in their Main Audit Report. Moreover, Section 227 of the Companies Act 1956 and Section 30(3) of the Banking Regulation Act, 1949 cast a duty on the Respondent-firm as the statutory auditors to bring to the notice of members the important developments, material in nature, which affect the financial position of the Bank in its statutory report which they failed to do. Accordingly, the Respondent firm is charged for professional misconduct falling within the meaning of Clauses 7, 8 & 9 of Part I of the Second Schedule to the Chartered Accountants Act, 1949.

2. Vide "information letter" dated 01.12.2006, the Respondent firm was also asked to disclose the name(s) of the member(s) answerable and thereafter, submit the Written Statement. In reply to the same, the Respondent firm vide their letter dated 27.12.2006 confirmed the name of Shri P. Rama Krishna, Shri S. Gopalakrishnan and Manish Agarwal (hereinafter referred to as the "**Respondents**") as the members answerable to the charges. The Respondent submitted his written statements, duly verified on 27.02.2007.

3. 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 the Written Statements of the Respondent & other two Respondents were considered by the Council at its meeting held between 16<sup>th</sup> to 18<sup>th</sup> 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 fixed the matter for hearing on three occasions on 13.12.2007, 22.4.2008 and 02.08.2008. Since Shri S. Gopalakrishnan and the Respondent submitted joint written statements and allegations were same, the Committee had held common hearing in respect of all the Respondents and concluded the hearing on 02.08.2008. 9

4. The Report of the Disciplinary Committee dated 02<sup>nd</sup> February, 2009 holding the Respondents not guilty of professional misconduct with respect to Charge 1 and first leg of Charge 4 and **Guilty** of professional misconduct under Charges 2, 3 and second leg of Charge 4 falling within the meaning of Clauses (6), (7), (8) & (9) of Part I of Second Schedule to the Chartered Accountants Act, 1949, was placed before the Council at its meeting held on 3<sup>rd</sup> February, 2010. After consideration of Disciplinary Committee report along with written representations of the Respondent, the Council decided to accept the report of the Disciplinary Committee. The decision of the Council holding him guilty of professional misconduct was conveyed to the Respondent vide letter dated 19<sup>th</sup> February, 2010.

4.1. The Respondent, aggrieved by the communication dated 19<sup>th</sup> February, 2010 containing decision of the Council therein, filed a Writ Petition No.1721/2010 in the Hon'ble High Court of Delhi. Single Judge Bench of the Hon'ble Delhi High Court vide its judgement dated 16<sup>th</sup> April, 2010 quashed the decision of the Council taken at its meeting on 3<sup>rd</sup> February 2010 and the communication dated 19<sup>th</sup> February 2010 whereby the decisions of the Council was communicated to the Respondent. The Hon'ble Court ordered that the proceedings against the Respondent would now recommence under the amended Section 21 of the CA Act before the Director (Discipline) in accordance with amended CA Act and CA Rules thereunder. The Hon'ble Court also clarified that it had not expressed any opinion whatsoever on the merits of the case and all contentions thereon of either parties are left open.

4.2. The Institute preferred an intra-court appeal against the aforesaid order of Single Judge Bench, being LPA 396/2010 before the Division Bench of Hon'ble High Court of Delhi, however, restricting the challenge to the interpretation given to Section 21D of the Chartered Accountants Act and the directions to proceed against the Respondent under the amended provisions of the Section 21 of the Act. The Division Bench of the Hon'ble High Court of Delhi vide its judgement dated 30.09.2011 allowed the appeal in favor of the Institute holding that the procedure prescribed by the unamended C.A. Act, 1949 i.e. Sections 21, 22 and 22A would be applicable to pending proceedings in Information case against the Respondent and not the procedures prescribed after the amendment made by the Chartered Accountants (Amendment) Act, 2006. Since the

Institute did not challenge the other findings and directions given by the learned single Judge, the appeal was accordingly, disposed of.

4.3. The Respondent, against the judgement of Division Bench filed a Special Leave Petition before the Hon'ble Supreme Court of India. The Hon'ble Supreme Court on 25<sup>th</sup> November, 2011 by way of an interim order directed the Institute that no further orders shall be passed against the Respondent until further orders. Subsequently, the Hon'ble Supreme Court of India vide judgement dated 13.05.2015 dismissed the Civil Appeal filed by the Respondent in favour of the Institute.

4.4. In view of the fact that the decision of the Council was quashed as communicated to the Respondent vide letter dated 19<sup>th</sup> February, 2010 and the same was not challenged before the Division Bench of Delhi High Court or the Hon'ble Supreme Court of India, the Report of the Disciplinary Committee was again placed before the Council for its consideration at 365<sup>th</sup> Meeting held in May, 2017. The Council, after consideration of the DC report alongwith the written and oral representations of the Respondent, decided to refer back the matter for further enquiry on following specific issues:-

***1. The Committee may examine the role of the Respondent and the extent of his responsibility in respect of audit of e-GTB for the year 2000-2001 based on all the documents and submissions on record.***

***2. To examine the responsibility of the Respondent in terms of the extent of reliance placed by the Signing Partner on the Respondent's view / observation.***

***3. To examine as to whether the provisions of clauses referred to in the Report of the Disciplinary Committee relating to Part I of the Second Schedule can be invoked after determining the role and responsibility of the Respondent in the matter.***

5. Thereafter, as per decision of the Council, the hearing in the instant matter was fixed on 4<sup>th</sup> April, 2018 at Mumbai. At the aforesaid hearing, the Respondent was present along with his



Counsel. The Respondent was put on oath. At the commencement of the hearing, the Committee clarified to the Respondent that the matter has been referred back to it for enquiry on the afore-stated specific points and accordingly, he may submit his oral / written submissions on these points.

