



भारतीय सनदी लेखाकार संस्थान

(संसदीय अधिनियम द्वारा स्थापित)

THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA

(Set up by an Act of Parliament)

PR/262/16-DD/307/2016/DC/1310/2020

[DISCIPLINARY COMMITTEE [BENCH-II (2024-2025)]

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

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

[PR/262/16-DD/307/2016/DC/1310/2020]

In the matter of:

Shri A.K. Mahala

DCIT, Central Circle-2(3), Pune,
4th Floor, PMT Building,
Shankersheth Road,
Swargate,
Pune – 411 037.

.....Complainant

Versus

CA. Siddharth Shyam Shetye (M.No. 116188)

M/s. S.S. Shetye and Associates (FRN 124823W)

Aranyeshwar Park A Wing,
2nd Floor, Near Aranyeshwar Temple,
Sahakar Nagar 1,
Pune – 411 009.

.....Respondent

Members Present:-

Mrs. Rani S. Nair, IRS (Retd.), (Government Nominee), Presiding Officer (through VC)

Shri Arun Kumar, IAS (Retd.), Government Nominee (in person)

CA. Sanjay Kumar Agarwal, Member (in person)

CA. Cotha S Srinivas, Member (in person)

Date of Hearing: 19th March, 2024

Date of Order: 7th May, 2024

1. That vide Findings under Rule 18(17) of the Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007, the Disciplinary Committee was, inter-alia, of the opinion that **CA. Siddharth Shyam Shetye (M.No. 116188)** (hereinafter referred to as the **Respondent**) is **GUILTY** of Professional Misconduct falling within the meaning of Item (7) of Part I of the Second Schedule to the Chartered Accountants Act 1949.

2. That pursuant to the said Findings, an action under Section 21B (3) of the Chartered Accountants (Amendment) Act, 2006 was contemplated against the Respondent and a communication was addressed to him thereby granting an opportunity of being heard in person / through video conferencing and to make representation before the Committee on 19th March 2024.

Shri A.K. Mahala, DCIT, Central Circle-2(3), Pune -vs- CA. Siddharth Shyam Shetye (M.No. 116188)



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3. The Committee noted that on the date of the hearing held on 19th March 2024, the Respondent was present through video conferencing and made his verbal representation on the Findings of the Disciplinary Committee, inter-alia, stating that he was not chargesheeted by any investigating agency. The company documents which were presented during the assessment procedure are under lock and key with the Complainant Department. However, till date none of these documents were either provided to the Disciplinary Committee or to the Respondent. There has not been any bad intention / motive while issuing the audit reports and thus, requested for a lenient view in the case as his professional practice had already suffered badly on account of one year debarment in another disciplinary case. The Committee also noted that the Respondent in his written representation on the Findings of the Committee, while requesting to recall the Findings of the Committee, inter-alia, stated as under:

- (a) Since there is a change in the composition of the Disciplinary Committee in February 2024, a fresh hearing for this case needs to be granted.
- (b) Observations in para no. 16 to 18 of the Findings do not match with the charges which are specified in para 2.1 to 2.4.
- (c) The opinion from the experts as regards the "Deposits" or "Collective Investment Schemes" in the context of the matters like "Deposits Acceptance u/s 58A of The Companies Act, 1956" or "Non-Applicability of Collective Investment Schemes mentioned by the SEBI" have not been given consideration.
- (d) It is the responsibility of the Management of the Company to ensure that the entity's operations are conducted in accordance with the provisions of laws and regulations, including the compliance with the provisions of laws and regulations that determine the reported amounts and disclosures in an entity's financial statements. The auditor is not responsible for preventing the non-compliance and cannot be expected to detect the non-compliance with all the laws and regulations.
- (e) The case is not maintainable due to non-compliance of Rule 8(1) and Rule 18 (6).
- (f) There was no mention in the SEBI or CBI's Order with respect to the maintenance of records by the company.
- (g) No opportunity was given to cross-examine the Complainant and the Special auditor.
- (h) The copies of documents submitted by the witness and not provided to the Respondent are heavily relied in passing the abovesaid Order.
- (i) Only Special Audit Report without the supporting documents, which is a "DISCLAIMER OF OPINION REPORT" is considered as an Evidence which is not acceptable evidence.
- (j) The special audit report itself mentions that the Special Auditor has not received the records and the books of accounts maintained by the Company. The Special Auditor himself has stated in his letter dated 8th January 2024 forwarded to the Disciplinary Committee as under:
"I say that there are no allegations in my report against the auditors of Sammrudha Jeevan Foods India Limited."
- (k) Audit Working Papers of the Respondent and other documentation were not made available to him by the various authorities in spite of follow up.
- (l) The explanations given by the Company and also the denials expressed by the Company against the Findings of the Special Audit have not been considered.
- (m) The Income Tax Department (Complainant) had finalised the assessments for all the financial years 2008-09 to 2012-13 without raising any objections to the treatment of 'use of misleading nomenclature' applied by the Company.
- (n) The Respondent issued the necessary qualifications in the audit report for the Financial Year 2013-14 itself based on the first show cause notice from SEBI.



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- (o) He requested for not awarding a major punishment as he had completed only around six years of membership when the audit for the first year 2008-09 was commenced and he has not been involved in any case of misconduct till the year 2021, when in the case of a group Company of the same client he was charged only for some non-disclosure of the information.
- (p) He has not been keeping good health for last few years.

4. The Committee considered the reasoning as contained in the Findings holding the Respondent Guilty of Professional Misconduct vis-à-vis written and verbal representation of the Respondent. As regard the submission of the Respondent that since there has been a change in the composition of the Committee and thus, fresh hearing is required in the case, the Committee keeping in view the following observations of the **Honorable Appellate Authority in para 8 of its Order dated 14th June 2021 passed in Appeal no. OS/ICAI/2020 in the matter of Devki Nandan Gupta –vs- ICAI and others** on the same issue was of the view that there is no merit in the contention of the Respondent:

“We find no substance in the appellant’s plea that due to change in the composition of DC who had passed the order dated 08.02.2018 the new DC with changed members could not have passed the final order dated 07.11.2019.....”

We are of the view that no prejudice whatsoever was caused to the appellant due to change in the composition of the DC who had held him guilty of ‘professional misconduct’ under Clause 7 of Part – I of the Second Schedule and the one who had finally awarded punishment vide order dated 07.11.2019. In fact, the changed DC was not expected or required to hear arguments afresh on merits to find if the appellant was guilty of ‘professional misconduct’. The said findings had already been recorded by the previous DC in its order dated 08.02.2019 and attained finality qua the changed DC. The changed DC was required only to hear the appellant on the quantum of punishment/penalty and for that, the appellant was afforded reasonable opportunity of being heard.”

Further, the Special auditor appeared as a witness before the Committee and stood by his Findings in the Special audit report. Also, the documents provided by the witness were duly shared with the Respondent vide email dated 9th January 2024 and 15th January 2024. Due opportunity to cross-examine the Special auditor was given to the Counsel for the Respondent on 9th January 2024 as the Respondent was not present for hearing on the said date. Looking into the merits of the case and the reasons on the basis of which the request was made by the Respondent to call the Complainant as witness, his request was not accepted by the Committee. As regard the submission of the Respondent regarding non-compliance with the requirements of Rule 8(1) and Rule 18 (6) of the aforesaid Rules, the Committee was of the view that all the Rules of procedure are the handmaid of justice, and the object of prescribing procedure is to advance the cause of justice. In this regard, the Committee also noted that the Hon’ble Supreme Court in the case of Smt. Rani Kusum case, considered its earlier judgment passed In *Topline Shoes Ltd. v. Corporation Bank* [(2002) 6 SCC 33] and observed the following in Topline case:

“the question for consideration was whether the State Consumer Disputes Redressal Commission could grant time to the respondent to file reply beyond total period of 45 days in view of Section 13(2) of the Consumer Protection Act, 1986. It was held that the intention to provide time frame to file reply is really made to expedite the hearing of such matters and avoid unnecessary adjournments. It was noticed that no penal consequences had been prescribed if the reply is not filed in the prescribed time. The provision was held to be directory. It was observed that the provision is more by way of procedure to achieve the object of speedy disposal of the case”.



