



भारतीय सनदी लेखाकार संस्थान

(संसदीय अधिनियम द्वारा स्थापित)

THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA

(Set up by an Act of Parliament)

[DISCIPLINARY COMMITTEE [BENCH-IV (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.

[PPR/10/N/12/DD/9/N/INF/12/DC/385/2014]

In the matter of:

The Joint Director (CL)

Serious Fraud Investigation Office,
Ministry of Corporate Affairs, Govt. of India
2nd Floor, Paryavaran Bhawan
B-3 Wing, C.G.O. Complex, Lodhi Road
New Delhi - 110 003

... Complainant

Versus

CA. Vishnu Bhagat (M. No. 092266)

B-8/6, First Floor, Ramesh Nagar,
Delhi -110015

.....Respondent

MEMBERS PRESENT:

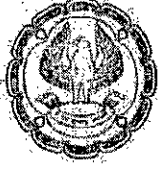
1. CA. Ranjeet Kumar Agarwal, Presiding Officer (In person)
2. Shri Jiwesh Nandan, I.A.S (Retd.), Government Nominee (In person)
3. Ms. Dakshita Das, I.R.A.S. (Retd.), Government Nominee (Through VC)
4. CA. Abhay Chhajed, Member (In person)

DATE OF HEARING : 19th MARCH, 2024

DATE OF ORDER : 16th May, 2024

1. That vide Findings dated 05.02.2024 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. Vishnu Bhagat (M. No. 092266)** (hereinafter referred to as the **Respondent**) is **GUILTY** of Professional and Other Misconduct falling within the meaning of Clause (2) of Part-IV of the First Schedule and Clause (4) Part II of the Second Schedule to the Chartered Accountants Act, 1949.

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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.

3. The Committee noted that on the date of hearing on 19th March 2024, the Respondent was seen in the virtual waiting room to attend the hearing through video conferencing, However, when he was admitted to the virtual meeting room at the time of taking up of the matter and was called upon to make his submissions before the Committee, the Respondent remained silent and did not turn on his video/ camera. The Committee then waited for some time to enable the Respondent to join the proceedings and hence passed over the matter for taking up later.

4. The Respondent then sent an email to DC Bench-IV at 05:46 PM stating that *"No meeting has started. I have been logged in since 3.30 pm. I am logging off now since there is no response from you till now."* Then again, the Respondent sent another email to DC Bench-IV at 05.56 PM stating that *"On correction: The log off happened from ICAI side and I tried logging in again but failed."* The Secretariat, during the hearing, replied to the above-mentioned emails of the Respondent at 06.15 PM while intimating/ informing him that *"Your matter will be taken up shortly. Kindly connect as soon as possible."* Besides this, the Respondent was also called by the Secretariat over telephone to request him to attend the proceedings, however, the Respondent did not answer the telephonic call. Resultantly, when the subject matter came up again for hearing before the Committee, it was noted that the Respondent still remained absent, and accordingly, the matter was proceeded with by the Committee. Further, it was noted that the Respondent did not file any written representation on the Findings of the Committee.

5. The Committee considered the reasoning as contained in Findings holding the Respondent 'Guilty' of Professional and Other Misconduct.

6. Thus, keeping in view the facts and circumstances of the case and material on record, the Committee was of the view that the Respondent being CFO/COO of the Company in connivance with Mr. Subhinder Singh Prem, the then MD of the Company, hired the secret warehouses to secretly keep the goods of the Company in the form of unaccounted sales return and goods under the category 'Billed but not dispatched' and thereby made the loss to the Company. The Committee held that the Respondent being the then CFO/COO of the Company approved the rent of such warehouses in a clandestine manner by booking fictitious expenses in Company's account and thereby made loss to the Company. The Committee held that the practice of BBND



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(Billed but not dispatched) prevailing in the Company was formulated by him only to recognize the sales in such a manner where the goods were being invoiced without the consent of the customers and he hid such BBND goods and the unaccounted sales return in secret warehouses. The Committee held that the intent of invoicing to 'K.K. Enterprises' without any intent of transferring the title of goods to it, was to inflate the sales; and the Respondent misused his position and resorted to falsification of accounts by booking fictitious sales in the financial year 2010, in the month of December, 2011 and thereafter, the reversal of such sales in the next financial year i.e. in the month of February, 2012.

7. The Committee was of the view that the Respondent cannot escape from his liability as he was a part of the decision making process and the Franchise Referral Program scheme is evidently formulated for wrongful intention which led to falsification of the books of accounts of the Company and clear window dressing done to cover the violation of Companies Act provisions, because of which the financial statements did not give true and fair view of the state of affairs. The Committee was of the view that practices of 'In and Out' transactions was a tactic to falsify the accounts of the Company leading to misrepresentations of facts about ageing of debtors to mislead stakeholders and the Respondent being at the helm of affair of the Company himself foster that malpractice in the Company. The Committee held that the Respondent being the then CFO/COO of the Company was responsible to maintain true and transparent position of receivables; and omission of such system from ERP system and failure on part of the Respondent to bring in any official document to justify the action of local management to maintain ROR signified that the local management of the Company fraudulently overstated the Accounts Receivables with a malafide intention of managing earnings over the years. Thus, the Committee was of the opinion that the Respondent being one of the top most official/Key managerial personnel of the Company was required to show a true and fair view of its Financials, which however, he knowingly failed to do so.

8. The Committee held that the Respondent being a Key Managerial Personnel (Chief Operating Officer/Chief Financial Officer) of the Company, part of decision making authority in the Company and also signatory to its Financial Statements for the financial years ended 2009-10 and 2010-11, was involved in the manipulations and falsification of accounts of the Company. In the Investigation Report of SFIO too, the name of the Respondent is specifically referred at many places for certain violations and irregularities in the affairs of the Company. Therefore, in the context of the investigation report of SFIO, the Committee held that the role of the Respondent in falsification of accounts of the Company is evident, which caused wrongful loss to the Company and stakeholders.

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9. The Committee was of the view that a Chartered Accountant in capacity of employee of Company (that too as Key Managerial Person) is expected to render his services in utmost professional manner with complete integrity and is supposed to protect the interest of all stakeholders of his employer Company failing which, would lead to bringing disrepute to the profession. Hence, the Professional and Other Misconduct on the part of the Respondent is clearly established as spelt out in the Committee's Findings dated 05th February 2024, which is to be read in consonance with the instant Order being passed in the case.
10. Accordingly, the Committee was of the view that the ends of justice would be met if punishment is given to him in commensurate with his Professional and Other Misconduct.
11. Thus, the Committee ordered that the name of the Respondent i.e., CA. Vishnu Bhagat (M. No. 092266) be removed from the register of members for a period of 03 (Three) years and also imposed a fine of Rs. 2,00,000/- (Rupees Two Lakhs) upon him, which shall be paid within a period of 60 (sixty) days from the date of receipt of the Order.

Sd/-

(CA. RANJEET KUMAR AGARWAL)
PRESIDING OFFICER

Sd/-

(SHRI JIWESH NANDAN, I.A.S. {RETD.})
GOVERNMENT NOMINEE

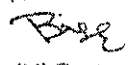
Sd/-

(MS. DAKSHITA DAS, I.R.A.S. {RETD.})
GOVERNMENT NOMINEE

Sd/-

(CA. ABHAY CHHAJED)
MEMBER

सही प्रतिलिपि होने के लिए प्रमाणित
Certified to be true copy


शिव नाथ तिवारी / Bishwa Nath Tiwari
कार्यकारी अधिकारी / Executive Officer
अनुशासनात्मक निदेशालय / Disciplinary Directorate
इंस्टीट्यूट ऑफ चार्टर्ड एकाउंटेंट्स ऑफ इंडिया
The Institute of Chartered Accountants of India
आईसीएआई भवन, विश्व नगर, शाहदरा, दिल्ली-110032
ICAI Bhawan, Vishwes Nagar, Shahdara, Delhi-110032

CONFIDENTIAL

DISCIPLINARY COMMITTEE [BENCH – IV (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.: [PPR/10/N/12/DD/9/N/INF/12/DC/385/2014]

