



THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA  
(Set up by an Act of Parliament)

[PR-174A/2017/DD/229/2017/DC/1351/2020]

ORDER UNDER SECTION 21B(3) OF THE CHARTERED ACCOUNTANTS ACT 1949 READ WITH RULE 19(1) OF THE CHARTERED ACCOUNTANTS (PROCEDURE OF INVESTIGATION OF PROFESSIONAL AND OTHER MISCONDUCT AND CONDUCT OF CASES) RULES, 2007.

File No. : [PR-174A/2017/DD/229/2017/DC/1351/2020]

In the matter of :

**Shri Vijay Kumar Brungi**

POA Holder of

Shri Anil Kumar Ravuri and Smt. Satyavani Ravuri,

1-2-19 Maruthi Nagar,

Kothapet

HYDERABAD 500 035

.....Complainant

Versus

**CA. T Partha Saradhi (M.No. 013477)**

Plot No.67 Paigha Colony,

SP Road,

Secunderabad (A.P.)-500 003

.....Respondent

Members present:

CA. Aniket Sunil Talati, Presiding Officer

Smt. Anita Kapur, Member (Govt. Nominee)

Shri P.K. Srivastava, Member (Govt. Nominee)

CA. Vishal Doshi, Member

CA. Sushil Kumar Goyal, Member

**Date of Hearing: 01.06.2022 through Video Conferencing**

**Place of Hearing: New Delhi**

1. That vide report dated 26<sup>th</sup> October 2021 (copy enclosed), the Disciplinary Committee was of the opinion that **CA. T Partha Saradhi (M. No. 013477)** was **GUILTY** of Professional misconduct falling within the meaning of Item (8) & (9) of Part I of the First Schedule and Item (5) & (7) of Part I of the Second Schedule to the Chartered Accountants Act, 1949 as the Respondent

(i) Being the statutory auditor of M/s Satya Prakash Hotels Private Limited (hereinafter referred to as "the Company") from the FY 2012-13 to 2014-15 failed to report about the outstanding loan of the Company to the Syndicate Bank among its other debts outstanding which was secured against its property at Kakinada Mandal East Godavari District. It was stated that as per the Debt Recovery Tribunal, Hyderabad OA No. 1108 of 2016, the outstanding loan to Syndicate Bank amounted INR 19,44,36,800/- (C-3), and

(ii) that while being appointed as statutory auditor in another company, Sri Brinda Infrastructure Private Limited (hereinafter referred to as "SBIPL"), failed to ensure the compliance of the provisions of Companies Act, 2013, proper resignation of the previous auditor CA. KJD Srinivas and also accepted its appointment without proper prior communication with the previous auditor.

2

9



THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA  
(Set up by an Act of Parliament)

[PR-174A/2017/DD/229/2017/DC/1351/2020]

It was noted that Item (8) & (9) of Part I of the First Schedule and Item (5) & (7) of Part I of Second Schedule states as under:-

**First Schedule**

*PART I: Professional misconduct in relation to chartered accountants in practice*

*A chartered accountant in practice shall be deemed to be guilty of professional misconduct, if he –*

*“(8) accepts a position as auditor previously held by another chartered accountant or a certified auditor who has been issued certificate under the Restricted Certificate Rules, 1932 without first communicating with him in writing;”*

*“(9) accepts an appointment as auditor of a company without first ascertaining from it whether the requirements of Section 225 of the Companies Act, 1956\* in respect of such appointment have been duly complied with;”*

**Second Schedule**

*PART I: Professional misconduct in relation to chartered accountants in practice*

*A chartered accountant in practice shall be deemed to be guilty of professional misconduct, if he–*

*“(5) fails to disclose a material fact known to him which is not disclosed in a financial statement, but disclosure of which is necessary in making such financial statement where he is concerned with that financial statement in a professional capacity”*

*“(7) Does not exercise due diligence, or is grossly negligent in the conduct of his professional duties”*

2. An action under Section 21B (3) of the Chartered Accountants Act, 1949 was contemplated against the Respondent and communication dated **20<sup>th</sup> May, 2022** was addressed to him thereby granting him an opportunity of being heard in person and/or to make a written representation before the Committee on **1<sup>st</sup> June, 2022** through video conferencing.