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The Committee was of the view that it is trite law that procedural law should not ordinarily be construed as mandatory, and it is always subservient to and is in aid to justice. The Honorable Supreme Court in Smt. Rani Kusum case further observed that merely, because a provision of law is couched in a negative language implying mandatory character, the same is not without exceptions. The Courts, when called upon to interpret the nature of the provision, may, keeping in view the entire context in which the provision came to be enacted, hold the same to be directory though worded in the negative form.

The Committee held that the nature of the provisions contained in Rule 8(1) and 18(6) is procedural and not a part of the substantive law which have been provided to achieve the object of speedy disposal of the cases keeping in view the principle of natural justice. The consequences of non-complying with the same are not specifically provided for in the Rules. Thus, assuming, even if the time limit prescribed under the aforesaid Rules had not been adhered to, it cannot be said that the proceedings are not maintainable.

As regard other submissions of the Respondent, the Committee held that the same were basically a reiteration of the submissions made by the Respondent during the course of hearing and thus, due consideration to the submissions and documents on record had been given by the Committee before arriving at its Findings. Findings in respect of only the charges alleged against the Respondent have been given by the Committee. Further, the request of the Respondent to recall the Order/Findings of the Disciplinary Committee is not maintainable as there is no provision under the Chartered Accountants Act 1949 and the Rules framed thereunder for review or recall of the Order/Findings of the Disciplinary Committee. Also, the issues raised by the Respondent were duly addressed during the course of hearing. Due opportunity of being heard was provided to the Respondent as it is evident that the case was listed for hearing on seven occasions and the Committee came to a logical conclusion in the case only after a careful consideration of the submissions and documents on record. The Committee also held that no fresh ground can be adduced at this stage.

5. Thus, keeping in view the facts and circumstances of the case, material on record including verbal and written representations on the Findings, the Committee is of the view that the Company was engaged in collection of money through various schemes in guise of sale/ rearing of goats/ buffalo. Even the CBI or SEBI was not satisfied with the records maintained by the Company as they also observed that the Company had not maintained records of livestock, or it were incomplete and not showing complete details of inventory at the time of their investigation. The said facts were sufficient to negate the submissions of the Respondent that proper Stock registers were maintained in respect of sale and purchase of livestock. Since during the enquiry conducted by the CBI and SEBI or even in the hearing before the Hon'ble Court of Madhya Pradesh, the Company could not produce sufficient documentary record/ registers or details of inventory to establish that these were duly maintained or there was no material deviation in maintenance of the same and the quantity of inventory as claimed by it in its financial statements or to negate that it was not engaged in collection of money in guise of business of goat/ buffalos, the benefit was not extended to the Respondent merely on the ground that his working papers were seized by the CBI. The Respondent as auditor of the Company for the financial years 2008-09 to 2013-14, was required to report instances of accepting deposits in guise of sale and rearing of livestock but he failed to report the same in his audit report. He could not establish as to how the shortcomings pointed out by the special auditor in the audit reports were not correct. He failed to point out the correct nature of expenses and other irregularities related to the sale of goat / buffalo and expenses related thereto. Moreover, despite being the tax auditor of the Company, he failed to point out the non-deduction of TDS on the payment made to the agent in the form of interest and commissions. Hence the professional misconduct on the part of the Respondent is clearly established as spelt out in the Committee's Findings



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dated 7th February 2024 which is to be read in consonance with the instant Order being passed in the case.

6. Accordingly, the Committee was of the view that ends of justice will be met if punishment is given to him in commensurate with his professional misconduct.

7. Thus, the Committee ordered that the name of CA. Siddharth Shyam Shetye (M.No.116188), Pune be removed from the Register of members for a period of 06(Six) Months and also a Fine of Rs. 1,00,000/- (Rupees One Lakh Only) be imposed upon him payable within a period of 60 days from the date of receipt of the Order.

sd/-

(MRS. RANI S. NAIR, IRS RETD.)

GOVERNMENT NOMINEE CUM PRESIDING OFFICER

sd/-

(SHRI ARUN KUMAR, IAS RETD.)
GOVERNMENT NOMINEE

sd/-

(CA. SANJAY KUMAR AGARWAL)
MEMBER

sd/-

(CA. COTHA S SRINIVAS)
MEMBER

CONFIDENTIAL

DISCIPLINARY COMMITTEE [BENCH – II (2023-2024)]
[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/262/16-DD/307/2016/DC/1310/2020

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.....Complainant

Versus

CA. Siddharth Shyam Shetye (M.No. 116188)
M/s. S.S. Shetye and Associates (FRN 124823W)
Aranyeshwar Park A Wing,
2nd Floor, Near Aranyeshwar Temple,
Sahakar Nagar 1,
Pune – 411 009

.....Respondent

MEMBERS PRESENT:

CA. Ranjeet Kumar Agarwal, Presiding Officer (Present in person)
Mrs. Rani Nair, I.R.S. (Retd.), Government Nominee (Present in person)
Shri Arun Kumar, I.A.S. (Retd.), Government Nominee (Present in person)
CA. Sanjay Kumar Agarwal, Member (Present in person)

DATE OF FINAL HEARING: 09.01.2024 (through physical/video conferencing mode)

PARTIES PRESENT:

Complainant : Not Present
Counsel for Respondent : CA. Sharad Vaze (Through Video Conferencing)
Witness : CA. Niteen Chandra Limaye (Through Video Conferencing)

BACKGROUND OF THE CASE:

1. As regard the background of the case, it is noted that the Respondent was statutory auditor of **M/s. Samruddha Jeevan Foods India Ltd** (hereinafter called as the "**Company**") for the financial years 2008-2009 to 2013-2014. The Complainant Department had carried out the assessments of the Company from AY 2007-08 to AY 2013-14 which revealed that the Company had shown itself to be engaged in sale and purchase of live stocks and allied activities of trading in milk and milk products, bio-fertilizer etc. The Complainant Department also got a special audit of the Company conducted for aforesaid periods by M/s M.P. Chitale and Co., Chartered Accountants (hereinafter referred to as the "**Special Auditor**") under Section 142(2A) of the Income Tax Act, 1961 which revealed various serious irregularities in the working of the Company.
 - 1.1 The special auditor submitted its report on 12.09.2015. Based on enquiries conducted by the various independent authorities such as SEBI, CBI and the special auditors, it became clear that the activities carried on by the Company were akin to Residuary Non-Banking Company (RNBC) in accordance with Part II-2 of Residuary Non-Banking Companies (Reserve Bank) Directions, 1987.

CHARGES IN BRIEF: -

2. The Committee noted that the charges levelled against the Respondent were as under:-
 - 2.1 At the outset, the Special Auditor reported that following records were not made available for their verification and examination:-
 - (i) Subsidiary ledgers in respect of advance received from customers under different agreements/ contracts/ sales plans.
 - (ii) Stock registers indicating party wise/ agreement wise/ contract wise movement of livestock.
 - (iii) Purchase register, sales register.
 - (iv) Subsidiary ledgers in respect of Sundry debtors.
 - (v) Computation of commission and TDS thereon.

- (vi) Title deeds in respect of immovable properties and invoices of fixed assets.
- (vii) Balance confirmation certificates in respect of all current and time deposits.

The special auditor had reported that in the absence of relevant information, the correctness of revenue recognised from live stock sale agreements / leasing contracts could not be verified. Therefore, it was alleged that where aforesaid crucial registers and accounts were not maintained by the Company, the Respondent had completed the audit without reference to such relevant information and accounts.

2.2 That the quantitative details of inventory of livestock produced for verification were at variance with that recorded at the project site.