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Ms. Dakshita Das, I.R.A.S. (Retd.), Government Nominee (In person)

CA. Mangesh P Kinare, Member (Through VC)

CA. Cotha S Srinivas, Member (Through VC)

DATE OF FINAL HEARING : 14th December 2023

DATE OF DECISION TAKEN : 09th January 2024

PARTIES PRESENT

Ms. Sumaiya Bansal: - Complainant's representative (Through VC)

Mr. Princee Arora:- Counsel for the Complainant (Through VC)

CA. Vishnu Bhagat:- Respondent (Through VC)

Ms. Smriti Asmita:- Counsel for the Respondent (Through VC)

1. Background of the Case:

The Respondent was the Chief Financial Officer/ Chief Operating Officer and was overall in-charge of the marketing activities/ financial affairs of M/s. Reebok India Company (hereinafter referred to as the 'Company/RIC'). He had signed the Financial Statements of the Company for the F.Ys. 2009-10 and 2010-11. He was one amongst others who was involved in scam/fraud of Rs. 870 crores in operations of the Company. The Company filed an FIR no. 99 of 2012, registered at Sector-40 Police Station, Gurgaon on 21.05.2012 and pursuant to the investigations conducted by the Police, a charge-sheet was filed in the Court of CJM, Gurgaon by the Police in November 2012. At the request of the Company, further investigations were ordered by the Haryana Government and the same are being conducted by the Crime Branch, Haryana.

2. Charges in brief: -

As per the investigations conducted in the Books of Accounts and records of the Company, the following discrepancies, irregularities, and misappropriations were found/noticed: -

2.1. Maintenance of secret warehouses: The Respondent, during his tenure as the Chief Operating Officer of the Company was involved in a conspiracy to defraud the Company by maintaining secret warehouses in the name of Company's vendor, M/s Shivam Enterprises and another enterprises M/s Oriya Sales & Distribution, to store goods of Company.

2.2. Fictitious Sales: The Respondent along with his co-conspirator, also generated fictitious sales over numerous financial year ends (December) fraudulently over

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stating the Company's business performances, categorized as BBND (Billed but not dispatched) goods.

- 2.3. **Fake Sales to K.K. Enterprises:** The Respondent had fraudulently billed defective and unusable goods at the wholesale price (full price) of Rs. 19.39 crores (exclusive of taxes) to a customer, M/s K. K. Enterprises during the period of 20th December 2011 to 31st December 2011 in order to inflate sales figures for the year 2011.
- 2.4. **Franchisee Referral Program (FRP):** An amount of Rs. 108.47 crores from 58 persons/ entities was collected under this program, and only one store was opened indicating that the motive of FRP scheme was not to open stores (even if unauthorizedly) but to fraudulently show such amounts as collections against sales. This is evidenced by e-mails found for debtor collection updates which also contained FRP collections indicating FRP collections were part of collection targets.
- 2.5. **In & Out Transactions:** The Respondent and Mr. Subhinder Singh Prem, the then Managing Director had also conspired to defraud and cheat the Company by manipulating the payments made to and received back from eight selected customers of the Company and two other entities to show fictitious collections in December 2010.
- 2.6. **Overstating of accounts receivable and maintenance of parallel accounting records:** The Respondent and Mr. Subhinder Singh Prem, the then MD of the Company had also maintained or caused the maintenance of parallel books of accounts known as Regional Outstanding Reports (RORs), in respect of accounts receivable balances of various customers of RIC, which were at variance with the official financial records of the Company.
3. **The relevant issues discussed in the Prima facie opinion dated 6th February 2014 by Director (Discipline) in the matter in brief is given below: -**

- 3.1. Mr. Sanjiv Mishra (who was proprietor of M/s. Shivam Enterprises) has confessed before the Police authority that he himself along with the Respondent and others, has received about Rs. 1.5 Crores of Rupees as rent of the said four warehouses and out of this amount, some are paid to the owners and thereafter shared the remaining amount among them. In view of this, it is evident that illegal possession of the warehouses was in the knowledge of the Respondent. The rent for such secret warehouses was paid through a fraudulent arrangement entered into by the Respondent and others with M/s. Shivam Enterprises which supplies the manpower to the Company's warehouses and through the fake bills for overtime were caused to be raised and cleared by the Respondent and due to this act of the Respondent, there is a direct loss to the Company. The other accused confessed before the Police Authority that the records were in the laptop and were hidden in the laptop and the same was hidden by the Respondent in his house which was recovered by the Police.
- 3.2. There are products value of which are in crores were invoiced but not delivered to the customers. Over the years, customers had been returning the products to the Company and such products were deliberately and fraudulently not accounted for in the books of accounts of the Company under the instructions of the Respondent. As per the replies from the Respondent as well as the wife of the Respondent at prima facie stage, there is no convincing evidence/ fact on the part of the Respondent.
- 3.3. The sale was approved by Mr. Shahin Padath, Director of the Company and was reversed subsequently, and goods were in the possession of the Company. The Respondent was charge-sheeted on this ground also and it was found by the Police that these products were stored in the secret warehouses and the Respondent caused a loss of about Rs. 2 Crores to the Company. As per the documentary proof submitted by the Company, it is evident that the same was signed only by the Respondent and the co-conspirator Mr. Subhinder Singh Prem, the then MD and was not signed by the General Manager-Finance or the CFO. There is no refusal by the Respondent of this document in his submissions at prima facie stage.



3.4. The Company has submitted that there was no mention of how the amounts would be determined to participate in the FRP scheme and the amounts were accepted from multiple parties. This program was started by the Respondent and Mr. Subhinder Singh Prem, the then MD of the Company and for which large amount was collected by the Company on the pretext of opening of stores at excessive rates of interest. Despite the instruction from the Company to not to expand the store base further, the Respondent has started this scheme. There is a finding in the chargesheet that there was falsification under the said scheme and on this account, there is a direct loss to the Company of about Rs. 14.82 crores. It is observed that despite the instruction not to open such program, the Respondent along with Mr. Subhinder Singh Prem, the then MD has opened the scheme which caused the so-called loss to the Company.

3.5. In investigation by the Police authority, it was found that on the instructions of the Respondent and Mr. Subhinder Singh Prem, the then MD of the Company, the money was transferred to the Customer's accounts in the January 2011 and at the same time a cheque dated December 2010 was obtained from the customers when the cheques were actually encashed by the Company about almost an equivalent amount. Based on the documentary proof produced by the Company and the clarification given by the Respondent and as per the charge-sheet, the involvement of the Respondent is alleged to have been shown.

3.6. Mr. Shahin Padhat, the Director of the Company has himself signed several Regional Outstanding Reports (RORs), no funds have moved out of the Company, ROR is not a parallel accounting but reports that intrinsically captured various items of reconciliation that would arise with any customer and no reconciliation is possible without looking into various reconciliation issues of the franchisees. On investigation, it was found by the Police Authority that the accounts receivable balances were at variance with the official financial records of the Company. There is also a finding in the charge-sheet that there was a conspiracy hatched by the Respondent and Mr. Subhinder Singh Prem, the then MD of the Company with some customers wherein the customers used to confirm the outstanding balance wrongly reported in the books as corrected by signing audit confirmation letters for the purpose of the Company's audit. These

statements show relationship with some customers and certain fraudulent acts which were alleged to have been committed by the Respondent in connivance with the customers.

3.7. Based on the aforesaid facts it is noted that this fraud was reported as Rs.870 crores but as per Police Report filed in the Court, the Police has reported that the Respondent has caused loss to the Company by giving more interest i.e. Rs. 8.80 crores. It appears that the conduct of the Respondent is suspicious because of his acts and omissions in the capacity as a professional in the Company and being a person in key position in the finance/ marketing matter in the Company.

3.8. The Director (Discipline) in Prima Facie Opinion dated 6th February 2014 has held that the Respondent is prima facie Guilty of Professional and Other Misconduct falling within the meaning of Clause (2) of Part-IV of the First Schedule and Clause (4) Part II of the Second Schedule to the Chartered Accountants Act, 1949. The said Item to the Schedule to the Act, states as under:

"Clause (2) of Part IV of First Schedule

A member of the Institute, whether in practice or not, shall be deemed to be guilty of other misconduct, if he —

(2) in the opinion of the Council, brings disrepute to the profession or the Institute as a result of his action whether or not related to his professional work.