3. During hearing on **1<sup>st</sup> June 2022**, the Committee noted that the Respondent was not present before it for hearing. However, the Respondent had vide his submission dated **27<sup>th</sup> May, 2022**, expressed his inability to attend the hearing stating that he had undergone brain tumor operation and was confined to bed for last six years and on account of his mental and physical condition he had sought adjournment. The Committee noted that the extant matter was listed for hearing before it on **25<sup>th</sup> April 2022** wherein adjournment was granted in the matter, in view of the principles of natural justice and the last opportunity was afforded to the Respondent to be heard in terms of proviso to Rule 19 (1) of the Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007. Further, it was noted that the Respondent had never appeared before the Committee at the hearing stage too despite providing sufficient opportunities to him. In any case, it was also noted that the written representation of the Respondent dated **7<sup>th</sup> December, 2021** on the findings of the Committee were available on record. Accordingly, the Committee decided to proceed in the matter.

4. The Committee noted that the Respondent in his written representation had reiterated his submissions made at the stage of forming prima-facie opinion that the alleged loan was given by the Complainant to Mr. M. Surya Prakash in his individual capacity and not to the Company. As per him an amount of Rs. 5,16,42,520/- (Rs. 8,15,95,181.60 a misleading figure) was received by Mr. M Surya Prakash and same was withdrawn from his account and delivered to the persons as advised by Mr. Anil Kumar & Mrs. Satyavani to their individual families, and to colour the said transaction as Hawala Transaction, an MOU was entered. He raised certain technical objections that:

W

D



THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA  
(Set up by an Act of Parliament)

[PR-174A/2017/DD/229/2017/DC/1351/2020]

- a. the Complainant was a Power of attorney holder copy of which was not provided to him.
- b. When the Complainant had filed complaints on the same issue before Registrar of Companies, Hyderabad as well as NCLT, Hyderabad then lodging complaint with ICAI resulted into one cause of action many complaints with different authorities which are bad in law.

The Respondent, further, contended that the Company had not undergone any liquidation proceedings, and it was a going concern. So, there were no material facts which were concealed by him. When certain creditors came to know that the Company was going for amalgamation, they filed petitions in Hon'ble High Court of Judicature for the states of AP & Telangana, however, as per him mere admission of trial did not meant liquidation, the complainants were misleading the authorities under reference. The Respondent submitted that Syndicate Bank authorities had classified the accounts of the Company as NPA in September 2013, and the property was auctioned. As per him it was thereafter in September/ October 2015 when objections were called for from public through paper advertisement, the complainants came into the picture with intent to grab the property.

4.1 As regards the second issue, the Respondent submitted that when the director's report clearly mentioned that about his appointment in the place of existing auditor that itself clearly indicated that the existing auditor ceased to continue as auditor of the company and the Company got the consent of the outgoing auditor. Thus, the incoming auditor had assumed the office of the auditor after obtaining consent of the outgoing auditor. As per him, if there was no issue among these auditors then issue got resolved. The Respondent pleaded that he was aged about 72 years, got brain tumour operated and working hard only to survive. So, he was allowed to make use of CA. KJD Srinivas office and infrastructure only to keep his financial condition. And when CA. KJD Srinivas did not choose to sign on the financials of SBIPL and board of directors of that company got auditor appointed at their choice and hence there was no dual role.

5. The Committee considered the written representation as made by the Respondent vide letter dated 7<sup>th</sup> December 2021 on the findings of the Disciplinary Committee. At the outset, the Committee noted that the Respondent had instead of submitting his defence on the misconduct alleged against him, opted to argue on the intent of the Complainant and their relation with the Company without providing any evidence of the arguments being put forth. It was noted that all the documents pertaining to filing of the Complaint were provided to the Respondent and that proceedings before the Committee were independent of the proceedings taking place between the Complainant and the Company. The latter proceedings were against the Company whereas the extant proceedings were to assess the performance of the Respondent being the statutory auditor of the Company.