2.3 That in order to camouflage its financial activities, the Company had willfully used misleading nomenclature in the books of accounts to avoid TDS provisions and accordingly, it was alleged that the Respondent had completed the audit for all various years overlooking these material facts. The Special Auditor found following instances where TDS deducted at branches on payment made to Sales Executives was not accounted for and was misappropriated by the Company:-

Real Nature of Transactions	Nomenclature used by the Company	Modus Operandi
Interest payments to customers on their deposits	Goat Maintenance Charges	The amounts collected by the Company under the sales schemes were in fact deposits and liable to a fixed rate of interest which was shown as advance received from customers and the same was subsequently recognized as income as and when claimed by the Company. Further, it was stated that interest payment on such deposits was shown as Goat maintenance charges to bypass the regulations of SEBI in respect of Collective Investment scheme and to avoid TDS provision for interest payment

Commission paid to agents	Spot Discount (i.e., trade discount to the Customer)	Sales executives used to collect amount from customers and deposited the net amount to the Company after deducting their commission on such deposits which was shown as spot discount given to customers, treatment of commission as spot discount from FY 2006-07 to 2012-13 has resulted in non-deduction of TDS on Rs. 67,91,66,401/-. In the FY 2011-12 and FY 2012-13, Rs. 50,46,49,800/- and Rs. 65,96,68,738/- respectively, were transferred to Cash in hand- Dhankawadi (Livestock) A/c, thus, it also resulted in non-deduction of TDS on such amount. The Complainant department has stated that the agreements for sale and rearing did not indicate any such discount being offered to the customers.
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Thus, in nutshell, it is alleged that the commission paid on collection of deposits was shown as 'Spot Discount'. There was collection of deposits vide agreement of sale of buffaloes and goats and interest paid on such deposits was shown as 'Goat Maintenance charges'. It was further stated that the Special Auditor found instances where TDS deducted at branches on payment made to the sales executives was not accounted for and was misappropriated by the Company.

2.4 That the Special Auditor also pointed out other numerous serious irregularities in the books of accounts for FY 2008-09, 2009-10 and 2010-11. Some of the irregularities were as under:-

- i. Change of head from indirect expenses to direct expenses i.e., Commission, over riding commission, consideration paid for land and office was shown as Purchase of Buffaloes and Revenue expenses and commission/Incentives were capitalized.
- ii. Sales were not supported by receipt of cash amounting to Rs. 4,73,19,000 and Rs. 7,13,01,871 in FYs 2008-09 and 2009-10 respectively, and no corroborative evidence was produced to support such cash sales.

- iii. Substantial purchases was recorded in the name of Mr. Ghanshyam Patel without any corroborative evidence during FYs 2008-09 and 2009-10.
- iv. Various fictitious sales and purchase of buffaloes were shown.
- v. Sales at Osmanabad-branch were recorded only during the period April to June 2010 and no explanation was given as to why there were no sales in the same branch from July 2010 to March 2011. Further, counter sales at Dhankwadi and Malthan-branches for the month of October and November 2010 amounted to only Rs. 500/- and Rs. 3,370/- respectively, however, in the month of September, 2010, the said sale was Rs. 1,39,65,332/- which indicates that these figures shown were not genuine.
- vi. Donation to Samurddha Jeevan Foundation of Rs. 2,59,76,450/- in FY 2011-12 was claimed as revenue expenses.
- vii. During the financial year 2011-12, maintenance charges were shown as goat purchases which were nothing but periodic interest paid to customers (investors) amounting to Rs. 1,83,44,058/-.
- viii. There were suspicious cash transactions during the financial year 2011-12 amounting to Rs. 53,09,94,346/- relating to cash in hand and no vouchers were provided to support them.
- ix. During the financial year 2011-12, the Company provided Accidental Death and Hospitalization Benefit scheme to its customers. It was observed that the cases wherein accidental death claim or hospitalization claim was given to the nominees or to the customers to whom large sales of either buffaloes or goats was made. The sales were usually on the same date and of the same quantities to these parties. Further, the quantity of the livestock sold to these parties was higher than the quantity of sales for the day for all branches of the Company. Thus, the stock movement even as per the working provided by the Company to the Complainant department did not match with the sales. The report also pointed out certain specific cases to indicate that there were fictitious sales. In this manner, it is alleged that there were fictitious sales and cash receipts of Rs. 13,85,02,250 /- during the FY 2011-12.

3. The Committee noted that the Respondent in his reply at the stage of PFO had, inter-alia, mentioned as under: -
- a. That he had conducted independent statutory audit of the Company under the Companies Act, 1956 as well as under the Income Tax Act, 1961 (hereinafter collectively referred to as the “**Statutory Audits**”) for financial years 2008-2009 to 2013-2014. He was never associated with the Company in any other capacity such as employee, manager, director etc.
 - b. That in respect of above allegations, he cannot provide any documents as the same were impounded by the CBI and are in their possession. He made an application to CBI under RTI Act, requesting for the copy of the documents relied upon by the Complainant, such as assessment orders of various years, special audit report etc. However, his application was rejected.
 - c. That during the course of audit, he had relied on various agreements which were executed on the stamp papers of Rs. 100/- each and notarized by the Public Notary for sale and rearing of livestock and also brought on record copy of some of such agreements.
 - d. That the Complainant did not enclose the copy of the relied upon documents like agreements, audit reports, bills, invoices, vouchers and such other information etc. As such, it would not possible to submit point-wise reply to the allegations of the Complainant.
 - e. That as per findings of the SEBI mentioned in the complaint, the Company was running a Collective Investment Scheme (hereinafter referred to as ‘The CIS’). The Company preferred an appeal before Hon’ble Securities Appellate Tribunal (hereinafter referred to as the “**Tribunal**”) against the order of SEBI. Accordingly, the matter is sub-judice. Further, the Tribunal passed an interim order dated 02nd December 2015 whereby the Company has been permitted to carry on its activities including those of sale and purchase of livestock except by way of launching new schemes.
 - f. That the Respondent took expert opinion on the matter of applicability of NBFC norms of the Reserve Bank of India and provisions of Section 58A of the Companies Act, 1956 and SEBI with respect to collective investment schemes to the Company wherein the expert [(legal opinion of Dr. K.R.

Chandratre, FCS, M.Com, LLB, Ph.D, opined that the provisions of Section 58A of the Companies Act, 1956 with respect to acceptance of deposits, Collective Investment Schemes Regulations of SEBI and NBFC Regulations of the Reserve Bank of India were not applicable to the business carried on by the Company.

- g. That if the Company failed to provide any crucial information to the special auditor, he, as a statutory auditor cannot be held accountable for the same.
- h. As regards the goat maintenance charges, the Respondent stated that the Company had majorly 8 to 10 different schemes for sale of livestock as well as for rearing of livestock. In case of one or two of the above schemes, the customers who opted for rearing services, the Company used to share income generated from the activity of maintenance of livestock with its owner of livestock (i.e., the customer). For this purpose, the Company used to pay certain amount fixed as per the agreements to its customers and the amount was paid quarterly, half-yearly or yearly basis. Further, the provisions of TDS as applicable on payment of interest would also be applicable in case of payment of Goat Maintenance Charges as the same would amount to payment of contract charges. Thus, there was no escape route available to the Company from applicability of TDS as such. Thus, the contention of the Complainant that nomenclature of the interest payment was changed to "Goat Maintenance Charges" to avoid TDS provisions does not stand.
- i. That as regards the spot discount, the Respondent stated that the amount payable by the customers to the Company was paid through an agent (sales executive), who used to collect the amount from the customer and deposit the same in the company. During the course of the audit, the company had provided vouchers duly signed by the customers and also provided the declarations obtained from the sales executive that the benefits of spot discounts were not enjoyed by them and the same was paid to the respective customers only. It was also upheld in survey proceedings u/s 133A as well as other proceedings of the Income Tax that provisions of TDS were not applicable on spot discounts. Since the

provisions of TDS were not applicable, there was no question of hiding them by changing nomenclature.

- j. That during the FY 2011-2012 onwards, the Company decided to stop paying spot discounts to their customers. However, necessary changes were not made in the said in-house software of the Company and thus, the management of the Company decided to make entries for transfer of cash in hand related to spot discount to Head Office account (which was named as Cash in Hand – Dhankawadi Livestock) for the reason of keeping better control and separate identification over these transactions. It was explained that the spot discount amounts generated by the in-house software but not paid to the customers were un-utilized amounts and lying at each CSC office. If the said amount was deposited in the bank accounts of the Company along with other transactions, then separate identification of the same was not possible. Thus, the said surplus cash with these branches was paid to the agents and others directly for purchase of livestock as well as other expenses. Thus, instead of making payment entry directly from respective CSC to vendors, entry was made by showing as transfer to head office and from their separate entry was made for payment to respective party.