Clause (4) Part II of Second Schedule

A member of the Institute, whether in practice or not, shall be deemed to be guilty of professional misconduct, if he: -

(4) defalcates or embezzles moneys received in his professional capacity."

3.9. The Disciplinary Committee considered the Prima Facie Opinion dated 6th February, 2014 of the Director (Discipline) at its meeting held on 7th February 2014 along with the "Information" letter, clarifications of the Respondent/submissions of Mrs. Komal Bhagat filed on behalf of the Respondent. The Committee on consideration of the same agreed with the prima facie opinion of the Director (Discipline) and decided to proceed further under Chapter V of these Rules. The Committee also directed the Directorate that in terms of the

provisions of sub-rule (2) of Rule 18, the prima facie opinion formed by the Director be sent to the Respondent including particulars or documents relied upon by the Director, if any, during the course of formation of prima facie opinion and the Respondent be asked to submit his Written Statement.

4. Date(s) of written submissions/pleadings by parties:

The relevant details of filing of documents in the instant case by the parties are given below:

S.No.	Particulars	Dated
1.	"Information Letter"	6 th November 2012
2.	Written Statement filed by the Respondent	30 th June 2012 21 st April 2013 3 rd June 2013
3.	Prima facie Opinion by Director (Discipline)	6 th February 2014
4.	Written Submissions by the Respondent	14 th June 2014 6 th September 2014 17 th November 2014 26 th July 2023 25 th October 2023
5.	Written Submissions by the Complainant	13 th December 2023

5. Written Submissions filed by the Respondent:

The Respondent vide letter dated 14th June, 2014, 6th September, 2014, 17th November, 2014, 15th April, 2023, 26th July, 2023 and 25th October, 2023 made submissions, which are summarized as under:

5.1. Submissions of the Respondent made vide letters dated 14th June, 2014 and 06th September, 2014:

5.1.1 In respect of allegation of secret warehouse of the Company, temporary warehouses availed by the Company from time to time by the Respondent to the senior officials of Adidas AG including Clause Heckerott. The alleged secret warehouses were always in possession of the Reebok, keys of these warehouses were with the Company, employees deployed there were of the Company and the software being used in the system at these warehouses was also of the Company.

There has been complete transparency regarding making payments and accounting in the books for the temporary warehouses. The audited balance sheet of the company for the period ended 31st March, 2012 shows goods billed but not despatched (BBND) of Rs.54 crores (which includes goods pending dispatched for March 2012 as well). These BBND stocks are eventually delivered in the following months to the customers. BBND is a normal phenomenon in Reebok and Adidas and all are aware of this procedure. Goods against these invoices were kept in temporary warehouses for logistics purposes till the time of shipping. These BBND were reflected in the customer accounts as receivables and RIC had discounted the invoices of such BBND from the Banks and therefore had received the money in its bank account in January 2012.

5.1.2 BBND is a normal phenomenon in Reebok India Company (RIC) and Adidas India and all concerned personnel of these Companies are aware of the procedure. As a matter of procedure, goods against invoices, previously raised were kept in temporary warehouses for logistics purposes till the time of shipping. The audited balance sheet of Reebok India Company for the period ending on 31.03.2012, the auditors have also certified that BBND as on 31.03.2012 was only Rs 54,00,00,000/- (Rupees fifty-four crore only). The audited financial statements do not mention about any loss to Reebok India Company because of such BBND stocks.

5.1.3 The sales which have been referred as "Fictitious sales" by Reebok India Company (RIC) is not fictitious by any means and this can be demonstrated by a bare perusal of an Approval Letter dated 24.02.2012, wherein Mr. Shahin Padath, the Director of the Company himself signed and approved the said transaction. The chargesheet filed by Gurgaon Police before the Court of Ld. JMFC, Gurgaon clearly states that Reebok India Company (RIC) did not suffer any loss on account of the sale transactions with M/s K.K. Enterprises.

5.1.4 Regarding franchisee referral program (FRP), through an email dated 11.07.2011, Mr. Claus Heckerott, conveyed that new stores shall not be opened until the Company is brought to profitable position. By the time this decision was taken by Mr. Claus Heckerott and the management, the FRP Scheme was already one year

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old and once the said email was received by the concerned personnel of Reebok India Company, no further money was collected under the FRP Scheme. Therefore, the allegation of Reebok India Company that the FRP Scheme was floated despite instructions to the contrary, is patently frivolous and misleading.

5.1.5 The chargesheet filed by Gurgaon Police before the Court of Ld. JMIC, Gurgaon states that the money collected on account of FRP Scheme was deposited into the bank account of Reebok India Company. This fact was also corroborated by the Status Report dated 28.02.2014 filed by the State Crime in the abovementioned Court which also mentions that the Headquarters was fully aware of the scheme. This fact is further supported by one of the emails dated March 23, 2012 to the Global Headquarters by Shahin Padath, the Director of the Company that FRP money has been refunded.

5.1.6 In respect of in and out transactions, the balance sheets of Reebok India Company (RIC) for year ending 31st December 2010 and 31st March 2011 reflected these in and out transactions, which were finalized by Mr. Shahin Padath, the Director of the Company. Status Report dated 28.02.2014 filed by State Crime branch of Gurgaon Police mentioned that the balance sheets were signed by Mr. Shahin Padath, the Director of the Company. Therefore, considering these facts, it becomes clear that In and Out Transactions were not a fraud as the same were in practice in Reebok India Company. The State Crime Report of the Haryana Police dated 28.02.2014 nowhere implicates the Respondent and on the contrary has exonerated the Respondent of any wrongdoing as no instance of any diversion PF funds or otherwise has been reported.

5.2 The Respondent vide letter dated 17th November, 2014 has raised preliminary objections, which are as under:

5.2.1 Non-Maintainability of the Disciplinary Proceedings in absence of any "Information".

The present proceeding as per the Prima Facie Opinion dated 06.02.2014 has been initiated against the Respondent on the basis of various newspaper reports wherein allegations of misappropriation were made against him. Newspaper reports cannot

form the basis of any disciplinary proceedings against any member of the ICAI. As per the provisions of the Chartered Accountants (Procedure of Investigation of Professional and/or Other Misconduct and Conduct of Cases) Rules, 2007, a detailed procedure has been provided to enable the Disciplinary Directorate to investigate matters relating to professional misconduct of the members of the ICAI. The Rules and its compliance as well as initiation of a complaint is to be followed strictly as provided by the statute as the same are mandatory in nature. This means that the Directorate treated the said news reports as "Information" defined in 'Rule 7' of the above-mentioned Rules which is not permissible as per law.

5.2.2 Non-Applicability of Clause (2) of Part IV of the First Schedule of the Chartered Accountants Act, 1949:

Clause (2) of Part IV of the First Schedule to the Chartered Accountants Act, 1949, provides that a member of the ICAI shall be deemed to be guilty of other misconduct if in the opinion of the Council, he brings disrepute to the profession or the Institute as a result of his actions, whether or not related to his professional work.

5.2.3 This provision is not applicable to this case as he has not done anything which bring disrepute to ICAI. Any press release of Reebok India Company or any newspaper report published based on allegations made by Reebok India Company cannot be presumed to be true and therefore, it is premature to charge the Respondent under Clause (2) of Part IV of the First Schedule of the Act. This provision would be applicable only once Court of Law concluded that the allegations made against the Respondent are correct.

5.2.4 Non-Applicability of Clause (4) of Part-II of the Second Schedule of the Chartered Accountants Act, 1949:

Clause (4) of Part II of the Second Schedule of the Act, provides that a member of the ICAI shall be deemed to be guilty of professional misconduct if he defalcates or embezzles moneys received in his professional capacity. This provision is not applicable to this case, as neither the Respondent has defalcated nor has he embezzled any money received by him in his professional capacity. Word 'defalcate' or embezzle' means to steal or misappropriate but neither the Respondent has

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misappropriated anything belonging to Reebok India Company nor has he stolen any property belonging to Reebok India Company which is evident from the fact that nothing has been recovered from the Respondent by the investigating team of Gurgaon Police and there is no evidence to show that the Respondent has misappropriated or stolen any property.