5.1 With respect to failure of the Respondent to report about the outstanding loan of the Company taken from the Syndicate Bank, the Committee noted that the Respondent in his submissions had made an unrelated comment that the Syndicate Bank authorities had classified the accounts of the Company as NPA which was being challenged by the Company in September 2013 and also the Bank had auctioned its immovable property in 2015. It was noted that through the said submissions, the Respondent had accepted the fact that he was aware of the outstanding loan liability of the Syndicate Bank that had been classified as NPA but when the said outstanding liability was neither disclosed in financials nor any disclosure was made by way of note that in case the said liability, if not paid by the Company, its assets would be disposed off as per the SARFAESI Act, 2002, the Respondent being the statutory auditor, failed to report said omissions in his audit report(s) in any of the alleged periods. Thus, the Respondent has failed to disclosed the material fact known to him and also failed to exercise due diligence in performing his duties.

2

8



THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA  
(Set up by an Act of Parliament)

[PR-174A/2017/DD/229/2017/DC/1351/2020]

5.2 Regarding the allegation of accepting the appointment as statutory auditor of Sri Brinda Infrastructure Private Limited (SBIPL) without communicating with the previous auditor or ascertaining that requirements of Companies Act had been complied with, it was noted that (C-4) previously the audit of SBIPL was conducted by CA KJD Srinivas after which the Respondent was allegedly appointed as the auditor of SBIPL for the FY 2014-15. Further, it was noted that only documents available on record is the consent letter of the Respondent dated 28<sup>th</sup> August, 2014 (C-150) for accepting the audit and the consent of the previous auditor CA. KD Srinivas dated 31<sup>st</sup> October, 2014 (C-158). It was noted that the two consent letters were self-contradictory as it indicate that the Respondent had accepted the assignment before obtaining the approval of the previous auditor. Further, it was noted that despite seeking copy of Board's Resolution or minutes regarding the appointment of the Respondent as statutory auditor, he had failed to bring on record any evidence to corroborate that he had verified the compliance of provisions of Companies Act, 2013 before accepting the assignment. It was viewed that the contention of the Respondent that since there was no dispute among them so matter was resolved could not be accepted because it is a matter of compliance of Code of Ethics. Accordingly, the Committee viewed that the Respondent has failed to offer any plausible explanation/ clarification on the issues raised by the Complainant.

6. The Committee thus viewed that the misconduct on the part of the Respondent has been held and established within the meaning of Item (8) & (9) of Part I of First Schedule and Item (5) & (7) of Part I of Second Schedule to the Chartered Accountants Act, 1949 and keeping in view the facts and circumstances of the case as aforesaid, ordered that the name of the Respondent **CA. T Partha Saradhi (M. No. 013477)** be removed for a period of 3 (three) months from the Register of members alongwith a fine of Rs. 25,000/- (Rupees Twenty Five Thousand Only) be levied upon him that shall be payable within a period of 3 (Three) months from the date of receipt of the Order and in case he failed to pay the same as stipulated, the name of the Respondent be removed for a further period of 1 (One) month from the Register of members as per the order of the Committee.

Sd/-  
[CA. Aniket Sunil Talati]  
Presiding Officer

Sd/-  
[Smt. Anita Kapur]  
Member (Govt. Nominee)

Sd/-  
[Shri P.K. Srivastava]  
Member (Govt. Nominee)

Sd/-  
[CA. Vishal Doshi]  
Member

Sd/-  
[CA. Sushil Kumar Goyal]  
Member

Date: 14<sup>th</sup> June, 2022  
Place: Delhi

*Jyotika*  
प्रमाणित सत्य प्रतिलिपि / Certified true copy

सीए. ज्योतिका ग्रोवर / CA. Jyotika Grover  
सहायक सचिव / Assistant Secretary  
अनुशासन-सम्बन्धित विदेशालय / Disciplinary Directorate  
इंस्टीट्यूट ऑफ चार्टर्ड एकाउंटेंट्स ऑफ इंडिया  
The Institute of Chartered Accountants of India  
आईसीएआई भवन, विश्वास नगर, शाहदरा, दिल्ली-110032  
ICAI Bhevan, Vishwas Nagar, Shahdra, Delhi-110032