4. The Director (Discipline) had, in his Prima-facie opinion dated 10th October 2019, noticed as under: -
 - a. That the combined contract of sales and rearing entered with Mr. Dynadev Patel on 21st March 2009 as produced by the Respondent was authorised by Ms. S.R. Motewar on behalf of the Company who had joined the Company w.e.f. 01st June 2010 i.e., on the date when he was not even appointed by the Company.
 - b. That the agreement brought on record by the Respondent were not made on stamp paper and were not notarised which creates doubts on the genuineness of these contracts. It was, accordingly, viewed that the contention of the Respondent that he had relied on the agreements which were executed on stamp paper and notarised was not tenable.
 - c. That the Complainant has also informed that the CBI had conducted a preliminary enquiry in the matter and came to a conclusion that the

Company was engaged in the business of receiving deposits under various plans and that all the deposits received by it were not for sale of cattle as was being claimed by the Company.

- d. That the Complainant has also informed that the finding of the SEBI on complaint filed with it against the Company was that the sale/ purchase and rearing of goats/ buffaloes as per the 'Agreement for Sale' and 'Rearing Contract' were done symbolically on paper and there was no physical delivery of goats/ buffaloes to the purchaser as was in the case of ordinary sale and purchase transaction.
- e. That a separate information case under file no. PPR/P/HG/168/15/DD/4/INF/2016 was initiated against the Respondent wherein he was held prima facie guilty for his gross negligence in carrying the audit of M/s. Samruddha Jeevan Multi State Multi-Purpose Co-operative Societies Ltd. which acquired the Company in the instant case.
- f. In view of the above facts and in absence of any defence or evidence produced by the Respondent, it was clear that if the Company was running the business of trading in livestock, then the sales reported by it, the inventory shown in financials vis a vis the livestock held were not at all supporting each other as there was complete absence of basic records, registers and agreements.

4.1 Accordingly, the 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, held the Respondent *prima facie* **Guilty** of Professional Misconduct falling within the meaning of Item (7) of Part-I of Second Schedule to the Chartered Accountants Act, 1949. The said item in the Schedule to the Act states as under:-

Item (7) of Part I of the Second Schedule:

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

(7) does not exercise due diligence or is grossly negligent in the conduct of his professional duties".

SUBMISSIONS OF THE RESPONDENT ON THE PRIMA FACIE OPINION:-

5. The Respondent besides reiterating his earlier submissions made at PFO stage, vide his further written submissions dated 25th September 2020, inter-alia, made the following submissions as under: -
- a. That special audit report relied upon by the Complainant was not provided along with the complaint and was first made available only after forming the prima facie opinion thereby denying the Respondent a fair opportunity of being heard which amounts to denial of natural justice.
 - b. That the Company preferred appeal with CIT(A) against assessment order of the Complainant relying on the audit reports of the special auditors, and also provided a detailed reply dated 06th November 2015 denying each and every observation of the special auditors. In the same reply, the Company provided the dates on which various documents and information was submitted to the Complainant as well as special auditors which the Special Auditor claimed not to have received.
 - c. That the special audit report also covers period of previous auditors (FY 2006-07 and FY 2007-08) who were the auditors of the Company since its inception (FY 2002-03 to FY 2007-08), but the Complainant chose to file complaint against him only.
 - d. That the Respondent stated that he had categorically specified in all his audit reports that the responsibility of preparation of financial statement of the Company was that of the management of the Company.
 - e. That he relied upon the books maintained in "Tally" software. The Company had an inhouse software programme which was used by Customer service centres (CSC) and branches. This inhouse software (backend software) was not relied on by him at the time of audit unless the same was authenticated by the management.
 - f. That as per the assessment of the Company for AY 2009-10 u/s 143(3) of the Income Tax Act, 1961 completed on 29th December 2011, the nature of business of the Company was considered as "*Trading in Livestock, milk, other allied products and rearing and breeding of livestock*". While passing the assessment orders, the Complainant himself accepted the sales and

profit disclosed in the return of Income. There was no evidence brought on record by the Complainant to claim that the business of the Company was that of acceptance of deposits or akin to RNBC.

- g.** That the Respondent stated that he was not an expert in the various laws related to the RBI and SEBI and thus, he relied upon the opinions of the experts in this regard. He had taken opinion of two experts who opined that the provisions related to RBNC or Section 58A of the Companies Act, 1956 were not applicable to the Company.
- h.** That the Respondent also stated that he had never hidden fact that the Company was running various schemes and the sale and rearing of livestock was apportioned in certain percentages as decided by the Company.
- i.** That the Respondent stated that from FY 2008-09 to FY 2012-13, there was no conclusion established as to whether the Company was carrying on CIS activities. The SEBI order was passed for the first time in 2013-14 on 31st October 2023 and he made disclosure of the same in his audit report. Thus, there was no reason to submit the same in the audit reports of earlier years. The Company preferred appeal against SEBI order to Securities Appellate Tribunal which in its interim order dated 02.12.2015 permitted the company to carry on activities including those of sale and purchase of livestock except by way of launching new schemes.
- j.** Regarding the non-availability of certain documents for verification, the Respondent stated that he was never contacted by the special auditors and in case the management did not provide the documents for verification then the Respondent cannot be held responsible for that.
- k.** That the Respondent also referred to the reply of the Company wherein it was stated that the customer of the new plan used to become the first level agent (Sales Executives) of the Company, and spot discount were paid to these Customers/ Sales Executives. The Customers and Sales Executives were the same person and not two different individuals.

BRIEF FACTS OF THE PROCEEDINGS:

6. The Committee noted that the instant case was fixed for hearing on following dates:

S.No.	Date	Status of Hearing
1.	08 th September 2020	Adjourned on request of Respondent
2.	12 th November 2021	Adjourned on request of Respondent
3.	07 th November 2022	Adjourned on request of Respondent
4.	06 th April 2023	Part heard and adjourned
5.	23 rd June 2023	Part heard and adjourned
6.	25 th August 2023	Part heard and adjourned
7.	09 th January 2024	Concluded and Judgment Reserved
8.	23 rd January 2024	Decision taken in the matter

7. On the day of the first hearing held on 08th September 2020, the Respondent along with his Counsel, CA. Sharad Vaze was present. The Respondent requested for adjournment of hearing. The Committee looking into the same decided to adjourn the hearing in the above matter at the request of the Respondent.
8. On the day of second hearing held on 12th November 2021, the Committee noted that the Respondent vide e-mail dated 08th November 2021 had sought an adjournment in the matter. The Committee also noted that the Respondent in his submissions dated 06th November 2021 has reiterated his earlier submissions regarding non-availability of documents and working papers and requested for calling the Complainant (Mr. A.K. Mahalla) and the special auditor as witnesses. The Committee noted that the Complainant was neither present nor had informed about his absence from the hearing. The Committee, looking into the request of the Respondent and looking into the absence of the Complainant, decided to adjourn the matter to a later date.
9. On the day of third hearing held on 07th November 2022, the Committee noted that the Complainant was not present. The Counsel for the Respondent sought an adjournment in the matter on the ground that he was not prepared for submissions before the Committee. The Committee, looking into the same

vis-à-vis absence of the Complainant, decided to adjourn the hearing in the matter.

- 10.** On the day of fourth hearing held on 06th April 2023, the Committee noted that the Respondent along with his Counsel CA. Sharad Vaze was present through Video Conferencing and the Complainant was not present. The Committee also noted that the Respondent submitted a brief of his submissions. Thereafter, the Respondent was administered on Oath. Thereafter, the Committee enquired from the Respondent as to whether he was aware of the charges. On the same, the Respondent replied in the affirmative and pleaded Not Guilty to the charges levelled against him. Thereafter, looking into the fact that this was the first hearing, the Committee decided to adjourn the hearing to a future date to provide one more opportunity to the Complainant, the hearing in the matter was partly heard and adjourned.
- 11.** On the day of fifth hearing held on 23rd June 2023, the Committee noted that neither the Complainant was present, nor any prior intimation was received from him in this regard despite the notice of hearing was duly served upon him. The Committee noted that the Respondent along with his Counsel, CA. Sharad Vaze was present through Video Conferencing. The Respondent's Counsel requested the Committee to call the special auditor and the Complainant (Sh. A.K. Mahala) as witnesses in the hearing. However, looking into the merits of the case and the reasoning for calling the witnesses by the Respondent/ his Counsel, the said request of the Respondent was denied by the Committee.
- 11.1** Thereafter, the Committee asked the Respondent's Counsel to make his submissions. The Respondent's Counsel in his defence, inter-alia, stated as under: -

 - a.** That the period covered under the special audit was 5 years wherein the audit of 3 years was done by another firm, but the department chose to file case for the 2 years in which the Respondent was the Auditor. Therefore, he was insisting for cross examination of the Complainant.