**The Committee noted that the Respondent through his written as well as oral submissions before it, made following submissions in his defence:-**

5.1. The Disciplinary Committee had held the Respondent guilty of professional misconduct for the following charges as under:-

i) Charge No.2 - Not made any remark / qualified remarks about Advances made to Group Companies of Ketan Parekh and Bharat Shah. Thus, the Respondent firm as Auditor has failed in their duty to report to the members of the Bank.

ii) Charge No.3 – The Auditor have not in their report dated 30.04.2001 on the Annual Accounts of the bank for the year ended 31.03.2011 explained the reason as to why the NPAs have gone up as compared to the previous years and what are those various important NPAs accounts and the steps taken by the management of the Bank to recover the NPAs.

iii) Charge No.4 – It therefore seems that the Respondent firm has failed in their professional duties to make any observation / adverse remark in this regard in their report to the members of the Bank.

5.2. During the initial stage of communication between ICAI and the Respondent firm, the names of three individuals were forwarded as being answerable for the charges levied in the instant case:-

i) Shri S. Gopalakrishnan

ii) CA. Manish Agarwal

iii) CA. P. Ramakrishna

The first and the third individuals were professionally engaged with the Respondent firm **as partners of the firm**. CA. Manish Agarwal was an employee of the firm, working in the capacity as Audit Manager. Since Shri S. Gopalakrishnan and the Respondent were

8

partners of the firm, they were defined as "Signing Partners" and "Engagement Partner" by the firm.

5.3. While clarifying his role, the Respondent stated that he was engaged with the audit of e-GTB only as a "Concurrent Review Partner" to review that the procedures adopted in the audit of the financial statements of the client were in keeping with the policies of the firm. He was not in charge of the audit operations and he did not have the responsibility of reporting to the shareholders, and no statutory powers / duties that rest/ devolve upon the statutory auditor rested / devolved upon him such an engagement. He had no interface with the officers of the client on a regular basis, nor was he required to be present during the conduct of the audit by the team employed by the Respondent firm under its engagement leader and signing partner, Shri S. Gopalakrishnan. The Respondent did not attend meetings of the Audit Committee and attended only one meeting of the Board of Directors on 30<sup>th</sup> April, 2001. The Respondent did not visit any branch of the bank as member of the engagement team and was not involved in any manner whatsoever for the LFARs with respect to the branches. The Respondent was also not responsible for the audit procedures at the Head Office or any office of the business entity concerned for the purpose of submitting the statutory audit report.

5.4. As regard the term "*Engagement Partner*", the Respondent stated that the said term has been defined in the glossary of terms included in the Handbook of Auditing Pronouncements as follows:-

*"The partner or other person in the firm who is a member of the Institute of Chartered Accountants of India and is in full time practice and is responsible for the engagements and its performance, and for the report that is issued on behalf of the firm, and who, where required, has the appropriate authority from a professional, legal or regulatory body."*

The Respondent stated that the said aforesaid definition was available at the time of when the audit of e-GTB was conducted by the Respondent firm for the year

2000-01, and thus, the Respondent could naturally not have worked as the "*Engagement Partner*" as it is understood after the adoption of the definition of the said term by ICAI. The term engagement partner had been used in communication with ICAI in relation to the Respondent loosely referring to an individual who was engaged in some capacity with the audit of e-GTB. The Respondent had never been engaged in the process of performing the audit procedures and has not expressed any opinion or provided any report to the shareholders or stakeholders of eGTB for the year ended 2001-01 or for any other years.

5.5. The Respondent stated that it was the duty of the partner in charge of the audit (Shri S. Gopalakrishnan) to review the financial statements, books of accounts, records and all other documents to be able to arrive at a decision regarding the matters to be included in the audit report. The Respondent had a limited role in the audit engagement of e-GTB as a concurrent review partner. The Respondent clarified that at the time when audit of e-GTB was conducted, there was no requirement under any Standards of Audit or any Guidance Note from ICAI requiring / mandating the involvement of a review partner during the course of statutory audit of business entities. It was purely an internal operational policy of the firm to sustain and enhance the standard of delivery of service that a concurrent review partner was assigned for some big clients.

5.6. The responsibility for formation and expression of opinion contained in the audit report belongs solely to the person in charge of the overall audit procedures and signing the said audit report. The concept of an engagement quality reviewer in the sense as it is understood today also did not exist at the relevant time.

5.7. The Respondent brought on record "Audit Acceptance Note" (Page 61-63 of the Respondent's submissions submitted on 04.04.2018) and stated that the said document describes the roles played by the members of the team. The appointment for the audit of e-GTB was made by GTB in January, 2001 and consequent to the said appointment, the note referred above was drawn up and signed, but the word engagement partner were included in the Audit Acceptance Note to clearly demarcate the difference between the role of the person who was supposed to be the overall in charge of the audit and

sign the audit report, as compared to the person whose role was limited to concurrent review only and not mandated by the statute or recommended by ICAI. At the time of expressing opinion in the audit report, Shri S. Gopalakrishnan had not relied on the opinion of the Respondent. The same is abundantly clear from the fact that the practice of counter-signing by a partner of the Respondent firm (who was otherwise the signing partner) was not followed.