5.3 The Respondent raised certain issues regarding clubbing of complaint case filed by the SFIO along with subject information case. The Respondent further submitted that decision of clubbing was not informed to him. It was informed to the parties that the Disciplinary Committee at its meeting held on 28 & 29.12.2015 had taken the decision to club the complaint subsequently filed in Form "I" dated 20/04/2015 by SFIO along with the Information case, in terms of Rule 5(4)(b) and said decision was informed to the parties vide letter dated 27/01/2016. Thereafter, as per the directions of the earlier Committee given at its meeting held on 15/10/2019, the issue raised by the SFIO vide letter 14/10/2019 (i.e. complaint filed in Form "I" dated 20/04/2015 by SFIO to treat it as a separate complaint; after having the decision for clubbing of Information case and Form "I" was already taken by the Committee and communicated to the parties vide letter dated 27/01/2016, was legally examined.

5.4 The Respondent vide letter dated 26th July 2023 made an application for examination of witnesses viz. Mr. Subhinder Singh Prem (former MD of Reebok and Adidas) Mr. Shekhar Singh (former warehouse manager at Reebok), Mr. Jatin Lamba (former customer/KK Enterprises), Mr. Munish Bali (former customer) and HR manager of Reebok India Company.

5.5 Submissions of the Respondent made vide letter dated 25th October 2023: -

5.5.1 The Respondent informed that the complaint filed by SFIO before the Ld. Trial Court, Gurgaon, was challenged before the Hon'ble High Court of Punjab and Haryana and the Hon'ble High Court had stayed the proceedings going on before the Ld. Trial Court vide order dated 01.02.2017 and since 01.02.2017 all the proceedings going on before the Ld. Trial Court on the complaint of the SFIO have been stayed.

5.5.2 The allegation related to the entire scheme of FRP was within the knowledge and with the consent of the management. The email dated 23.03.2012 sent by Mr. Shahin Padath to Ronald Auschel and Mr. Claus Heckerott clearly shows that Mr. Shahin Padath and Mr. Claus Heckerott were well aware of the FRP scheme.

5.5.3 As per report of the State Crime Branch, money received on account of the FRP was deposited in the bank accounts of the Company and Adidas AG Germany.

6. Written Submissions filed by the Complainant:

The Complainant vide letters 13th December 2023 made further submissions, which are summarized as under:

6.1. The Committee noted that the Complainant (SFIO) vide letter dated 13/12/2023 has submitted that Department has conducted investigation into the affairs of Reebok India Company and filed the present complaint with due authorization from the Ministry of Corporate Affairs. The Respondent has admitted that the Hon'ble High Court of Punjab and Haryana has stayed the proceedings going on before the Ld. Trial Court vide Order dated 01.02.2017. The proceedings before ICAI (Disciplinary Committee) are not affected by the same and are to run independently. The fact that Management of the Company being aware of the mal-practices being followed in the Company, does not in any way absolve or mitigate offence/misconduct of the Respondent in any manner. The Respondent is only attempting to mislead the Disciplinary Committee by not placing cogent evidence/submissions to defend the allegations. The Respondent was expected to know the statutory provisions and correct procedure relating to treatment of receivables in the books of accounts of the Company but deliberately connived with other officials of the Management in the falsification of the books of accounts of the Company which did not give the true and correct picture of the affairs of the Company.

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7. Brief facts of the Proceedings:

7.1. The details of the hearing(s) fixed and held/adjourned in said matter is given as under:

Particulars	Date of Meeting(s)	Status
1 st time	14.09.2014	Part heard and adjourned
2 nd time	14.07.2015	Adjourned at the request of the Respondent.
3 rd time	19.10.2015	Adjourned at the request of the Respondent.
4 th time	22.11.2015	Adjourned due to paucity of time.
5 th time	28 & 29.12.2015	Adjourned at the request of the Respondent and complaint clubbed with subject case.
6 th time	13.01.2016	Adjourned at the request of the Respondent.
7 th time	01.02.2016	Adjourned at the request of the Respondent.
8 th time	26.10.2016	Meeting cancelled due to unavoidable circumstances.
9 th time	22.11.2016	Part heard and adjourned.
10 th time	28.03.2017	Adjourned at the request of the Respondent.
11 th time	12.07.2017	The matter was adjourned, and Committee decided to summon SFIO as witness.
12 th time	22.08.2017	Adjourned at the request of the Respondent.
13 th time	27.05.2019	Adjourned at the request of the Respondent.
14 th time	25.07.2019	Adjourned at the request of the Respondent
15 th time	24.09.2019	Part heard and adjourned.
16 th time	15.10.2019	Fixed and adjourned.
17 th time	22.03.2023	Fixed and adjourned.
18 th time	11.04.2023	Part Heard and Adjourned.
19 th time	26.07.2023	Fixed and adjourned.
20 th time	10.08.2023	Part heard and adjourned.
21 st time	14.09.2023	Part heard and adjourned.
22 nd time	25.10.2023	Adjourned at the request of the Respondent.
23 rd time	21.11.2023	Adjourned due to paucity of time.
24 th time	14.12.2023	Hearing concluded and judgement Reserved.
25 th time	09.01.2024	Decision taken.

7.2 On the day of hearing on 22nd March 2023, the Committee noted that as per the directions of the earlier Committee given at its meeting held on 15/10/2019, the issue raised by the SFIO vide letter 14/10/2019 that Form "I" dated 20/04/2015 filed by SFIO be treated as a separate complaint; after having the decision for clubbing of Information case and Form "I" dated 20/04/2015 was already taken by the Committee and communicated to the parties vide letter dated 27/01/2016, has been legally examined. The Committee further noted that it has been opined that clubbing of the complaint in Form "I" dated 20/04/2015 against the Respondent (member of ICAI) with the already existing Information case on same subject matter, and is pending for hearing before the Committee, was well within the provisions of Rule 5(4)(b) of Rules. It was further opined that the decision of clubbing was well within the powers of Disciplinary Committee, and it can be proceeded further in terms of the provisions of the Chartered Accountant Act and the Rules framed thereunder. The Committee noted the same.

The Committee further noted that witness from SFIO department, Ms. Swasti Agarwal, AD (Law) and Mr. Madhur Bajaj, DD (CL) were present, but Respondent was not present at the hearing. The Committee noted that the request for adjournment made by Respondent vide email dated 21/03/2023, which was communicated to him. During the meeting, the Committee tried to contact the Respondent over phone for his response and also waited for some more time, but the Respondent could not be contacted. Thus, the Committee expressed its displeasure and took note of the absence of the Respondent and directed the Secretariat to write a letter/e-mail to the Respondent communicating the sentiments of the Committee that he should appear before the Committee in the hearing fixed next time, failing which the captioned case shall be proceeded with ex-parte, in accordance with Rule 18(18) of the Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007.

7.3 On the day of hearing on 11th April 2023, the Committee noted that the Respondent along with the Counsel and witness(es) from SFIO Department were present through Video Conferencing Mode for the hearing. The Committee further

noted that since the composition of the Committee had changed further to the previous hearing, the Respondent was put on oath and the Committee enquired from the Respondent as to whether he was aware of the charges; and the same were also read out. On the same the Respondent replied that he is aware of the Charges but pleaded Not Guilty to the charges levelled against him. As the proceedings started de-novo in the current year, the facts of proceedings commencing from current year are given in this findings. The Respondent submitted that he had raised certain issues regarding clubbing of complaint case filed by the SFIO along with subject information case and sought to know the details of legal examination of the same. The Respondent further submitted that decision of clubbing was not informed to him. It was informed to the parties that the Disciplinary Committee at its meeting held on 28 & 29.12.2015 had taken the decision to club the complaint subsequently filed in Form "I" dated 20/04/2015 by SFIO along with the Information case, in terms of Rule 5(4)(b) and said decision was informed to the parties vide letter dated 27/01/2016. Thereafter, as per the directions of the earlier Committee given at its meeting held on 15/10/2019, the issue raised by the SFIO vide letter 14/10/2019 (i.e. complaint filed in Form "I" dated 20/04/2015 by SFIO) be treated as a separate complaint; after having the decision for clubbing of Information case and Form "I" was already taken by the Committee and communicated to the parties vide letter dated 27/01/2016, was legally examined. The Committee noted that it was opined that the decision of clubbing was well within the powers of Disciplinary Committee.