**CONFIDENTIAL**

**DISCIPLINARY COMMITTEE [BENCH – III (2021-22)]**

**[Constituted under Section 21B of the Chartered Accountants Act, 1949]**

**Findings under Rule 18(17) of the Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007**

**File No. : [PR-174A/2017/DD/229/2017/DC/1351/2020]**

**In the matter of:**

**Shri Vijay Kumar Brungi**

POA Holder of

Shri Anil Kumar Ravuri and Smt. Satyavani Ravuri,

1-2-19 Maruthi Nagar,

Kothapet

**HYDERABAD 500 035**

**.....Complainant**

**Versus**

**CA. T Partha Saradhi (M.No. 013477)**

Plot No.67 Paigha Colony,

SP Road,

**Secunderabad (A.P.)-500 003**

**.....Respondent**

**MEMBERS PRESENT:**

**CA. Nihar N Jambusaria, Presiding Officer**

**Smt. Anita Kapur, Member (Govt. Nominee)**

**CA. Chandrashekhar Vasant Chitale, Member**

**Date of Final Hearing: 23<sup>rd</sup> July, 2021 through Video Conferencing**

**Place of Final Hearing: Mumbai**

**PARTIES PRESENT:**

**Mr. Vijay Kumar Brungi - authorized representative of the Complainants  
(appeared from personal location through video-conferencing)**

Ⓟ

**Charges in Brief:**

1. The Committee noted that in the *Prima Facie* Opinion formed by Director (Discipline) in terms of Rule 9 of the Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007, the Respondent was held *prima facie* guilty of Professional Misconduct falling within within the meaning of Items (8) & (9) of Part I of First Schedule and Items (5) & (7) of Part I of Second Schedule to the Chartered Accountants Act, 1949.

The said Items to the Schedule state as under: -

**Part I of First Schedule:**

*"(8) accepts a position as auditor previously held by another Chartered Accountant without first communicating with him in writing"*

*(9) accepted an appointment as auditor of a company without first ascertaining from it whether the requirement of Companies Act in respect of such appointment have been duly complied with"*

**Part I of Second Schedule:**

*"(7) Does not exercise due diligence, or is grossly negligent in the conduct of his professional duties" and*

*"(8) Fails to obtain sufficient information for expressing an opinion"*

**Brief background and the allegations against the Respondent**

2. In the extant case, the Complainants had interest in M/s Satya Prakash Hotels Private Limited (hereinafter referred to as "**the Company**") as they had advanced INR 8,15,95,181.60/- to the Company (**C-2**) whereas the Respondent was appointed as the statutory auditor of the Company from the FY 2012-13 to 2014-15. The charges alleged against the Respondent were as under:-

2.1. The Respondent had misled the Complainants by not reporting the material fact that the fundamental accounting assumption of going concern would be affected in the future and also did not flag the possibility of liquidation as there were continuous losses for 3 financial

years but he had given an unqualified and clean report (C-16 to C-19, C-60 to C-63 and C-108 to C-110) just before the Company went into liquidation.

2.2 The Respondent had failed to make any observation in his Audit Report as regard the outstanding loan of the Company to the Syndicate Bank among its other debts outstanding which was secured against its property at Kakinada Mandal East Godavari District. The loan outstanding to Syndicate Bank, as per the Debt Recovery Tribunal, Hyderabad OA No. 1108 of 2016 was INR 19,44,36,800/- (C-3).

2.3 The Complainants further alleged that (C-5) the Respondent, while being appointed as statutory auditor in another company; Sri Brinda Infrastructure Private Limited (hereinafter referred to as "SBIPL"), neither the provisions of Companies Act, 2013 was complied with nor ensuring the proper resignation of the previous auditor CA. KJD Srinivas and also without proper and prior communication with the previous auditor.

**Proceedings:**

3. At the time of hearing on 23<sup>rd</sup> July 2021, the Committee noted that the authorized representative of the Complainant was present before it for hearing. The Respondent had, however, requested for adjournment vide e-mail dated 21<sup>st</sup> July 2021 on medical grounds stating same grounds on which he had sought earlier adjournments. Thereafter, the Complainant's representative gave declaration that there was nobody present except him in his room from where he was appearing and that he would neither record nor store the proceedings of the Committee in any form. Being first hearing the Complainant was put on Oath.