- b. That the special auditor never sought the help of the Respondent, and the Complainant simply copied and pasted the special audit report in his complaint to ICAI. The copy of the special audit report was never provided to the Respondent and the reply in absence of the same could not be submitted. Accordingly, the Respondent stated that he wanted to cross examine the special auditor as well.
- c. That the directors of the Company, who were put behind the bars on the basis of CBI investigation ordered by MP High Court in a writ petition against misappropriation of his money, have completed their maximum punishment of 7 years.
- d. That the case wherein the Respondent was earlier held guilty was a different case and was only on non-disclosure. The Respondent appealed against that decision and the Appellate Authority confirmed the punishment about a year back or so and one year name removal was confirmed. The Respondent was now a member again.
- e. That the Respondent was not charge-sheeted in the CBI case and he was told by the CBI that the working papers would be returned only when the case is decided.

11.2 Thereafter, the Committee directed the Respondent/ his Counsel to submit his reply on the specific issues raised in the special audit report along with any further submissions, if any, in the next 21 days. With this, the hearing in the above matter was partly heard and adjourned.

12. On the day of next hearing held on 25th August 2023, the Committee noted that the Respondent along with his Counsel, CA. Sharad Vaze was present through Video Conferencing and the Complainant was not present. The Committee noted that in pursuant to the directions given by it, the Respondent submitted a summary of submissions made by him to date. Thereafter, the Committee asked the Respondent to make his submissions.

12.1 The Counsel for the Respondent in his submissions, inter-alia, stated as under:

- a. That no action was taken against the Respondent by CBI. A search was conducted by the CBI wherein they impounded 19 box files containing audit working papers and those papers were still with the CBI.

- b. That they requested the CBI many times, but as of now, nothing has been provided.
- c. That the SEBI has only charged the Company in collective investment scheme and there was no charge by the SEBI with respect to collection of deposits. SEBI took action against the Company and stopped the Company from doing collection of money from public. The Company appealed against the order of the SEBI to the Securities Appellate Tribunal (SAT) which permitted the Company to carry on its business. Meanwhile, the Directors of the Company were arrested and later on, the case in SAT was decided ex-parte in favour of SEBI.
- d. That the collective investment scheme as well as the issue of going concern was highlighted in the audit report for the FY 2013-14. There was an expert opinion of Mr. Chandratrey, and Mr. Mahesh, the past Presidents of ICSI stating that the SEBI law was not applicable on the Company. Prior to SEBI order, there was no agency and there was no investigation that the Company was doing the business of Collective Investment Scheme. In fact, all agencies were saying that the company was trading into livestock business. Income Tax Department, in its assessment, held that the Company was in the business of livestock trading business and nowhere IT Department has said that it was a collective investment scheme.
- e. That when the Respondent was auditing, all the books of accounts and documents were available.

12.2 On consideration of the submissions and responses, the Committee gave directions to the Respondent to submit the following within next 30 days:-

- a. To procure the documents from the CBI which the Respondent requires for his case.
- b. Any documentary evidence such as Order sheet of Income Tax regarding his appearance as authorized representative of Company with respect to AY 2008-09.
- c. Copy of SEBI order.
- d. Further documents/ submissions to substantiate his defence, to the extent not submitted earlier.

The Committee also directed the office to send a mail/communication to the special auditor asking him to submit his response on the submissions of the Respondent in the matter and to appear before this bench in the next hearing. With this, the hearing in the matter was partly heard and adjourned.

- 13.** On the day of final hearing held on 09th January 2024, the Committee noted that the Complainant was not present despite due delivery of notice upon him and the Respondent's Counsel, CA. Sharad Vaze appeared through video conferencing. The Committee further noted that pursuant to its direction given in the previous hearing, the special auditor appeared before the Bench and he was administered oath. Thereafter the Committee noted that the special auditor in his submissions dated 08th January 2024, inter- alia, stated as under: -
- a.** That based on the evidence collected during the course of the special audit; they came to a conclusion that the claimed activity of sale/ purchase/ rearing of Goats/ Buffalos" was only a smokescreen. The real or dominant activity was that of collecting deposits (borrowing) under various Sale Plans devised by the Company through various agents/ executives for a guaranteed return(interest). In the books of accounts in Tally software for FY 2007-08, the various amounts received from the customers against different Sale Plans were pre-fixed with FD implying Fixed Deposits (i.e., Onetime payment claimed by the Company as single instalment plan or SIP) and RD implying Recurring Deposits (i.e. Instalment Basis Plan). Like in case of FD with the banks, if the returns (interest) were payable at monthly/ quarterly/ half yearly/ annual rests, the same was recognised in the books of the Company as Goat/ Buffalo Maintenance Charges at the stated frequency. This was referred to as pension plan as per the terminology used by the Company. At maturity, the principal amount repaid was recognised as purchase of Goat/ Buffalo. On the other hand, if the returns were accumulated and were payable at maturity i.e., compounded then the amount paid at maturity was recognised as purchase of Goat/ Buffalo. The settlement at maturity has always been by payment in cash/ bank and never by delivery of the allegedly raised/

reared Goat/ Buffalo. The Company had always shown symbolic delivery of Goat/ Buffalo at maturity and the same Goat/ Buffalo was shown to have been purchased from the customer. Resultantly, the customer was paid the purchase price reflecting the guaranteed return promised at inception.

- b.** That the trading and rearing of Goat/ Buffalo was only a mask behind which the real activity of accepting deposit (borrowing) for a guaranteed return was carried out. The sale agreement was drafted in a manner that the individual identity of the livestock purchased by the customer was always lost and the customer becomes a co-owner with others even when he has paid the entire consideration in lump sum. Similarly, the rearing agreement reserves the Company the right to sell the livestock without assigning any reasons or reference to the customer. In the end, the only recourse left for the customer was to claim the maturity proceeds, reflecting the agreed-upon return. Whenever, a Sale Agreement whether instalment sale agreement (ISA) or lump sum sale agreement (LSA) was executed, there was always a rearing agreement with the same customer. The garb of rearing was necessary to define the tenure of the deposit. Not a single case was found in the course of audit where the customer has entered into a sale agreement but not a rearing agreement. Similarly, not a single rearing agreement was found where the customer had not purchased the livestock from the Company. The rearing agreement was always executed after a gap of one day to claim that the two agreements were not a composite arrangement. This was done essentially to defeat the SEBI Order.
- c.** That the Company had always resorted to presenting the commission paid to the third-party agents/ executives at introduction of the customer to the Company (i.e., at the first point of interaction with the customers) as spot discount. This treatment was improper. Discount denotes an incentive offered to the purchaser from the cost/ investment incurred/made by him. On the other hand, commission was paid as an incentive to a third party who brings/ induces the purchaser to the transaction with the seller. The

recipient of the commission was not a party to the transaction of sale-purchase. The treatment of this discount across different years was as under:-

- i) When the Spot Discount was paid at the branch, no separate payment voucher was prepared in the accounting package. However, agreements and advice, gathered from branches clearly indicate that the Spot Discount was paid to the Sales Executive. Further, on page 19 of the brochure of the Company in Marathi titled as "Samruddhi Guide", working of earning of a Sales Executive is demonstrated. It was evident from this calculation that the spot discount was earned by the Sales Executive, who was not the customer making the investment. The marketing brochures showing the different sales plans, nowhere mention that the any discount would be available to the customers. If a discount was in fact offered to the customers, the marketing manual would have indicated that the effective return on investment to the customer was much higher.
 - ii) That the marketing brochures indicate the "Accidental Death compensation" as an additional benefit available to the customer. The brochures made available indicate that the incentive of spot discount was paid to the Sales Executive who was at the 1st level of the marketing matrix of 12 levels. The return from the investment explained to the customer/sales executive does not reduce the spot discount from the investment made by the customer that would enhance his return on the capital. In substance, there was no merit in the submission of the Respondent that Spot Discount was paid to the customers and not the sales executives.
- d. That the claim that the books were maintained only in Tally was not acceptable because first of all, there was a lot of reference in tally of the vouchers generated from the backend software. They were really using some other software which was at the backend.