The Committee noted that witness from SFIO department, Ms. Sumaiya Ahluwalia, Senior Prosecutor SFIO and Mr. Madhur Bajaj, DD (CL) were present. The Committee further noted that its meeting held on 12.07.2017, the decision was taken by it to call/summon the concerned official from SFIO to appear as witness in the hearings of the captioned case, and same was informed to the Respondent. The Committee directed Respondent to make a request in writing at the earliest for documents/information required by him from the Directorate and instructed the office to provide the same. Further, the Committee instructed the parties present that at next date, the matter would be heard on merits of the case and concluded at the earliest in accordance with the provisions of the Rules. With this, case was part heard and adjourned.

7.4 On the day of hearing on 26th July 2023, the Committee noted that the Respondent in this case vide email dated 25th July 2023 has sought adjournment. The Committee acceded to the request of the Respondent and adjourned the case to a future date with a view to extend one more opportunity to the Respondent to defend the charges. The case was adjourned to a future date.

7.5 On the day of hearing on 10th August 2023, the Committee noted that the witness from SFIO and the Respondent along with Counsel were present through Video conferencing mode. The Counsel for the Respondent submitted that she has not received the copies of some of the documents sought vide application dated 15/04/2023. The Committee observed that all the documents sought for by the Respondent vide application dated 15/04/2023 have been supplied to the Respondent vide e-mails dated 19/07/2023 and 21/07/2023 respectively, except the legal opinion and the communications dated 14/10/2019 and 21/04/2015 received from SFIO which was not considered relevant by the Committee. The Committee has also taken on record the preliminary objections raised by the Respondent vide letter dated 17/11/2014.

The Counsel for the SFIO Department submitted that a letter dated 21st July, 2023 of SFIO has been submitted before the Committee to allow them to participate as complainant in the matter, without which serious prejudice will be caused to them as the Complaint dated 21.04.2015 filed by the SFIO was based on the detailed findings and charges mentioned in the Investigation Report of SFIO duly supported with various documentary and oral evidences which are not covered in detail in the Prima Facie Opinion dated 06.02.2014 of Director (Discipline).

The Committee on consideration and examination of the matter, acceded to the request of the SFIO to treat them as a Complainant, since the allegations arise out of the same set of facts in both the Information and complaint cases. The Committee permitted them to attend and participate in the proceedings of the case as Complainant from the present stage. The Committee was further of the view that the role of the Complainant is to support the case before the Committee, and so long as

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the principles of natural justice are followed, and the Respondent is given a fair and reasonable opportunity it cannot be said that any prejudice is caused to the Respondent if SFIO is permitted to assume the role of a Complainant.

Agreeing to above decision, the Counsel for the Respondent submitted that copy of Form 'I' dated 21.04.2015 filed by SFIO together with all annexures were not received as some of the pages are missing. The Committee, therefore, directed the SFIO to submit complete copies of Form 'I' together with their annexures. The Committee further directed the parties to the case to exchange the complete set of written submissions and documents filed before the Committee till date by both the parties, between them with a copy to Committee within 10 days. The case was part heard and adjourned.

7.6 On the day of hearing on 14th September 2023, the Committee noted that Ms. Saumiya Bansal, Senior Prosecutor, SFIO along-with Mr. Princee Arora, Advocate were present through Video Conferencing mode. From this stage, SFIO Department appeared as Complainant in the proceedings. The Committee further noted that the Respondent along with Counsel were present through Video conferencing mode. Thereafter, they gave a declaration that there was nobody present except them from where they were appearing and that they would neither record nor store the proceedings of the Committee in any form.

The Committee noted that at its last meeting dated 10/08/2023, the Complainant and the Respondent were directed to exchange the written submissions/ documents, which they have with them related to this case and asked the parties whether they had exchanged/received documents filed by respective parties. Both parties informed that they have exchanged the same but the Respondent submitted that he had received documents (including Form 'I' and their complete annexure) from the Complainant on 05/09/2023 and since documents were voluminous, he sought time for filing written submissions on these documents. Acceding to the Request of Respondent, the Committee allowed 14 days' time to Respondent to file written submissions on documents submitted by the Complainant and directed that the copy of reply be shared with the Complainant.

The Counsel for the Respondent further submitted that vide e-mail/letter dated 26/07/2023, they have requested to examine certain officials of Rebook India Company as their witness(es). The Committee noted that the instant case has been listed numbers of times in the past and the Respondent is now making such request for summoning of witness(es). The Committee noted that the Respondent has not given valid reasons for examination of these witness(es) and did not corroborate the relevance of these witness(es). The Committee further noted that out of list of witness(es), contained the names of persons including officials of Reebok India Company. The Committee noted that no valid reason has been given whatsoever for compelling the attendance of these persons for examination and cross examination which makes it evident that it is a desperate and vexatious attempt to cause unwanted delay in the proceedings. Thus, the Committee opined that calling for examination of witness(es) was not warranted as the documents/evidences placed on record are ample for the purpose of consideration of the matter. The Committee further noted that the detailed Report of SFIO after investigation into the matter also contained the person(s) named in the witness list by the Respondent and role of such persons has been considered in the said Report of SFIO. The Committee, on consideration, was of the view that the said request was clearly made for the purpose of vexation and delay and therefore, be refused in view the provisions of Rule 18(14) of the Chartered Accountants (Procedure of Investigation of Professional and Other Misconduct and Conduct of Cases) Rules, 2007.

Further, the Counsel for the Respondent submitted in the meeting that SFIO was called as witness in earlier hearing(s) by the Committee and SFIO has now been given the right of Complainant, and hence, the Respondent desired to examine officials of SFIO as witness. The Committee was of the view although the said request be refused, however, the Respondent may ask few relevant questions at the time of hearing /arguments on merits of the case as may be permitted by the Committee which could be responded appropriately by SFIO who would be participating in the proceedings. On consideration of the same, the Committee was of the view that the request for cross – examination of officers of SFIO was not warranted and accordingly decided to refuse the said request of the Respondent on

the ground that it is made for the purpose of vexation and delay in view of Rule 18(14) of the Chartered Accountants (Procedure of Investigation of Professional and Other Misconduct and Conduct of Cases) Rules, 2007. With this, the case was part heard and adjourned.

7.7 On the day of hearing held on 25th October 2023, the Committee noted that the Respondent vide email dated 14/10/2023 had sought adjournment due to non-availability of his authorized Counsel. In view of plea of the Respondent, the Committee adjourned the case to a later date with a view to extend one final opportunity to the Respondent to defend the charges. The Committee was of the view that sufficient opportunities have been granted to the Respondent and directed the office to inform the Respondent that in case of his failure to participate in next hearing, the matter would be proceeded ex-parte the Respondent. With this, the case was adjourned to a future date.

7.8 On the day of hearing on 21st November 2023, the consideration of this matter was deferred by the Committee.

7.9 On the day of hearing on 14th December 2023, the Committee noted that Ms. Saumiya Bansal, Senior Prosecutor, SFIO along-with Mr. Princee Arora, Advocate were present through Video Conferencing mode. The Committee further noted that the Respondent along-with Counsel were present through Video conferencing mode. The Committee asked the Counsel for the Respondent to make submissions on merits of the case and advised her not to repeat the arguments already made at earlier hearing(s). The Counsel for the Respondent submitted that the Respondent had already filed writ petition before the Hon'ble High Court of Delhi challenging the said matter and she therefore requested that the case be not heard by the Committee. However, the Committee did not accede to the said request and noted that the present matter had already been listed before the Committee on several occasions. The Committee had also extended ample opportunities to the Respondent to submit his arguments on merits of the case. The Counsel for the Respondent submitted that during the last hearings held since year 2017, the Committee called the SFIO as witness and not as Complainant, and the SFIO have

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been now given the right of Complainant, and hence the Respondent desired to cross-examine the officials of SFIO as witness. The Counsel for the Respondent submitted that the proceedings of the Committee were not as per Rules of the Chartered Accountants (Procedure of Investigation of Professional and Other Misconduct and Conduct of Cases) Rules, 2007.