3.1 The Committee perused the request of the Respondent for adjournment and noted that during the last hearing, the Respondent was granted last opportunity to appear before it and was also directed to make his written submission in the matter, however, the Respondent again sought adjournment on medical grounds without providing any corresponding medical certificate to prove his bonafide. It was noted that the Respondent was being continuously granted adjournments since Dec, 2020 to provide him opportunity to defend his matter.

However, the Respondent failed to avail the said opportunities since he neither appeared in person or through authorized representative nor gave his written submissions in the matter. Thus, the Committee rejected the application for grant of adjournment made by the Respondent and decided to proceed further in the matter. Thereafter, the authorized representative of the Complainants presented the matter before the Committee. He was thereafter examined by the Committee on his submissions. Based on the documents/information available on record alongwith submissions made, the Committee concluded hearing in the matter.

3.2 The Committee noted that the Complainant had raised three allegations against the Respondent and that first allegation (as mentioned in Paragraph 2.1 above) was dropped in the prima facie opinion. Accordingly, the Committee conducted inquiry against the Respondent in respect of the remaining allegations only.

**Findings of the Committee:**

3. As regard the **second charge**, the Committee noted that it has been alleged against the Respondent that he had failed to make any observation in his Audit Report as regard the outstanding loan of the Company to the Syndicate Bank among its other debts outstanding which was secured against its property at Kakinada Mandal East Godavari District. The Complainant has brought on record the Order of the Debt Recovery Tribunal, Hyderabad OA No. 1108 of 2016 dated 6<sup>th</sup> April 2017 which revealed that such a loan amounting to INR 19,44,36,800/- (**C-3**) was outstanding.

3.1 The Committee noted that the Respondent has not submitted his further written Statement in the matter after the receipt of *Prima Facie* Opinion despite sufficient opportunity given to him. However, his submissions at the stage of formation of Prima facie opinion were noted wherein he had not made any submission on the failure to make any observation in his audit report as regard outstanding loan of the Company but made an unrelated comment that the Syndicate Bank authorities had classified the accounts of the Company as NPA which was being



challenged by the Company in Debt Recovery Tribunal in September 2013 and also the Bank has made auction of its immovable property.

3.2 The Committee in this regard thus noted that the Respondent in his submissions had accepted the fact that he had an information about the loan liability of the syndicate Bank which had been classified as NPA by the Bank authorities but had not made any observation in his Audit report with regard to the outstanding liability of Syndicate Bank or in any note that in case the said liability will not be paid by the Company, its assets would be disposed off as per the SARFAESI Act, 2002. It was noted from the financial statements audited by the Respondent that neither the fact relating to securities given against the loan nor the contingent liabilities arising on account of dispute before Debt Recovery Tribunal in September 2013 were disclosed. However, the Respondent being the statutory auditor, failed to report said omissions in his audit report(s) in any of the alleged periods. Thus, it is viewed that the Respondent has failed to disclosed the material fact known to him and also failed to exercise due diligence in performing his duties and is accordingly held **GUILTY** for this charge under Items (5) and (7) of Part I of the Second Schedule to the Chartered Accountants Act, 1949.

4. The Complainants in his **third allegation** has stated that **(C-4)** previously the audit of SBIPL was conducted by CA KJD Srinivas after which the Respondent was allegedly appointed as the auditor of SBIPL for the FY 2014-15 but there was neither the appointment letter/ consent letter filed by the Respondent for being appointed as the auditor of SBIPL nor there was any resignation filed by CA. KJD Srinivas from the position of statutory auditor of SBIPL after which the Respondent could have been validly appointed as auditor of SBIPL. Thus, it was alleged against the Respondent that he had failed to communicate in writing with the previous auditor and also failed to ensure that the procedure laid down under the Companies Act 2013 relating to his appointment were duly complied with which is in violation to the provisions envisaged under Items (8) and (9) of Part I of First schedule to the Chartered Accountant Act 1949.

4.1 The Committee noted the submissions made by the Respondent with respect to this allegation at the stage of formation of Prima facie opinion that **(W-12)** the Director's Report of

SBIPL clearly mentioned "*the appointment of auditor in the place of existing auditor*" which made it clear that the existing auditor ceased to continue as auditor of the Company and the Company had the consent of the outgoing auditor. Further, he being the incoming auditor had obtained the consent of the said outgoing auditor before he had assumed the office of the auditor.