5.8. As regard the applicability of clause (6) of Part I of Second Schedule to the Chartered Accountants Act, 1949, the Respondent stated that any practicing members of the Institute may be held guilty under this clause provided he fails to report on issues contained in the financial statement with which he is concerned in his professional capacity. In this context, the Respondent stated that he has not made any report which is subject matter of the complaint. The Respondent was not even involved in the performance of the audit procedures in the capacity of an engagement partner (as is understood by the current definition of the term "Engagement Partner") during the audit of e-GTB during the year ended 2000-01. The Respondent also stated that clause (6) had not been included in the Show Cause Notices from ICAI dated 1<sup>st</sup> December, 2006.

5.9. As regard the applicability of clause (7) of Part I of Second Schedule to the Chartered Accountants Act, 1949, the Respondent stated that the said clause applies in cases where the individual does not exercise due diligence or is grossly negligent in his professional duties. He, however, was involved with the statutory audit of e-GTB in his capacity as Concurrent Review Partner (**CRP**) only. Further, there was no discussion in the report or the proceedings before the earlier Disciplinary Committee about any role of the Respondent as CRP. No negative comment or breach of obligation has either been pointed out or established with respect to the Respondent in his capacity as the CRP.

5.9.1. The Respondent stated that the various chartered accountants were deputed by the Respondent firm for the purpose of audit of e-GTB. There is not design in the statute or in any of the publication of ICAI to bring every chartered accountant engaged with the client by a professional firm within the net of professional misconduct in instances where the appropriateness or otherwise of the audit is under the scanner. The signing partner has never stated that the

9

Respondent was involved in the performance of such audit procedures upon which he may have relied in the formation of his opinion and the finalization of the audit report. The role of the Respondent was purely assistive and advisory, that too when called upon by the individual overall in charge (Shri S. Gopalakrishnan).

5.9.2. The Respondent stated that clause (7) of Part I of Second Schedule is not applicable to him as he was not involved / engaged in the process of performing audit procedures and verification at any stage. There was not nothing to prove that the imputation of the mental condition which such that the Respondent had failed to act honestly and reasonably. There was nothing contained in the Act, or any Guidance Note or any relevant Guidelines or the applicable standards at the time of occurrence of the alleged misconduct relating to the role of any review partner and thus, the question of evaluation of gross negligence in that respect does not arise.

5.10. In respect of applicability of clause (8) of Part I of Second Schedule to the Chartered Accountants Act, 1949, the Respondent stated that this clause would apply to an individual who express his opinion on the financial statements of any business entity. The Respondent was involved with the audit e-GTB by the Respondent only in his capacity as Concurrent Review Partner and thus, he has not expressed any opinion nor attested financial statements.

5.11. As regard the applicability of Clause (9) of Part I of Second Schedule to the Chartered Accountants Act, 1949, the Respondent stated that this clause relates to the duty of the Statutory Auditor to invite attention to material departure from the generally accepted audit procedures in his report. The Respondent was not responsible for providing the opinion to the shareholders of e-GTB in the audit report for the year ended 2000-01.

5.12. While referring conclusive para of findings of the then Disciplinary Committee in respect of each allegations, the Respondent stated that the same are attributed to deficiencies in the statutory auditors' report, or lack of due diligence in discharge of professional duties. The phrase "does not exercise due diligence" did not exist in the

statue prior to the year 2006. Further, the clause relating to deficiencies in reporting do not apply to the Respondent as the report was drafted and contained the opinion of CA. S.Gopalakrishnan only.

5.13. While quoting the provisions of Sections 226 and 227 of the Companies Act, 1956 and Section 30 of the Banking Regulations Act, 1949 relating to power and duties of auditors, the Respondent stated that from the provisions of these sections, it is clear that the word "Auditor" refers to the practicing partner of the firm who may act in the name of the firm. Such a person could be none other than the individual who has the overall responsibility for the conduct of the audit. More specifically it relates to the signing partner who has essentially expressed his opinion on the financial statement of the Company. The aforesaid clauses and sections relate to the obligations of an auditor and the reporting requirements. The obligation would devolve upon the person who is responsible for giving the final opinion in the report. In the instant case, such responsibility rested on the shoulders of Shri S. Gopalakrishnan. Even if that individual relies on others who are engaged with him in supportive roles, the answer ability for professional misconduct would lie with that individual i.e. the engagement leader or the signing partner.

5.14. The fact that Shri S. Gopalakrishnan was acting as the overall in-charge engagement partner is also absolutely clear from the email dated 16<sup>th</sup> February, 2001 sent by him to the other branch partners of the Respondent firm setting out the plan for carrying out the said audit of e-GTB. In addition to this, the working papers relating to the audit of e-GTB to the various issues clearly contain the views of Shri S. Gopalakrishnan as the views of the Engagement Partner and the Respondent's views as merely those of the Concurring Review Partner. The said working papers had been signed accordingly, in those respective capacities by Shri S.Gopalakrishnan and the Respondent respectively. The signatures of the Respondent as contained in the memos represent the concurrence of the Respondent with the views of the signing partner on a standalone basis, relating to the specific issues that were referred to him. While placing such signature and expressing concurrence, the Respondent was basically required to check that the partner who was fully responsible and engaged with the audit as the signing partner had checked all the documents, included all copies of important notes in

the working papers, held appropriate discussions within the team and the management of e-GTB and had complied with all steps as included in the audit plan. The Respondent also included copy of hand written note prepared during the audit discussions with the team by Shri S. Gopalakrishnan wherein he has clearly written that he is engagement partner and the Respondent is the concurrent review partner.