The Committee observed that the submissions / arguments of the Counsel for Respondent in the recent hearings before it, remained more or less the same, and it mainly revolved around raising issues on the Rules and process followed in the hearing, and at any point of time, the Counsel for the Respondent neither submitted nor desired to submit her arguments on merits of the case. The Committee further observed that the issues raised by the Respondent have been responded appropriately keeping in view the relevant provisions of the Rules. The Committee was of the view that ample opportunities were given to the Respondent to make submissions on merits before it, but the Respondent did not make any submissions / arguments on merits of the case in hearings so far held. The proceedings of the Committee in the present matter were held by following due process of law and sufficient opportunity have been given to the Respondent in accordance with the provisions of the Chartered Accountants Act/Rules. The Committee felt that as a quasi-judicial body, the role and responsibility of the Respondent in a particular assignment in the context of professional misconduct has to be considered and decided by it, as per the provisions of the Chartered Accountants Act, 1949 and Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007. The Committee further felt that sufficient time and opportunity have already been given to the Respondent, however, he is not forthcoming to argue the matter on the merits of the case, even in the present meeting.

The Committee observed all written submissions of the parties, documents / materials, and Prima Facie Opinion of the Director (Discipline), were available on record, and decided to concluded the hearing based upon said documents / material on record. On other side, the officials of the SFIO submitted that they have provided all the relevant documents and investigation Report of SFIO to the Committee and

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Committee shall decide this case based upon said documents. Thereafter, the Committee directed the Respondent and Complainant to submit further written submissions, if any, within 15 days. With this, hearing in the subject case was concluded by the Committee and judgement was reserved.

7.10 On the day of hearing held on 9th January 2024, the Committee noted that the subject case was heard by it and hearing in the matter was concluded at its meeting held on 14.12.2023 and the judgement was reserved. The Committee noted that no written submission was received from the parties as per the directions given in the hearing held on 14.12.2023.

7.11 After detailed deliberations, and on consideration of the facts of the case, various documents on record as well as oral and written submissions made by parties before it, the Committee passed its judgement.

8 Findings of the Committee:

The Committee noted the background of the case as well as oral and written submissions made by the Complainant and Respondent, documents/material on record and gives its findings as under:

8.1 The Committee at the outset noted that the Respondent has raised the following preliminary objections:

(i) Non maintainability of Disciplinary proceedings in the absence of any "Information" in subject case, citing that newspaper reports cannot form the basis of any disciplinary proceedings against any member of ICAI, as it does not qualify as "Information" defined in Rule 7.

(ii) Non applicability of Clause (2) of Part-IV of the First Schedule and Clause (4) Part II of the Second Schedule of the Chartered Accountant Act, 1949 against the Respondent in present case.

The Committee, considered the above preliminary objections raised by the Respondent. As regards the objection related to non-maintainability of disciplinary

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proceedings as stated in Sl. No, (i) above, the Committee noted that as per Section 22 of the Chartered Accountant Act, 1949, professional and other misconduct have been defined as under:

"For the purposes of this Act, the expression "professional or other misconduct" shall be deemed to include any act or omission provided in any of the Schedules, but nothing in this section shall be construed to limit or abridge in any way the power conferred or duty cast on the Director (Discipline) under sub-section (1) of section 21 to inquire into the conduct of any member of the Institute under any other circumstances".

Further, the Committee referred to the Order dated 16/12/2022 of Hon'ble Delhi High Court in the matter(s) of CA. Sanjay Jain vs. ICAI, [W.P. (C) 3372/2020] and noted the relevant observations of Hon'ble High Court as under:-

"Para 121

J On an overall consideration of the aforesaid, this Court is of the considered view that the word information as appearing in Section 21 cannot be narrowly construed to mean only those facts which may be specifically provided to the Institute. The Act and the Rules have consciously attempted to treat the two separately and distinctively. The phrase any information would thus cover within its ambit not only written complaints that may be received, albeit not compliant with Form-I, but also any material or fact that may come to the notice of the Institute pertaining to the professional conduct of a member and which on due examination and evaluation may merit an enquiry being initiated.

K. The Court thus comes to the firm conclusion that the words information and complaint appear to have been consciously used and placed in Section 21 in order to enable the Institute to proceed against a particular member unfettered by the absence of a written complaint being provided to the Institute.

L. If Section 21 were to be interpreted as conferring jurisdiction on the Institute to proceed against a member only upon receipt of a written complaint, it would clearly fetter and impede the larger public function that it is obliged to perform and the statutory duties that stand placed upon it.

O. On an overall consideration of the aforesaid, this Court is of the considered view that the word information as appearing in Section 21 cannot be narrowly construed to mean only those facts which may be specifically provided to the Institute. The Act and the Rules have consciously attempted to treat the two separately and distinctively. The phrase any information would thus cover within its ambit not only written complaints that may be received, albeit not compliant with Form-I, but also any material or fact that may come to the notice of the Institute pertaining to the professional conduct of a member and which on due examination and evaluation may merit an enquiry being initiated.

T. Viewed in the aforesaid backdrop, this Court is of the considered opinion that Section 21 does empower the Institute to proceed suo moto and unhindered by the absence of a written complaint or allegation that may be submitted. A written complaint or allegation in writing cannot, in any manner, be understood to be a pre-requisite or a sine qua non for the initiation of action under Section 21. This since the authority conferred on the Institute relates to both a complaint as well as information. Information, as has been found by this Court, would extend to any material or fact that may come to the notice of the Institute and from which it may derive knowledge. That material need not necessarily be in the written form or be interpreted as being confined to something which an individual may choose to bring to the notice of the Institute. Acceptance of a submission to the contrary would amount to restricting the width and amplitude of the power conferred by Section 21 which enables the Institute to

V. Rule 7 cannot control or constrict the ambit of Section 21 of the Act. Firstly, and on a fundamental plane, it will be wholly incorrect to either interpret or construe a provision placed in the principal enactment on the basis of what may be contained in a subordinate piece of legislation, as in this case the Rules. A rule cannot possibly be understood or held to be determinative of the scope or content of a provision placed in the parent enactment. Rules, as is well settled, cannot be interpreted in a manner which may curtail the powers that may be vested or be available to be exercised by virtue of the parent enactment. They essentially supplement and are ancillary to the principal provisions contained in the Act”.

Noting the above, the Committee was of the view that Section 21 of the Chartered Accountants Act, 1949 empowers the Institute to proceed suo-moto and unhindered by the absence of a written complaint or allegation that may be submitted. Accordingly, the Committee was further of the view that the authority conferred on the Institute relates to both a complaint as well as information, and that the information would extend to any material or fact that may come to the notice of the Institute and from which it may derive knowledge. The Committee opined that initiation of enquiry in the present case have been preceded by due application of mind and evaluation of veracity of news reports, and cogent material and facts. Accordingly, the Committee decided that the objection of the Respondent on non-maintainability of disciplinary proceedings is not tenable.