4.2 The Committee in this regard perused the consent letter of the Respondent (**C-150**) and also the consent letter of CA. KJD Srinivas (**C-158**) as available on record with regard to the instant allegation and noted that the Office address of the Respondent is same as of the previous auditor and also that the consent of the previous auditor CA. KD Srinivas dated 31<sup>st</sup> October, 2014 (**C-158**) and the consent of the Respondent dated 28<sup>th</sup> August, 2014 (**C-150**) are in itself self-contradictory as the Respondent had given his consent letter for appointment as auditor on 28<sup>th</sup> August, 2014 much before the date of the consent letter for appointment of the previous auditor CA. KD Srinivas which in normal course of business is not at all possible and made it evident that the Respondent had accepted the audit by flouting all the laid down provisions both under the Companies Act, 2013 and the Chartered Accountant Act, 1949.

4.3 Further as regard the **first leg of the third charge**, the Committee noted the provision of Clause (8) of Part I of the First Schedule of the Chartered Accountants Act, 1949 relating to communication in writing with the outgoing auditor which provides that a Chartered Accountant in practice shall be deemed to be guilty of professional misconduct, if he accepts a position as auditor previously held by another Chartered Accountant or a certified auditor who has been issued certificate under the Restricted Certificate Rules 1932 without first communicating with him in writing.

4.4 Thus, it can be said that the incoming auditor is required to communicate with the previous auditor in writing. Besides, the "**Code of Ethics**" for the Chartered Accountants emphasis that *professional courtesy alone is not the major reason for requiring a member to communicate with the existing accountant who is member of the Institute or a certified auditor. The underlying objective is that the member may have an opportunity to know the reasons for the change in order to be able to safeguard his own interest, the legitimate interest of the public and the*

*independence of the existing accountant. It is not intended, in any way, to prevent or obstruct the change. When making the enquiry from the retiring auditor, the one proposed to be appointed or already appointed should primarily find out whether there are any professional or other reasons why he should not accept the appointment. The object of the incoming auditor, in communicating with the retiring auditor is to ascertain from him whether there are any circumstances which warrant him not to accept the appointment.*

Further, **as per Code of Ethics**, Members of ICAI should therefore communicate with a retiring auditor in such a manner as to retain in their hands positive evidence of the delivery of the communication to the addressee. In the opinion of the Council, communication by a letter sent "**Registered Acknowledgement due**" or by hand against a written acknowledgement would in the normal course provide such evidence. **(Pg. 165-166 of Code of Ethics, Eleventh Edition, 2009).**

4.7 The Committee in view of the above noted that as per Clause (8) of Part I of the First Schedule to the Chartered Accountants Act, 1949 read with Code of Ethics issued by ICAI, it is incumbent upon the incoming Auditor to first communicate with the previous auditor in writing before accepting the audit in such a manner so as to retain in hand a positive evidence of delivery. However, the Respondent has failed to bring on record any evidence to corroborate that he had duly communicated with the Complainant in the laid down manner.

4.8 As regard the **second leg of the third charge**, the Committee noted the provisions of section 139 of the Companies Act, 2013 relating to appointment of auditors and provisions of section 140 of the Companies Act, 2013 relating to removal, resignation of auditor and giving of special notice read with Rule 8 of Companies (Audit and Auditors) Rules, 2014. The relevant extracts of said sections and Rule are provided hereunder-

*"139. (1) Subject to the provisions of this Chapter, every company shall, at the first annual general meeting.....*

**(8) Any casual vacancy in the office of an auditor shall—**

(14)

(i) in the case of a company other than a company whose accounts are subject to audit by an auditor appointed by the Comptroller and Auditor-General of India, **be filled by the Board of Directors within thirty days, but if such casual vacancy is as a result of the resignation of an auditor, such appointment shall also be approved by the company at a general meeting convened within three months of the recommendation of the Board and he shall hold the office till the conclusion of the next annual general meeting;**

(ii) in the case of a company whose accounts are subject to audit by an auditor appointed by the Comptroller and Auditor-General of India, be filled by the Comptroller and Auditor-General of India within thirty days:"

"140. (1) The auditor appointed under section 139 **may be removed** from his office before the expiry of his term **only by a special resolution of the company, after obtaining the previous approval of the Central Government** in that behalf in the prescribed manner:

Provided that before taking any action under this sub-section, the auditor concerned shall be given a reasonable opportunity of being heard.