5.15. The Respondent stated that the fact that Shri S. Gopalakrishnan was Engagement Partner is reconfirmed from a perusal of documents including letter dated 23<sup>rd</sup> April, 2001 exchanged by him with the management of e-GTB wherein he seeks various clarifications from the management of e-GTB relating to the said audit. Further, Shri S. Gopalakrishnan also signed Long Form Audit Reports of all 79 Branches. In addition, Trial Balance / Extracts of the day book as on 31<sup>st</sup> March, 2001 of all the branches were also signed / initialed by Shri S.Gopalakrishnan. Neither any of LFARs nor the Trial Balances do not contain any signature / initials of the Respondent clearly establishing that he was not involved in the subject audit as Engagement Partner or discharging any professional duties.

5.16. At the time of adoption of the accounts by the audit committee / Board meeting, Shri S.Gopalakrishnan had disclosed to the directors of e-GTB that he was in charge of audit and the Respondent was only a review partner, this fact was included in the confirmatory communication received from independent Director, Shri Laxminiwas Sharma.

5.17. CA. Manish Agarwal, who was the Audit Manager in the audit of e-GTB stated that the Respondent was only a concurrent review partner.

5.18. The role played by the overall in charge and the engagement / signing partner, Shri S. Gopalakrishnan is radically different from the role played by the Respondent in the audit of e-GTB for the year 2000-01. Using the same measuring scale for an individual who is in the driver's seat as an operational head and the final decision maker, and another individual whose role is assistive / supportive / advisory to a limited extent would defeat the purpose of justice. Further, when Institute had issued the notice on 1<sup>st</sup> December, 2006, the then risk management partner of the firm had constituted a team along with lawyers for e-GTB matter and informed the global risk team vide e-mail dated 22<sup>nd</sup> December, 2006 wherein the Respondent's name was not included and the

engagement partners for all the three years were included. This fact is a clear conclusion that the firm had never considered the Respondent as the engagement partner for the audit of e-GTB.

5.19. When queries were raised by the Department of Company Affairs and the Reserve Bank of India, the replies thereto on behalf of the Respondent firm were also given by Shri S. Gopalakrishnan by his letters dated 21<sup>st</sup> March, 2002 and 21<sup>st</sup> May, 2002 respectively.

5.20. The activities in which the Respondent was engaged as the concurrent review partner for e-GTB audit for 2000-01 were as under:-

- i) Ensuring that that the audit plan was sufficiently exhaustive to cover all major issues that required to be reviewed in a business entity like e-GTB.
- ii) To ensure that there was adequate manpower available to the engagement partner, for performing the audit procedures.
- iii) To ensure that the said manpower included the appropriate number of qualified experts for conducting the audit for a business entity like e-GTB.
- iv) To review the progress of the audit to establish that the audit steps included in the audit plan had actually been performed.
- v) To review that the findings from the conduct of the audit procedures had been dealt with by the engagement partner by engaging in discussions / communications with the management of e-GTB.
- vi) To ensure that regular team meetings had been held before finalization of the audit report.
- vii) To offer opinion on any specific issues referred regarding the audit procedures carried out and the conclusions drawn by the engagement partner.

5.21. The Respondent stated that when his name was included in the list of persons responsible for answering the allegations contained in the complaint, he did not provide any assurance to the Institute that he takes any responsibility to answer to the charges contained in the said complaint. However, he would like to clarify that he had been a counter signatory to the written statement dated 27<sup>th</sup> February, 2007 under pressure of his professional career being put to stake. He did not bring out the fact of his limited

97



role as CRP for the audit of e-GTB for the year 2000-01 before the Hon'ble Disciplinary Committee by a separate note. The practicality of this situation may kindly be appreciated due to the following reasons:-

i) the Respondent was a partner of a large multi-national networked firm, with his future at stake. The Respondent raised objections within the firm, but he had to succumb at a certain point.

ii) Despite having raised the issue of his limited role as a CRP in the firm, the Respondent was pushed into believing that the audit files have been reviewed by the local risk team and the international risk team of LLL and that the Joint Parliamentary Committee (JPC) report had no anomalies with respect to the financial statement for the year concerned.

iii) Like any other professional whose only source of income came from LLL, the Respondent was apprehensive (rather scared) that he may be asked to quit the firm if he did not go with its decision.

iv. No consideration of specific roles of each of the members answerable declared by the LLL. The Disciplinary Committee was required to undertake the exercise that of considering the precise roles of each of the members answerable declared by the LLL. In absence of any such consideration, the entire proceedings are vitiated and cannot be allowed to stand.

5.22. Since the Respondent had been agitating before the senior management of the firm that his name had been wrongfully included in the list of individuals responsible for answering the charges levied by ICAI, his name was not referred to any other agency / authority.

5.23. Based on above submissions, the Respondent briefly made the following submissions on specific issues referred to the Disciplinary Committee for further enquiry:-

5.23.1. As regard his role in audit of e-GTB, the Respondent stated as under:-

- i.) There was no direct interface of the Respondent with the client.
- ii) He was not involved in the carrying out of audit procedures.
- iii) He was not a party to the formation and expression of an opinion as contained in the branch audit report or the audit report of the entire entity.
- iv) His limited role has been testified by the Chairman of the audit Committee of the e-GTB and the audit manager of LLL.
- v) The internal working memos clearly express the limited role of the Respondent.
- vi) He did not engage with the written communication with the client on matters arising out of the audit.
- vii) The report did not have his counter-sign on the financial statements.

5.23.2. With respect to his responsibility regarding the extent of reliance placed by the signing partner, the Respondent stated as under:-

- i) There was no element of his involvement in assisting the signing partner to arrive at the decisions expressed in the audit report.
- ii) The signing partner has never alleged or stated to the Disciplinary Committee that he was placing reliance on the Respondent while forming his opinion as contained in the audit report.
- iii) The signing partner has not sought the confirmation from the Respondent as a counter signatory, which he would have done as per the practice in the firm in case he had relied upon the Respondent while forming the opinion contained in the audit report.
- iv) The Respondent may, if the Disciplinary Committee so requires, arrange for the appearance of Shri Laxminiwas Sharma and Shri Mahesh Augural to depose and confirm his role and responsibility.