(ii) As regards the objection related to non-applicability of Clause (2) Part IV of First Schedule and Clause (4) Part II of Second Schedule to the Chartered Accountants Act, 1949 as stated at Sl. No. (ii) above, the Committee noted that the Respondent was working as Chief Operating Office/Chief Financial Officer of the Company at relevant time. The Committee further noted that the Company lodged an FIR with Gurgaon Police and the Police had filed a charge sheet before the Court of Ld. JMFC, Gurgaon for fraud which took place in the Company. Thereafter, as per Order of the Ministry of Corporate Affairs an investigation was carried out by SFIO in the financial activities of the Company. The SFIO in its investigation report noted the role of the Respondent in falsification of the accounts of the Company (RIC) and

wrongful loss to the Company. Thus, the Committee was of the considered view that the Director (Discipline) has rightly attracted the Clause (2) Part IV of First Schedule and Clause (4) Part II of Second Schedule to the Chartered Accountants Act, 1949 in this case; as Respondent was involved in falsification activities with other officials of the Company and has caused wrongful loss to the Company. Accordingly, the Committee decided that the objection of the Respondent on this count is not tenable.

8.2 The Committee noted the **first charge** against the Respondent that the Company maintained four secret warehouses to keep the stolen stocks and did not report in the Books of accounts. The Committee observed the finding in the charge-sheet submitted before the Court of Ld. JMFC, Gurgaon, that the Respondent being one of the accused in such Charge Sheet, along with Mr. Sanjiv Mishra, the proprietor of M/s Shivam Enterprises and on of the accused hid the goods under the category '*Billed but not Dispatched*'(BBND) and Sales return goods of the Company in four warehouses situated at Bijwasan, New Delhi, & Samalkha, New Delhi. The Committee also observed that Mr. Sanjiv Mishra, the proprietor of M/s Shivam Enterprises had confessed before the Police authority that he himself along with the Respondent and others, had received Rs.1.5 Crores approximately as rent of the said four warehouses from the Company and out of which some amount was paid to warehouses' owners and remaining amount was shared by accused. The Committee further observed that the rent for such secret warehouses was being paid through a fraudulent arrangement entered into by the Respondent being the then CFO/COO of the Company and Mr. Subhinder Singh Prem, the then MD of the Company with M/s Shivam Enterprises which arranged warehouses on rent and the rent of such warehouses were paid to M/s Shivam Enterprises in clandestine manner through fake bills in the name of 'Overtime' which were cleared/approved by the Respondent from Company's account being the then CFO/COO of the Company and due to this act of the Respondent there was a direct loss to the Company.

8.3 The Committee further observed that the above stated facts mentioned in the Charge Sheet filed before the Hon'ble Court were corroborated with the findings of the other independent investigation authority i.e. SFIO in its Investigation Report, in the matter. The Committee observed that the Investigation Report of SFIO on this

issue has stated that the temporary warehouses were maintained by the top **functionaries of the Company** to store BBND goods, sales returns but the payment of rents to these warehouses was camouflaged through fictitious expense entries.

8.4 The Committee in this regard observed the submission of the Respondent that these were the temporary warehouses and not the 'secret warehouses' and goods which were invoiced but not dispatched were used to kept in such warehouses for logistics purposes till the time of their shipping however, the SFIO in its Report stated that though the Company had been operating through multiple temporary warehouses for three years but from the details of warehouses submitted by the Company it was observed that M/s Shivam Enterprises provided only two warehouses to the Company directly on lease.

8.5 Thus, the Committee viewed that though the temporary warehouses were taken by the Company on lease for its operations but the warehouses referred in the investigation which were arranged by M/s Shivam Enterprises to the Respondent and Mr. Subhinder Singh Prem, the then MD of the Company was not in the knowledge of the Company. The Committee thus, opined that the Respondent being CFO/COO of the Company in connivance with Mr. Subhinder Singh Prem, the then MD of the Company hired the secret warehouses to secretly keep the goods of the Company in the form of unaccounted sales return and goods under the category 'Billed but not dispatched' and thereby made the loss to the Company. The Committee also opined that the Respondent being the then CFO/COO of the Company approved the rent of such warehouses in a clandestine manner by booking fictitious expenses in Company's account and thereby made loss to the Company. Accordingly, the Committee held the Respondent guilty on this count.

8.6 As regard of **second charge** of fictitious sales the Committee observed that the fact was brought in the Charge Sheet that there were products of worth in crores which were invoiced but not delivered to the customers and it was also transpired that over the years, customers had been returning the products to the Company and such products were deliberately and fraudulently not accounted for in the books of accounts of the Company under the instructions of the Respondent.

8.7 The Committee observed that the SFIO also in its Investigation Report has concluded that the top functionaries of the Company had also adopted the method of recognising revenue prematurely for inflating sales. Accordingly, invoices were raised and revenue was recognised. However, goods were not dispatched to the customers against these sales which resulted in falsification of sales account and the consequent distortions in the customer ledgers, corresponding accounts receivable and inventory account of the Company. This practice of "goods billed but not dispatched", known as BBND, a practice followed at least since 2008, resulted in falsification of accounts and financial statements of the Company for the years 2008 to 2011 to the extent of a minimum of Rs 321.57 Crore.

8.8 The Committee observed that the practice prevailing in the Company 'Billed but not dispatched' is a mechanism to inflate the sales since as per the Investigation Report it was noted that:

- (i) *A sizeable portion of BBND as on December, 2011 which was booked as sales, were subsequently returned to RIC as sales return through issuance of credit notes.*
- (ii) *All the goods against the invoices were not dispatched even in the subsequent quarter.*
- (iii) *Some of the sale invoices used by officials of RIC for raising funds through bill discounting from banks were subsequently reversed by issue of credit notes.*
- (iv) *Out of BBND of Rs. 147.26 Crore as on 31st Dec, 2011, goods worth Rs.29.15 Crore were got discounted by RIC and the customers against whom the invoices were raised were not even aware of such invoices. This shows that there was no intention on the part of the local management of RIC to transfer title of these goods.*

8.9 The Committee noted that though the Respondent in his Written Submissions had stated that BBND (Billed but not dispatched) was a normal phenomenon and the stocks were eventually delivered to the Customers in the following months, however, from the above findings of the Investigation Report, it was quite evident that the above practice was to inflate the sales of the Company as the revenue was not being recognized in accordance with the applicable Accounting Standard – 9 'Revenue Recognition' as no transfer of title of goods was intended. The Committee opined that the Respondent being the then CFO/COO of the Company who signed the

Financial Statement for F.Y.s 2009-2010 and 2010-2011, was a key managerial personnel concerning the key business activities and was part of decision-making process of the Company and thus, the so called practice of BBND (Billed but not dispatched) prevailing in the Company was formulated by him only to recognize the sales in such manner where the goods were being invoiced without the consent of the customers. Further, as opined in the previous allegation the Respondent hid such BBND goods and the unaccounted sales return in secret warehouses, in the opinion of the Committee, the intention behind formulating such malpractices in the company by the Respondent has clearly brought disrepute to the profession. Accordingly, the Committee held the Respondent guilty on this count.

8.10 The Committee noted that **third Charge** was in regard of cheating through fake sale to M/s. K. K. Enterprises and the Respondent had fraudulently billed defective and unusable goods at the wholesale price of Rs. 19.39 crores in order to inflate the sales figures for the year 2011. The Committee observed that the Respondent was charge-sheeted on this ground and it was found by the Police that these products were stored in the secret warehouses and the Respondent caused a loss of about Rs. 2 Crores to the Company.

8.11 The Committee further observed that SFIO also in its Investigation report has concluded that in the month of December, 2011 the Company raised sales invoice of Rs. 21.47 Crores in favour of M/s K K Enterprises however, no goods were actually dispatched to them. The Committee also observed that the statement of Ms. Paragti Lamba, the proprietor of M/s K K Enterprises, was also taken on oath by SFIO who confirmed that they had not received any goods from the Company. Further, the statement of Mr. Abhinav Adhikari, Executive (Operations) of the Company, was also taken on oath by SFIO wherein it was stated that the '(Customer) master' (the ledger account name) of M/s K K Enterprises was opened in the system of the Company on the instruction of the Respondent for which the approval was also signed by him (Respondent) along with Mr. Subhinder Singh Prem. It was further stated that all the billing details of the articles were provided by them (the Respondent and Mr. Subhinder Singh Prem, the then MD) and further the approvals for such billing was also made by them only. This was also stated that such billings were done to meet the year-end target.