13.1 After considering all the submissions made by the special auditor, the Committee noted that the special auditor stood by his findings as mentioned

in the special audit report. When the office informed the Committee that the Respondent was debarred for one year from membership earlier also in a case related to same group company, the Respondent's Counsel replied in affirmative to the same.

13.2 The Committee noted that the Respondent's Counsel sought adjournment on the grounds that he wanted to cross-examine the special auditor in the presence of Respondent, however, the said request was denied by the Committee stating that the said matter was already listed for hearing for six or seven times, hence, it cannot be adjourned further. However, the Respondent's Counsel was informed that he can submit any further points he wants to submit within next 7 days in consultation with Respondent. The Committee also directed the office to send the copy of documents submitted by the special auditor to the Respondent.

13.3 After detailed deliberations, and on consideration of the facts of the case, various documents on record as well as verbal and written submissions made by the Counsel for the Respondent before it, the Committee concluded the hearing in the instant case. However, the Committee kept its judgment reserved in the matter.

14. On the day of the meeting held on 23.01.2024, when the matter was taken up for passing judgment, the Committee noted that the Respondent had submitted his submissions dated 19.01.2024. On perusal of the same, the Committee noted that apart from reiterating his earlier submissions, the Respondent had, inter-alia, submitted as under:-

a. That the Respondent was denied natural justice as he was directed to file his reply without providing documents at the prima facie stage. Further, non-communication of the appearance of the witness and not providing effective opportunity to cross examine him was another occasion when the natural justice was denied.

b. That during the hearing Dt. 09.01.2024, his counsel for the first time understood that the witness had submitted certain documents and information along with his letter. However, these documents were provided

to him in part on 09.01.2024 after conclusion of the hearing and balance documents on 15.01.2024. As per the directions of the Hon'ble Disciplinary Committee, the reply to these documents was to be made in 4 days. Thus, there was no opportunity for him to apply his mind on these documents or seek views of his counsel.

- c. That despite all possible efforts made by the Respondent, he was not able to get the copies of the documents impounded by the CBI and hence, making him handicapped in giving various explanations.
- d. That the Respondent stated that the Company was incorporated in the year 2002 and was carrying on the business of trading and rearing of livestock since then. There was no change in the nature of business as well as the manner in which the business carried on by the Company since 2002. The statutory auditors of the Company for FY 2002-2003 to FY 2007-2008 were different Chartered Accountants (CA) Firm (previous auditors). The Respondent conducted audits for FY 2008-09 to FY 2012-13. However, the Complainant chose to file case only against the Respondent for the reasons best known to them.
- e. That the only evidence brought in by the Complainant was the copy of the special audit report at rejoinder stage which contains mere suspicions, and no other document was provided. The Assessment orders passed by the Complainant shows that he did not take cognizance of the special audit report for completing the assessments. Hence, the Complainant replied upon the authenticity of the special audit report without verifying it.
- f. That he as a special auditor had never prepared his audit report as a complaint against the Respondent. The queries raised in the special audit were required to be answered by the Company, and the Company filed its reply with complaint on 06.11.2015 denying all the allegations against it.
- g. None of the investigating authorities, including CBI/ Police/ SEBI/ ED etc. have found the personal involvement of the Respondent with the Company or its activities. The CBI, Ranchi issued a letter of appreciation in his name for his help in their investigation of the matters related to the Company.

This shows that he has time and again co-operated and supported all the investigating agencies in their investigations related to the Company.

- 14.1** The Committee, after considering the submissions of the Respondent and material on record, passed its judgement in the extant case.

FINDINGS OF THE COMMITTEE

- 15.** The Committee noted that the Respondent was the statutory auditor of the Company from the FY 2008-09 to 2013-14 under the Companies Act, 1956 and Income Tax Act, 1961 as well. In respect of the money collected by the Company from its client, discount given to them and on other issues, the investigation were conducted by the CBI and SEBI. The Complainant Department had also carried out the assessment of the Company for the A.Y. 2007-08 to 2013-14. The Complainant Department had also got special audit of the Company conducted by the special auditor, M/s. M.P. Chitale and Co. under Section 142(2A) of the Income Tax Act, 1961 for the financial years 2007-08 to 2012-13.
- 16.** The Committee noted that in **First and Second charges**, it was alleged that various statutory registers and accounts were not maintained by the Company but the Respondent completed the audit without giving any reference to the same. Further, the quantitative details of inventory of live stocks produced for verification were at variance with that recorded at the project site. Against these charges, the Respondent stated that his working papers were seized by the CBI. When he requested the CBI vide letters 28.08.2023 and 20.09.2023 to provide the documents / working papers, the CBI vide letter dated 26.09.2023 stated that they would not be able to provide these documents. He also stated that even the Income Tax Department had also refused to provide the documents to him. However, the successor officer of the Complainant Department allowed inspection of documents and provided sample copies of the evidences submitted by the Company. As per the Respondent, the said documents / registers contradicts the findings of the

special auditor that no registers / documents were not maintained by the Company.

16.1 In respect of the above charges, the Committee, on perusal of the special auditor report, noticed that the special auditor had mentioned that the following records were not made available for their verification and examination:-

- (i) Subsidiary ledgers in respect of advance received from customers under different agreements/ contracts/ sales plans.
- (ii) Stock registers indicating party wise/ agreement wise/ contract wise movement of livestock,
- (iii) Purchase register, sales register,
- (iv) Subsidiary ledgers in respect of Sundry debtors,
- (v) Computation of commission and TDS thereon.
- (vi) Title deeds in respect of immovable properties and invoices of fixed assets.
- (vii) Balance confirmation certificates in respect of all current and time deposits.

16.2 In respect of the above charges, it is noted that though the Respondent stated that the facts as mentioned in the assessment order that the Company had submitted details/ copy of sample record, yet it is observed that the same was not sufficient to establish that the Company had, in fact, maintained the aforementioned registers and record. Moreover, the Respondent failed to produce a list of documents which were seized from the office of the Company to show that the registers and records with the aforementioned names were in fact seized and accordingly, it had been maintained by the Company. In addition to above, it is observed that the Respondent brought on record copy of some sample bills and agreement but the same were not enough to help the Respondent to establish that the aforementioned documents were in fact were maintained by the Company.

16.3 It is also relevant to mention here that the SEBI and the CBI had initiated inquiry into the affairs of the Company as the Company was accepting public deposits in guise of sale and rearing of goats / buffalos. The SEBI in its order clearly mentioned that the scheme or arrangement of the Company in taking monies from the public investors, executing two agreements with them, promising more animals after the end of the rearing contract and giving an option of monetary returns on sale of such animals would definitely fall within the scope and ambit of section 11AA of the SEBI Act as held by the Hon'ble Supreme Court. Moreover, the claim of the Respondent that the Company was engaged only in business of goat/ buffalo sales and rearing only and was not accepting public deposits comes under question with the following observations of the SEBI as mentioned in its order dated 02.09.2015:-

*“From the scheme or arrangement which the Company has with its customers, it is evident that the Company solicits investments from customers in its scheme of purchase and rearing of goats and buffaloes. The investor has the option to either subscribe to the lumpsum payment plan or the instalment payment plans of the Company. Under both the plans, the rearing contract is a necessary addition and the customer has to execute both the agreement to sell and the rearing contract. After execution of the agreements, the customer pays the consideration (i.e. his investment in the schemes) to the Company. **Even if the customer has opted for a lumpsum payment plan, he does not readily get any animal.** According to the Company, as per **Plan no. 5** (taken as an example), a part of the customer's investment of Rs.10,000/- would be towards the purported purchase of 2 goats and the remaining payment was towards rearing fees. At the end of the rearing period of 4 years, the customer is entitled to get 4 goats of 87 kgs. **The Company gets complete right over the animals purportedly given for rearing.**”*

It is also observed that the SEBI in its interim order dated 31st October 2013 had observed that there was no evidence of actual delivery of a farming animal. In all the cases, the customer has been paid the “Expected sum payable on expiry of terms” as mentioned in the certificate. The same is therefore a return and is therefore more of an investment contract than a purchase contract of goat/ buffalo.