5.24. The Respondent vide his letter dated 30<sup>th</sup> April, 2018 made his final submissions which are in brief as under:-

- i) The Respondent had not been afforded an adequate opportunity of defending himself. The Committee called upon him to present its defence without disclosing

to him as to what are specific allegations made against him and what evidence are available. The Respondent drew attention to the judgment passed by the Hon'ble Supreme Court in the case of Surath Chandra Chakrabarty Vs. State of West Bengal – reported as MANU/SC/0493/1970 wherein the Hon'ble Court held that it is one of the basic principle of granting reasonable opportunity of defence that the grounds on which action is proposed to be taken be communicated to the person charged. The Court further held that "if a person is not told clearly and definitely what the allegations are on which the charges preferred against him are founded he cannot possibly, by projecting his own imagination, discover all the facts and circumstances that may be in contemplation of the authorities to be established against him." The Respondent also placed reliance on the judgments cited in the below matters:

i) Amrit Foods v. Commissioner of Central Excise - (2005) 13 SCC 419- @ para 5;

ii) SACI Allied Products Ltd. v. Commissioner of Central Excise - (2005) 7 SCC 150 - @ para 16-18;

ii) It is also argued that in its show cause notice dated 01.12.2006, while calling upon the Respondent firm to provide the name of 'member/answerable' to the charge of misconduct. it was incumbent on the Disciplinary Committee to examine the record and ascertain independently as to whether the members named by the Firm were indeed members who had conducted the audit and had signed the report certificate and to further outline the specific roles and the consequent basis of the allegations to be met qua those.

iii) The Respondent further stated that presently in India the role of a concurring review partner does not have any legislative recognition. In absence of any such legislative requirement, it cannot be held that the Respondent was required to review the audit report prepared and signed by the Engagement Partner.

iv) Belated inquiry into the role and responsibility of the Respondent after a lapse of 17 years is in effect of a de-novo initiation of 'Information' qua the Respondent and is thus hit by the spirit of the provision contained in Regulation

14 of the Chartered Accountants Regulations, 1988. The present inquiry into the role and responsibility of the Respondent, effectively amounts to instituting a fresh 'complaint / information' qua him. The Respondent respectfully submits that the present de-novo inquiry into the role and responsibility of the Answering respondent deserves to be rejected under Regulation 14. The Respondent placed reliance on the judgements passed in the following cases wherein the Courts disallowed the proceedings on the ground of excessive delay:-

- i) Union of India &Anr. v. Hari Singh - ILR 2014 1 Delhi 443 @, Para 59-69
- ii) PV Mahadevan v. MD. TN Housing Board - (2005) 6 SCC 636 - @ Para 8-12
- iii) MV Bilani v. Union of India &Ors. - 2006 (5) SCC 88 - @ Para 16-19

6. The Committee noted that there are three specific issues on which the Council had referred back the matter to the Disciplinary Committee and directed it to hold the inquiry only on the issues referred stated as under:-

- 1. The Committee may examine the role of the Respondent and the extent of his responsibility in respect of audit of e-GTB for the year 2000-2001 based on all the documents and submissions on record.**
- 2. To examine the responsibility of the Respondent in terms of the extent of reliance placed by the Signing Partner on the Respondent's view / observation.**
- 3. To examine as to whether the provisions of clauses referred to in the Report of the Disciplinary Committee relating to Part I of the Second Schedule can be invoked after determining the role and responsibility of the Respondent in the matter.**

7. The Disciplinary Committee conducted the enquiry in the case based on the aforementioned issues and the hearing in the matter was concluded at its meeting held on 4<sup>th</sup> April, 2018 at Mumbai. The Disciplinary Committee submitted its Report dated 13<sup>th</sup> June, 2018

that the Respondent was **Guilty** of Professional misconduct falling within the meaning of Clauses (7) & (9) of Part I of Second Schedule to the Chartered Accountant Act, 1949.

8. While arriving at its aforesaid conclusion, the Disciplinary Committee had relied on the following reasonings/arguments:-

8.1. As regard the first issue related to the role and responsibility of the Respondent in respect of the audit of e-GTB for the financial year 2000-01, it is noted that the matter was treated as information against the Respondent firm, M/s Lovelock & Lewes, Chartered Accountants. When the Information letter dated 1<sup>st</sup> December, 2006 was sent to the Respondent firm to disclose the name/s of the member/s answerable to the charge of misconduct, the Respondent firm vide their office letter dated 27<sup>th</sup> December, 2006 (**Annexure 'B'**), disclosed the three members as answerable on the matter stating their role in the audit of e-GTB for the financial year 2000-01, which are noted to be as under:

	<u>Name of Member</u>	<u>Capacity / role</u>
1.	S.Gopala krishnan	Signing Partner
2.	P. Rama Krishna	Engagement Partner
3.	Manish Agrawal	Audit Manager

8.2. It is relevant to note here that the Respondent firm has disclosed CA. P. Ramakrishna as "Engagement Partner". In response to the Information letter, the Respondent being one of the members answerable requested for extension of time vide his letter dated 30<sup>th</sup> January, 2007 to submit his Written Statement on the allegation. In the said letter, the Respondent did not deny his role as "*Engagement Partner*" in audit of e-GTB. Thereafter, Shri S. Gopalakrishna and the Respondent vide their letter dated 27<sup>th</sup> February, 2007 submitted their joint Written Statements on the allegations wherein again the Respondent submitted his defense declaring and verifying himself as "Engagement Partner" to the assignment under investigation. It is noted that in his