(2) The auditor who has **resigned from the company shall file within a period of thirty days from the date of resignation, a statement in the prescribed form with the company and the Registrar**, and in case of companies referred to in sub-section (5) of section 139, the auditor shall also file such statement with the Comptroller and Auditor-General of India, indicating the reasons and other facts as may be relevant with regard to his resignation."

Further Rule 8 of Companies (Audit and Auditors) Rules, 2014 provides that for the purposes of sub-section (2) of section 140, when an auditor has resigned from the company, he shall file a statement in **Form ADT-3**.

4.9 The Committee thus noted that there could be two instances whereby the auditor of the Company retires before his expiry of tenure of appointment which is either the Auditor himself resigns from the Company resulting into casual vacancy or the Company removes the Auditor before the expiry of his term to be served in the Company. In case the casual vacancy is due to the resignation of auditor, the same is to be filled by the Board of Directors and such

appointment should also be approved by the company at a general meeting convened within three months of the recommendation of the Board and he shall hold the office till the conclusion of the next annual general meeting. Further in this case, the Auditor who has resigned from the company shall file within a period of thirty days from the date of resignation, a statement in Form ADT-3 (Notice of Resignation by the Auditor) with the Registrar. On the other hand, if the Auditor has been removed by the Company before the expiry of his term, the same can be done by passing a special resolution in AGM, after obtaining the previous approval of the Central Government.

4.10 In the instant case, it is noted that the Respondent has failed significantly to ensure before accepting his appointment as an Auditor in SBIPL that due procedure as laid down under the provisions of Companies Act, 2013 has been followed. In case, the retiring auditor has resigned from the Company, the Respondent should have verified the resignation letter submitted on record of the Company and also the resolution passed by the Board of Directors of the Company duly appointing the Respondent as the incoming auditor. However, it is pertinent to note that despite calling copy of minutes for his appointment under Rule 8(5) by the Directorate, the Respondent has failed to submit the same. Another probable reason of retirement of the previous auditor KJD Srinivas from the Company could be that he was removed by Company before his tenure. In such a scenario, it was incumbent upon the Respondent to ensure that the same is done by passing a special resolution of the company, after obtaining the previous approval of the Central Government and he should have obtained the minutes of the special resolution passed along with the approval letter of Central Government in the desired case to ensure the validity of his appointment in terms of requirement of Item (9) of Part I of First Schedule to the Chartered Accountants Act, 1949.

4.11 Thus, in light of above, the Committee was of the considered view that the Respondent had not only failed to communicate with the previous auditor before acceptance of the statutory audit of SBIPL in the manner as envisaged in the provision of Item (8) of Part I of First Schedule to the Chartered Accountants Act, 1949 but also failed to establish that his appointment for the FY 2014-15 in SBIPL was in due compliance of the provisions of the Companies Act 2013.

**Conclusion :-**

5. Thus in conclusion, in the considered opinion of the Committee, the Respondent is **GUILTY** of Professional misconduct falling within the meaning of Item (8) & (9) of Part I of the First Schedule and Item (5) & (7) of Part I of the Second Schedule to the Chartered Accountants Act, 1949. (M)

**Sd/-**  
**[CA. Nihar N Jambusaria]**  
**Presiding Officer**

**Sd/-**  
**[Smt. Anita Kapur]**  
**Member, (Govt. Nominee)**

**Sd/-**  
**[CA. Chandrashekhar Vasant Chitale]**  
**Member**  
**[Approved and confirmed through e-mail]**

**DATE: 26<sup>th</sup> October, 2021**  
**PLACE: New Delhi**

*Certified to be true copy*  
*Mohita Khanna*  
CA. Mohita Khanna  
Assistant Secretary,  
Disciplinary Directorate  
The Institute of Chartered Accountants of India,  
ICAI Bhawan, Vishwas Nagar, Shahdara, Delhi-110032