16.4 Further, the Hon'ble High Court of Madhya Pradesh while ordering enquiry into the affairs of the Company had observed the findings of the CBI into the affairs of the Company as under:-

“(i) It is prima facie indicated that the companies are receiving deposits from the customers in the name of one scheme or the other. The companies are deposits from the unwary public with the allure and promise of huge interest, more than Government sponsored schemes. But to avoid being covered under the definitions of 'deposit' as in RBI Act I Section 45 I(bb)] and Madhya Pradesh Nikshepakon Ke Hiton Ka Sanrakshan Adhiniyam 2000I section 2(b)], the companies are issuing certificates showing allotment of lands, plants or livestock which are actually not being honoured by him”

“g. The companies do not possess sufficient land, livestock or plants required for allotment to the customers against the certificates/ allotment letters issued.”

*“(ix) In the light of the above observation the livestock availability with the company was examined. It is seen that against a total of 6,48,406 customers, all over India, the company has a live-stock of only 16,876. **This live-stock is far short of the number of live-stock required to be with the company even against its already existing rearing contracts** (with 35,105 customers). The number of live-stock should in fact be more than the number of rearing contracts since there would be some cattle against the sale agreements too. Thus it indicates that the company is not purchasing cattle against every deposit made by the investors”.*

*“(xiii) The scrutiny of the certificate provided by the company has revealed that the company mentions the investment as sale agreement/goat rearing contract, against the investment made by the customer but the details/numbers of the cattle against this agreement are not mentioned. Further, estimated realizable/ maturity value is mentioned at the end of the agreement period. **This also indicates that the company is engaged in the business of receiving deposits under various plans and that all the deposits received by it are not for sale of cattle as is being claimed by the company”.***

16.5 The Committee also observed that during the hearing, the special auditor had submitted that **the trading and rearing of Goat/Buffalo was only a mask behind which the real activity of accepting deposit (borrowing) for a**

guaranteed return was carried out. The sale agreement was drafted in a manner that the individual identity of the livestock purchased by the customer was always lost and the customer become a co-owner with others even when he has paid the entire consideration in lump sum. **Similarly, the rearing agreement reserves the Company the right to sell the livestock without assigning any reasons or reference to the customer.** In the end, the only recourse left for the customer was to claim the maturity proceeds, reflecting the agreed-upon return. Whenever a Sale Agreement (whether instalment sale agreement (ISA) or lumpsum sale agreement (LSA) was executed, there was always a rearing agreement with the same customer. The garb of rearing was necessary to define the tenure of the deposit. ***Not a single case was found in the course of audit where the customer had entered into a sale agreement but not a rearing agreement. Similarly, not a single rearing agreement was found where the customer had not purchased the livestock from the Company.*** The rearing agreement was always executed after a gap of one day to claim that the two agreements were not a composite arrangement. This was done essentially to defeat the SEBI Order.

- 16.6** From the above, it is clear that the Company was engaged in collection of money through various schemes in guise of sale/ rearing of goats/ buffalo. It is also observed that even the CBI or SEBI was not satisfied with the records maintained by the Company as they also observed that the Company had not maintained records of lives stocks or it were incomplete and not showing complete details of inventory at the time of their investigation. The said facts were sufficient to negate the submissions of the Respondent that the aforementioned registers and records were maintained by the Company or proper stocks registers were maintained in respect of sale and purchase of live stocks. Since during the enquiry conducted by the CBI and SEBI or even in the hearing before the Hon'ble Court of Madhya Pradesh, the Company could not produce sufficient documentary record/ registers or details of inventory to establish that these were duly maintained or there was no material deviation in maintenance of the same and the quantity of inventory as claimed by it in its financial statements or to negate that it was not engaged in collection of money in guise of business of goat/ buffalos, the benefit merely

on the ground that the respondent's working papers were seized by the CBI cannot be extended. Accordingly, the Committee is of the view that the Respondent was grossly negligent in conduct of his duties while auditing the books of accounts and consequently, failed to qualify his audit report in respect of irregularities or discrepancies pointed out by the special auditor. Thus, the Respondent is held guilty of professional misconduct falling within the meaning of Item (7) of Part I of Second Schedule to the Chartered Accountants Act, 1949.

17. The Committee noted that in the **next charge**, it was alleged that the Company had willfully used misleading nomenclature in the books of accounts to avoid TDS provisions and completed the audit of various years by overlooking these material fact. In respect of the above charge, the Complainant pointed out two irregularities which are as under:-

- i) As per the Complainant, the amounts collected by the Company under sales schemes were in fact deposits and the payment of interest on the same was liable to TDS. For interest payments to customers on their deposits, nomenclature "Goat Maintenance Charges" was used by the Company.
- ii) For commissions paid to agents, nomenclature "Spot Discount" had been used by the Company to avoid TDS on the same.

17.1 In respect of **first leg of the allegation** that the Company was accepting deposits under the various sales schemes, the Committee perused the documents and submissions on record and after perusal of the same, the following were observed with regard to the business being run by the Company:-

17.1.1 The Committee noted that as per Memorandum of Association, the main object of the Company was to produce, breed, purchase, sell, transfer all type of livestock/ farm cattle, to establish, organize, promote and run goat/ buffalo farm at various places in India, to sell and purchase any and all types and kinds of livestock including goats on outright, cash and installment basis. The

Company also carries on the business of rearing goats, sheep farming etc. as incidental or ancillary objects to the main objects.

17.1.2 The Committee noted that the Company offers various schemes under which money was collected from the public. The Company had accepted monies from the public towards its scheme under two categories:

- i. Receipts against the "Sale of Goats/ Buffaloes" as per the "Application Form" and "Agreement for Sale" executed between the Company and the "Purchasers"/investors.
- ii. Receipts against the "Rearing/ breeding of Goats/ Buffaloes" as per the "Goat/Buffaloes Rearing Contract" executed between the Company and the "Purchasers"/ investors.

17.1.3 As regard the operations/ sales transactions carried out by the Company, on perusal of audit report and submissions made by the special auditor, the following were observed:-

- a. The Customer files a letter of intent (LOI) for purchase of farming animals in a pre-printed form addressed to the Company indicating sale plan number, number of livestock, total weight of livestock, total sales price, first installment of sale price being paid, number of installments in balance, total amount to be paid in installment, amount per installment.
- b. The Customer of the Company enters into two types of plans i.e., either installment sale agreement (ISA) or lumpsum sale agreement (LSA) and as per the agreement, the Customer is a co-owner along with several other owners.
- c. On payment of first installment, the Customer is issued a "First Installment receipt cum acceptance letter" and "Certificate".
- d. On payments of all installments under Installment Sale Agreement or at the time of single installment Sales Agreement, the Company prepares a delivery challan and obtains the acknowledgement of the customer in token of having received the farming animal, and sale invoice is also issued to the customer.

- e. The Customer gives a letter of intent for entering into rearing contract with the Company, and the Company gives acceptance of rearing contract to the Customer. The Company enters into rearing contract with the customer as Co-owner.
- f. On maturity, the Company makes payment/ delivery to the customer as agreed in the Rearing Contract.

17.1.4 As regard the actual transactions conducted by the Company, on perusal of the report and submissions of the special auditor, the Committee noted as under:-

- i. That the sale agreement and the rearing contract though appears to be legal distinct transactions but were inseparable.
- ii. That the certificates issued by the Company do not mention the underlying farming animals but mention the consideration paid/ payable to the customer, size of investment, type of investment, frequency of payment of investment, lock in period and return. Thus, what was termed as Goat/ Buffalo maintenance charges was nothing but interest on investment. It was also noted that no TDS was deducted on such payments as required in terms of Sec 194A of the Income Tax Act, 1961.
- iii. That the signature of the same customer on the delivery challan and sales/rearing agreement do not match with each other at all and there was no evidence of movement of farming animals from the Company's site to the location of the customer.
- iv. There was no gap between the acceptance of delivery by the Customer from the Company i.e., as per the sale agreement and acceptance of delivery by the Company from the Customer for rearing i.e., as per the rearing agreement. This proves that, in fact there was no delivery by customer and nor any acceptance by the Company. The mutual obligations were settled symbolically on paper. Further, none of the rearing agreements shown to the special auditor was notarized.
- v. The special auditor did not come across a single instance where the obligation of the Company was settled by delivery of a farming animal. In all the cases, the customer had been paid the "Expected sum payable on expiry of terms" as mentioned in the certificate.