Written Statement to the allegations as contained in the Information letter, the Respondent has verified his Written Statement as under:

*"P. Rama Krishna, as the **engagement partner** and on behalf of other members answerable to the letter, do hereby declare that what is stated above is true to the best of our information, knowledge and belief.*

*Verified today the Twenty Seventh day of February 2007, at Hyderabad.*

*P.Rama Krishna"*

8.3. It is further noted that the Respondent had earlier never submitted of him being the **"Concurring Review Partner"** nor had ever objected to his submission on being "Engagement Partner" before the earlier Disciplinary Committee hearings or in his written statements. In other words, until the copy of the Disciplinary Committee Report reached in the hands of the Respondent, he never contested the fact that he was not the Engagement Partner. While raising the issues before the Council, the Respondent stated that the earlier Disciplinary Committee never enquired into the role of the Respondent, Shri S. Gopalakrishnan and CA. Manish Agarwal. In this context, it is viewed that when the documents on record clearly state the respective roles of the Respondent alongwith the other Respondents involved in the matter which were also declared and signed by the Respondent, the matter was accordingly dealt with by the Disciplinary Committee. It is viewed that it is always the duty of the Respondent to bring on record all the facts relating to the matter before it. Concealing the facts and later contesting on them only delays the matter as in the extant case.

8.4. As regard the Respondent's role in audit of e-GTB for financial year 2000-2001, the Committee noted that the submissions made by the Respondent primarily pertains to the responsibility shared by him in audit of the entity. His major contentions are that he was not a signing partner and the signing partner was fully responsible for conducting audit and reporting. He had a very limited responsibility of concurring with the view of the signing partner. Further, He has no direct interaction with the client.

8.5. Upon consideration of the submissions and documents on record, it is noted that the Respondent stated that the term engagement partner had been used in communication with ICAI in relation to the Respondent is loosely referring to an

individual who was engaged to enhance the standard of delivery of service. His role was to assist, support and advise to the signing partner as also explained by the Respondent in his submissions. He had to ensure that audit plan was sufficiently exhaustive to cover all major issues, to review the findings of audit and also to offer his opinion on specific issues referred to him. Further, even if the then definition of 'engagement partner' is noted it states him to be *"responsible for the engagements and its performance, and for the report that is issued on behalf of the firm, and who, where required, has the appropriate authority from a professional, legal or regulatory body."* Thus, if the role defined by the Respondent is compared to that declared by the Respondent Firm, there appears to be similarity that he was responsible for engagement and its performance perhaps not as a signing partner but as a responsible partner of the Respondent firm to assist the signing partner.

8.6. The Committee noted that though the Respondent brought on record various documents, including an Audit Acceptance Note **(Page no.61-63 of the Respondent's submission submitted on 04.04.2018)**, to support his contention that he was concurring review partner yet there was nothing from the Respondent firm stating that the Respondent was not engagement partner. Moreover, documents brought on record by the Respondent were not on the letter head of the Respondent firm. The Respondent failed to bring on record copy of audit plan / programme describing the role of each team member of audit including the Respondent. The above facts indicates that the Respondent brought on record certain selective documents only and that too do not give complete information about the exact role of the Respondent in respect of audit of e-GTB. Further, there was no satisfactory explanation from the Respondent as to why he took more than 6 years to clarify his stand and to object to the firm declaration as engagement partner.

8.7. Even if it is assumed that the Respondent was concurring review partner, it is noted from the selective working papers **(Page 69-83 of the Respondent's submissions submitted on 04.04.2018)** produced on record that the Respondent was involved in various stage of audit. On perusal of the documents containing the view of signing partners and concurring review partner, it is viewed that the signing partner was seeking view of the Concurring Partner on various issues relating to audit such as

provision in case of shortfall in the value of the shares held as security for Capital Market exposure and creation of adhoc provision of Rs.50 crore, classification of standard assets and other assets and NPA provisioning. It is also noted that the Concurring Review Partner was agreeing with the views of signing partner. There is no document on record wherein the Respondent had expressed any comments / adverse comments to the signing partner despite the fact that the RBI had expressed serious concern for the exposure of the bank in the capital market and of which the Respondent was very well aware of it **(Page no.62 of the Respondent's submissions submitted on 04.04.2018).**

8.8. Considering the issues pointed out by the Respondent and his role and responsibility in audit as observed from his submissions and documents brought on record by him, the Committee opined that it is beyond any doubt that the Respondent was not responsible only to concur the view of Signing Partner but to express an independent view on the views / opinion expressed by the Signing partner. Thus, the role and responsibility of the Respondent appears to be similar or more in the nature of Engagement Partner.

8.9. The next issue before the committee is to examine the responsibility of the Respondent in terms of the extent of reliance placed by the Signing Partner on the Respondent's view / observation. In this regard the Committee noted that the Respondent did not produce the composition and role of the team member of audit team which was engaged specifically for the audit of e-GTB for the financial year 2000-01. The Respondent has argued that concurrent review partner was not defined at the point of time when the audit was conducted in the year 2000-01. The Committee noted that it is not mainly the definition which will define the role of Respondent but in fact the actual role played by the Respondent will be assessed by the Committee to decide on the issue. It is noted that the Respondent has not brought on record any document which limits his responsibility. It is noted that the case was filed against the Respondent firm who had made him answerable alongwith the signing partner. Thus, the Committee would like to reiterate its observation as mentioned in paras 13.7 and 13.8 and accordingly, opined that the Respondent had freedom to express his views while reviewing the work of the signing partner. The Signing partner was placing great



reliance on the opinion of the Concurring Review Partner on important and material issues. Accordingly, he cannot be exonerated from the charges leveled by the Informant in the matter.

8.10. As regard the last issue before the Committee to examine applicability of various clauses referred to in the Report of the Disciplinary Committee relating to Part I of the Second Schedule considering the role and responsibility of the Respondent in the matter. The Committee opined that in view of role and responsibility of the Respondent as mentioned in the preceding paras, it can be stated that Clauses (7) & (9) of Part I of Second Schedule to the Chartered Accountants Act, 1949 would be applicable in this case as besides being negligent in performing his duties, the Respondent failed to invite attention to material departure from the generally accepted procedure of audit applicable to the circumstances.

9. The Council considered the Report of the Disciplinary Committee in the above captioned matter dated 13<sup>th</sup> June, 2018 along with earlier Report of the Disciplinary Committee dated 2<sup>nd</sup> February, 2009. The Council noted that the Respondent, CA. P. Rama Krishna has already submitted his written representations dated 23<sup>rd</sup> March, 2019. The Council considered the contents of the same.

10. The Respondent CA. P. Rama Krishna, alongwith his Counsel, CA. A.P. Singh (M. No. 51888) appeared before the Council on 22<sup>nd</sup> May, 2019. The Respondent stated that he does not accept the findings of the Disciplinary Committee. The Counsel for the Respondent made representations on behalf of the Respondent. The Counsel for the Respondent stated that the Respondent was Concurrent Review Partner and his role was different from the role of the engagement partner. He further stated that the documents submitted by the Respondent clearly depicted his role as Concurrent Review Partner. After completion of oral representations made by the Counsel for the Respondent, the Council informed that it is going to conclude the hearing in the above matter. Thereafter, the Respondent along with his counsel was asked to withdraw from the hearing. Thereafter, the Counsel after deliberations on the matter decided to conclude the hearing. ९

11. After consideration of the reports the Disciplinary Committee vis-à-vis documents / submissions on record and upon hearing oral submissions made by the Counsel for the Respondent, it is noted that the Respondent made the following contentions in respect of the reports of the Disciplinary Committee:-

- i. The conclusions contained in the June, 2018 report are required to be read in conjunction with the report of the Disciplinary Committee in the same matter dated 2<sup>nd</sup> February, 2009. The Respondent had been held guilty under clauses (6), (7), (8) & (9) of Part I of Second Schedule to the Chartered Accountants Act, 1949 in the February, 2009 report whereas the Respondent was held guilty for the same charges only under clauses (7) & (9) of Part I of the Second Schedule to the Chartered Accountants Act as per the June, 2018 report.
- ii. It is observed that most of the submissions were made by the Respondent to substantiate that he was actually engaged in the audit of e-GTB only as the Concurring Review Partner (CRP) and as a CRP his liability and responsibility were very limited in the matter. The various contentions made by the Respondent in this regards can be summarised as under:-
  - a) The Respondent was involved only as CRP for the concerned audit assignment.
  - b) The use of the term Engagement Partner with the name of the Respondent by the Respondent firm in its letter dated 27<sup>th</sup> December, 2006 may be understood merely as use of the terminology of Engagement Partner, loosely, without attaching any technical meaning.
  - c) The Signing Partner, Shri S. Gopalakrishnan for the concerned year recognised his role as the Engagement Partner too. The Disciplinary Committee cannot rely on a document for limited purpose to state that the Respondent had expressed his views by concurring with the views of the Signing Partner, but turn a blind eye to the fact that the Signing Partner has admitted himself as the Engagement Partner and the Respondent as the Concurring Review Partner.
  - d) The concurrence of the view of the Respondent in any case related to the appropriateness of the procedures followed. Further, the opinions contained in the final audit report were exclusively the opinion of the Signing Partner. There is no proof /

evidence with the Disciplinary Committee that the Signing Partners placed great reliance on the Respondent.

- e) On some matters, where the views of the Concurring Review Partner were required, the Signing Partner sought the same in accordance with the policies of the Respondent firm and the Respondent as Concurring Review Partner expressed his views which is basically verifying and confirming that the audit procedures have actually been performed as per the approved and adopted policies. The Respondent could not be held responsible for professional misconduct for the audit procedure performed and the contents of the audit report.
- f) There is no document whatsoever on the records to demonstrate that the Respondent was involved in any manner in the performance of audit procedures.
- g) It was the signing partner who had communicated within the firm and with the client for the audit assignment and responded to queries from various regulators and government authorities and regularly participated in the audit committee meetings. As compared to the above, the initials of the Respondent were found on the audit acceptance note (specifically as a CRP), and few audit memos only. There was no comparison between the overall role of signing partner and that of the Respondent. It should be borne in mind that the professional engagement relates to the period where the audit memos and other noting were hand written and not maintained in a digital format.
- h) The Counsel for the Respondent stated that the Respondent was not given adequate opportunity to defend himself. There was no document to establish beyond reasonable doubt that the Respondent was concerned with the audit of e-GTB in any capacity beyond of a CRP.
- i) The Disciplinary Committee did not consider it appropriate to seek any additional confirmation from the then directors of e-GTB about the role of the Respondent. One of the then directors of e-GTB has confirmed that the Respondent was only a Review partner. Further, the Disciplinary Committee did not seek any documentary evidence from the Respondent firm. There is no record to establish that the Signing Partner relied upon any opinion of the Respondent in expressing his opinion in the audit report of e-GTB for the year ended 31<sup>st</sup> March, 2001.
- j) The earlier Disciplinary Committee never enquired into the role of the Respondent.