17.2 The Committee also perused the observations made by the SEBI into the affairs of the Company. In this regard, the Committee on perusal of the interim order dated 31.10.2013 passed by the SEBI, observed that the SEBI had gone into the issue as to whether the amount collected by the Company under various schemes were **Collective investment scheme (CIS)** under Section 11AA of the SEBI Act, 1992. While examining the said issue keeping in view the provisions of the aforesaid section, the SEBI had observed as under:-

S.No.	Conditions as mentioned in Section 11AA of the SEBI for being a CIS	Observations as per SEBI's Order
1.	Contributions, or payments made by the investors, by whatever name called, are pooled and utilized solely for the purposes of the scheme or arrangement	It is an admitted fact that the Company was accepting payments (lump sum or in instalments) from customers in respect of its Schemes, i.e., the sale and rearing of goats and buffaloes. The Company entered into Agreements for sale and the rearing Contract with its customers and that each of such agreements prescribes payments as mentioned therein. It was noted that the Company solicited and continues to solicit investments from customers with a promise of returns in the guise of operating a scheme dealing with goats and buffaloes. Therefore, the first condition was satisfied.
2.	Contributions or payments are made to such scheme or arrangement by the investors with a view to receive profits, income, produce or property, whether movable or immovable from such scheme or arrangement.	That there was no evidence of actual delivery of a farming animal. In all the cases, the customer was paid the "Expected sum payable on expiry of terms" as mentioned in the certificate. The same was therefore a return and was therefore more of an investment contract than a purchase contract of goat/ buffalo. Therefore, the second condition is satisfied.

3.	The property, contribution or investment forming part of scheme or arrangement, whether identifiable or not, is managed on behalf of the investors	It can be concluded that the property, contribution or investment forming part of scheme or arrangement, whether identifiable or not, is managed on behalf of the investors and the investors do not have day-to-day control over the management and operation of the scheme or arrangement. Thus, the scheme of the Company satisfies the third and fourth conditions under section 11AA (2) of the SEBI Act also.
4.	The investors do not have day-to-day control over the management and operation of the scheme or arrangement.	

17.3 The Committee further noted that the aforesaid findings of the interim order of SEBI were reaffirmed by SEBI in its order dated 02nd September 2015. Hence, it appears that the Company was accepting money in guise of sale and rearing of livestock and there was no documentary evidence regarding actual delivery of livestock. Hence, considering the above facts and as mentioned in the preceding paragraphs related to first and second allegations, it can be stated that the Company was indulged in collecting money in the guise of sale/ rearing of goat and buffalo which appears to be in nature of the deposits. Further, the contentions of the Respondent that Securities Appellate Tribunal (SAT) in its interim order dated 02.12.2015 had permitted the Company to carry on its activities including those of sale and purchase of livestock except by way of launching new schemes, was not acceptable as it was done by the SEBI only to protect the interest of the existing customer with directions to the directors of the Company to refund the collected money to the purchasers. The Committee also noted that the Company was neither having any license from the SEBI for running collective investment scheme nor it was registered with RBI as an NBFC. Moreover, the gravity of the fraudulent intent of the directors in collecting money under the guise of sale and rearing of livestock is reflected by the fact that the directors have already served their maximum punishment of 7 years in the alleged matter of accepting and misappropriating funds (as admitted by the Counsel for the Respondent). Therefore, the Respondent who was auditor of the Company for the financial years 2008-09 to 2013-14, was required to report such instances

of accepting deposits in guise of sale and rearing of livestock but he failed to report the same in his audit report. Accordingly, the Respondent is **guilty** of professional misconduct falling within the meaning of Item (7) of Part I of Second Schedule to the Chartered Accountants Act, 1949.

18. As regard the **next leg of allegation** that the Company had willfully used the misleading nomenclature in the books of accounts to avoid TDS and the allegation pertaining to irregularities in the books of accounts, the Committee observed that since the Company was involved in accepting deposits and paying interest in form of maintenance charges in garb of sale/ rearing of livestock, it cannot be denied that the Company was not required to deduct TDS on Goat Maintenance charges and spot discount which were in the nature of interest payment and commissions respectively. Further, on perusal of special auditor report, the Committee noted the observations of the special auditor as under:-

- i) That the Commission paid to the Sales Executive (IMEs) was designated as a spot discount, seemingly to circumvent applicable TDS provisions; however, the customer never benefited from such a discount.
- ii) That, the Company in order to increase its sales, appointed the Commission agents at various locations which were known as "Independent Marketing Executives" or **IMEs**. The Commission was payable to the IMEs according to their grades, ranking and years of service provided to the Company. The compensation paid to the first level of IME i.e., Sales Executive is termed as Spot Discount though in fact it is a commission.
- iii) That based on the entries in the books of accounts, agreement with the customers, the commission structure provided to the Special Auditors, Commission structure given to SEBI, the Income Tax Department and the brochures circulated by the Company, it was abundantly clear that, what is shown as Spot Discount was Commission paid to the IMEs.
- iv) That though it was termed as Spot Discount for the reason that it was paid at the time of depositing collection from customer, it was not given to the customers but paid to the sales executive who was a third party

in the transaction. Hence, the recipient and the beneficiary of the Spot Commission were the sales executive and not the customer. If the spot discount was really paid to the customers, in such case, the customers who had paid the amount by cheques would have deducted the amount from the amount payable to the Company and accordingly, paid the net amount only.

- v) That as per the IME Rule book in case of Instalment basis plan (IBP), the first stage executive gets between 20% to 25% commission though termed as Spot Discount. In the information furnished to the Department and the Special Auditor, the same was shown as 2% to 5%. The quantum of commission offered together with other prizes/ incentives raised doubts about the genuineness of the underlying transaction claimed.
- vi) That sale and rearing agreements do not indicate any discount being offered to the Customer. There was no evidence of the customer having received any spot discount.

18.1 The Committee further noted that if the discount was intended to be given at the time of sale, it should have been granted to the customer rather than to the agent. Hence, the amount paid to the agent appears to be in the nature of commissions. Further, the Respondent's submissions that CIT (A) had termed the payment made to agent was not commissions, was not tenable in view of the fact that ITAT vide its order dated 14.08.2014 (downloaded from <https://itat.gov.in/>) set aside the said order of the CIT(A) in case of both the assessment years 2008-09 and 2009-10.

18.2 The Committee noted that the special auditor was called as witness by the Committee as the entire complaint was made based on the special audit report of the Company conducted by M/s M.P. Chitale and Co., Chartered Accountants. The Committee noted various shortcomings in the quality of the audit report prepared by the Respondent as pointed out in the special audit report. The Committee, with regards to the submissions made by the Respondent/ his Counsel on the same, noted that they could not establish that as to how the shortcomings pointed out by the special auditor in the audit

reports were not correct. The Committee further noted the Respondent/ his Counsel failed to justify his stand regarding due diligence of the Respondent in the instant matter.

18.3 Hence, considering the above, the Committee is of the view that the Respondent as an auditor failed to point out the correct nature of expenses and other irregularities related to the sale of goat / buffalo and expenses related thereto. Moreover, despite being the tax auditor of the Company, he failed to point out non-deduction of TDS on the payment made to the agent in form of interest and commissions. Accordingly, the Committee decided to hold the Respondent **guilty** of professional misconduct falling within the meaning of Item (7) of Part I of Second Schedule to the Chartered Accountants Act, 1949.

CONCLUSION

19. In view of the above observations, considering the submissions of the Respondent and documents on record, the Committee holds the Respondent **GUILTY** of Professional Misconduct falling within the meaning of Clause (7) of Part I of the Second Schedule to the Chartered Accountants Act, 1949.

Sd/-
(CA. RANJEET KUMAR AGARWAL)
PRESIDING OFFICER

Sd/-
(MRS. RANI NAIR, I.R.S. RETD.)
GOVERNMENT NOMINEE

Sd/-
(SHRI ARUN KUMAR, I.A.S. RETD.)
GOVERNMENT NOMINEE

Sd/-
(CA. SANJAY KUMAR AGARWAL)
MEMBER

DATE: 07/02/2024

PLACE: NEW DELHI