- k) The Disciplinary Committee relied only on the letter issued by the Respondent firm on 27<sup>th</sup> December, 2006 but ignored the Audit Acceptance Note, various audit memos, the affidavit of CA. Manish Agarwal and the confirmation form the then Director of GTB.
- l) The Respondent stated that he is not attached in any professional capacity with the Respondent firm since April, 2011 and hence, he could not be expected to produce any working papers under this circumstance. The Disciplinary Committee has not sought any additional proof or documentations from the Respondent firm. The Disciplinary Committee itself accepted that it does not have complete information, at the same time it has not taken the appropriate steps to procure additional information as suggested and requested by the Respondent at the time of hearing.
- m) It is against the principles of law applicable to hold an individual guilty under the provisions of any Act, if such provision did not exist at the time of occurrence of the allegations concerned. There is no question of applying "Grossly Negligence" to the Respondent especially when "Gross Negligence" has not been applied even in case of signing partner.

12. The Council noted that the matter under consideration relates to statutory audit of e-GTB for the financial year 2000-01. The allegations alleged against the Respondent were based on findings of inspection carried out by the then Department of Company affairs in respect of violation of requirement of Sections 227, 228 of the Companies Act, 1956. The Respondent firm in response to the letter issued to them, declared the name of following members as member answerable to allegations leveled against the Respondent firm:-

<b><u>Name of the member answerable</u></b>	<b><u>Role of the members</u></b>
1. Shri S. Gopalakrishna	- Singing Partner
2. CA. P. Ramakrishna	- Engagement Partner
3. CA. Manish Agarwal	- Audit Incharge

13. It is noted that the Respondent stated that the then Disciplinary Committee never enquired into the role of the Respondent and the Respondent was never allowed to point out his role before the Committee. In this regard, it is to relevant to point out that there was nothing on record which indicates that the Respondent was stopped by the Disciplinary Committee to raise question on the role prescribed by the Respondent firm but he till the

conclusion of the hearing before the earlier Disciplinary Committee remained silent and did not point out that he was Concurring Review Partner.

14. Before the Council, the Respondent stated that the term "Engagement Partner" was misunderstood by the Respondent firm and his role was loosely termed as Engagement Partner by the Respondent firm which was contrary to his role being performed as Concurring Review Partner. He also stated that no documents on record establish beyond reasonable doubt that he was engagement partner and documents brought on record by him such as audit acceptance note, letter from the then Chairman of the bank establish his role as concurring review partner in the audit.

15. The Council after perusing the content of the Disciplinary Committee reports vis-à-vis oral and written submission on records, is of the view that it is a matter where only limited documents were available with regard to the role of the Respondent. The Disciplinary Committee after considering the issues pointed out by the Respondent as regard to his role and responsibility in audit, opined that it is beyond any doubt that the Respondent was responsible not only to concur the view of signing partner but to express an independent view on the views / opinion expressed by the signing partner. Further, it opined that the role and responsibility of the Respondent appears to be similar or more in the nature of Engagement partner. Though the Council is not fully agreed with this findings of the Disciplinary Committee to the extent of his role as an engagement partner, yet it agreed with the fact that the Respondent concurred the views of the signing partner on various issues relating to audit such as provisions in case of shortfall in the value of the shares held as security for Capital market exposure and creation of adhoc provisions of Rs.50 crore, classification of standard assets and other NPA provisioning. The Council noted that that there was no document on record wherein the Respondent had expressed any comments / adverse comments to the view of the signing partner despite the fact that the RBI had expressed serious concern for the exposure of the bank in the capital market.

16. In view of above facts, though the Respondent claimed that his responsibility as Concurring Review Partner was limited to the extent of being concurrence with the views of the Signing Partner yet it is a fact that the Respondent was supposed to be give his independent views / opinion on the views of the signing partner but the documents submitted by the Respondent himself on record does not establish at all that he has expressed any contrary view

to the view of the Signing Partner specifically when serious issue of non-availability of sufficient security, increasing in the level of NPA and steep fall in value of shares which were held as security were there. Though as claimed by the Respondent that the signing partner was not bound to accept his view as concurring review partner yet if the Respondent had expressed adverse view / opinion on the view of the signing partner, the same would have helped the signing partner to reconsider his opinion on various material issues which resulted in material misstatement and impacted the true and fair view of the state of affairs of the bank. Accordingly, in view of above, the Council agreed with the view of the Disciplinary Committee that the Respondent is guilty of professional misconduct falling within the meaning of Clauses (7) & (9) of Part I of the Second Schedule to the Chartered Accountants Act, 1949.

17. The Council upon consideration of the Report of the Disciplinary Committee dated 13<sup>th</sup> June, 2018 read with earlier Report dated 2<sup>nd</sup> February, 2009 along with written representations and also the oral submissions made by the Respondent and his Counsel before it, decided to accept the Report of the Disciplinary Committee. Therefore, the Respondent, CA. P Ramakrishna (M. No.022795), is Guilty of Professional Misconduct under charges 2, 3 and second leg of charge 4, falling within the meaning of Clauses (7) & (9) of Part I of Second Schedule to Chartered Accountants Act, 1949.

18. Further, the Council also decided to recommend to the Hon'ble High Court that the name of the Respondent CA. P. Rama Krishna (M.No. 022795) be removed from the Register of Members for a period of 01 (one) Year.

19. 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

*Shri D. Secretary*  
The Council of the Institute of  
Chartered Accountants of India  
New Delhi