8.12 The Committee noted that though the Respondent in his Written Submissions had stated that the sale was approved by Mr. Shahin Padath, the then Director of the Company and the sale was reversed subsequently and goods were in the possession of the Company and hence, the Company did not suffer any loss on account of this sale transaction with KK Enterprises. On this defence of the Respondent, the Committee was of the view that Mr. Shahin Padath, the Director Finance has also been made liable for the charges in the Investigation Report of SFIO. Further, though the goods invoiced to K K Enterprises were in the possession of the Company and hence, there was no loss to the Company but from the findings of the SFIO, it was clearly evident that the intent of invoicing to K K Enterprises without any intent of transferring the title of the goods to it, was to inflate the sales. The Committee opined that the Respondent being a professional and Key Managerial Personnel of the Company was responsible for presenting a true and fair picture of the accounts of the Company while the Respondent misused his position and resorted to falsification of accounts by booking fictitious sales in the financial year 2010, in the month of December, 2011 and thereafter, the reversal of such sales in the next financial year i.e. in the month of February, 2012 and thus, the Respondent thereby has clearly brought disrepute to the profession. Accordingly, the Committee held the Respondent guilty on this count.

8.13 Further, as regard the **fourth** charge of Franchise Referral Program (FRP) is concerned, the Committee observed that this program was started by the Respondent and Mr. Subhinder Singh Prem, the then MD and for which large amount was collected by the Company on the pretext of opening of stores at excessive rates of interest. Despite the instruction from the Company not to expand the store base, the Respondent has started this scheme. There is a finding in the chargesheet that there was falsification under the said scheme and on this account, there is a direct loss to the Company of about Rs. 14.82 crores. On perusal of the submissions made by the Respondent, it is observed by the Committee that despite the instruction not to open such program, the Respondent along with Mr. Subhinder Singh Prem, the then MD has opened the scheme which caused the so-called loss to the Company.

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8.14 The Committee further observed that the SFIO in its Investigation Report has discussed the FRP in length and stated that the Company was a thinly capitalized company and with the spectacular growth over a number of years in its primary sales to the franchisees, it was in dire need of funds as it had allotted franchisee stores in the past mainly on MG model, which was a highly cash intensive model. In December, 2010, the Respondent and its other employees viz. Shri Nikhil Upadhyay (then National Sales Manager), Shri Subhinder Singh Prem (then Managing Director) formulated a novel scheme known as 'Franchisee Referral Program' (FRP) and collected funds (approx. Rs. 100 crore) from the market purportedly by inviting prospective franchisees to open franchisee stores. The amounts collected had a lock in period of six months, high rate of return on such funds was offered and were termed as incentive varying from 16% to 24% and 32% per annum in some of the cases. The amount was supposed to be kept till a Reebok store was allotted to such deposition.

8.15 Investigation further revealed that the Company took large amounts from parties under FRP which were received initially for six months but rolled over after six months by returning the deposited amount with interest, followed by re-investment by them for another six months period.

8.16 There was no connection between the money collected under FRP and the franchisee stores opened. Out of 58 investors, 15 investors were inquired by the Complainant-Department and it was concluded that transaction with RIC were in nature of investments by way of fixed deposits for return of capital and the interest amount. Neither intention to take over retail store of RIC was expressed by investors nor any store under FRP was allotted.

8.17 On account of the following facts as brought out in SFIO Report, it was amply clear that the money advanced by various parties under FRP scheme to the Company was nothing but deposits made by them for earning interest only and there was no time for opening up of retail store of the Company.

- *The treatment of amounts received under FRP as deposit by the tax auditors in the tax audit report for FY 2010-11;*

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- *The fact that the franchisees do not make any deposits/advances (and that too at such high interest rates) for store allotment as deposed by Preet Pal Singh.*
- *The fact that RIC issued post-dated cheques to the depositors for monthly payment of interest as well as for return of capital investment;*
- *The fact that RIC deducted tax at source on account of incentive (interest) paid to so called prospective franchisee under Section 194A of the Income Tax Act, 1961 relating to interest other than interest on securities.*
- *The decision of the Hon'ble Supreme Court in the case of Ram Janaki Devi and another vs. M/s Juggilal Kamlapat.*

8.18 The Company had declared itself to be a private company. Therefore, as per the provisions of Section 3(1)(iii) of the Companies Act, 1956, it was not entitled to accept any deposit from the public. In order to bypass these provisions of the corporate law, FRP Scheme was devised by RIC to camouflage the transaction of accepting deposits under the garb of FRP”.

8.19 FRP scheme was launched to raise funds as RIC was in dire need of finances and camouflaging of the money so received under debtors revealed the intent of concealing such deposits. Franchisees of RIC were not normally required to give any security deposits to open a store but required only to invest in inventory and retail store but opening of only one store under FRP Schemes and that too after returning major portion of their investment, shows that RIC had no intention of creating nexus between the deposits and the store allotment.

8.20 From the material available on record, it was noted that the deposits were accepted by RIC during 2010 and 2011 from both non-corporate and corporate entities. As the deposits received under FRP were wrongly credited to various sundry debtors to show improvement in aging profile of these debtors, it amounted to the falsification of account of RIC. Further, the interest payments on these deposits were also wrongly credited to a fictitious account, leading to falsification of books of account of the Company.

8.21 Thus, the Committee was of the opinion that the Respondent cannot escape from his liability as he was a part of the decision making process and the scheme is evidently formulated for wrongful intention which lead to falsification of the books of accounts of the Company and clear window dressing done to cover the violation of Companies Act provisions, because of which the financial statements did not give

true and fair view of the state of affairs. Thus in the opinion of the Committee, the Respondent has clearly brought disrepute to the profession. Accordingly, the Committee held the Respondent guilty on this count.

8.22 The Committee noted that **Fifth charge** was in context of 'In and Out transactions', the Company had submitted that the Respondent along with Mr. Subhinder Singh Prem, the then MD had manipulated the payments made to and received back from customers of the Company to show the fictitious collections in December, 2010. The Committee observed that in investigations by the Police authority, it was found that on the instructions of the Respondent and Mr. Subhinder Singh Prem, the then MD, the money was transferred to the Customer's accounts in the January, 2011 and at the same time a cheque dated December, 2010 was obtained from the customers when the cheques were actually encashed by the Company about almost an equivalent amount.

8.23 The Committee further observed that the SFIO also in its Investigation Report had stated that the top functionaries of the Company in order to reduce the ageing of its accounts receivable connived with some of its selected customers by first remitting money to their bank account and subsequently collected money from them to reduce Account Receivable Balances. The name of such Customers were also transpired by SFIO from whom together the Company shown false collection of Rs.98.40 Crores in the Financials of the Company for the year ended as on 31-12-2011.

8.24 The Committee noted that though the Respondent in his Written Submissions had stated that that 'In and Out' Transaction in the Company were not fraud as the same was a practice in the Company, the Committee viewed that the Respondent has indirectly has admitted that the malpractice of 'In and Out' Transactions was prevailing in the Company. The Committee was further of the view that such practices was a tactic to falsify the accounts of the Company leading to misrepresentations of facts about ageing of debtors to mislead stakeholders and the Respondent being at the helm of affair of the Company himself foster that malpractice in the Company. Accordingly, the Committee opined that the

Respondent being a professional has brought disrepute to the profession. Accordingly, the Committee held the Respondent guilty on this count.

8.25 As regard the **sixth charge** of overstating of accounts receivable and maintenance of parallel accounting records maintained by the Respondent and Mr. Subhinder Singh Prem, the then MD, which is known as Regional Outstanding Reports (ROR), the Committee noted that the Company has submitted that the amount mentioned in the receivables as per the ROR is much less than the amount mentioned in the books of the Company. The Respondent has submitted that Mr. Shahin Padhat, the Director of the Company has himself signed several RORs, no funds have moved out of the Company, ROR is not a parallel accounting but reports that intrinsically captured various items of reconciliation that would arise with any customer and no reconciliation is possible without looking into various reconciliation issues of the franchisees. The Committee observed that in investigation, it was found by the Police Authority that the accounts receivable balances were at variance with the official financial records of the Company. There is also a finding in the charge-sheet that there was a conspiracy hatched by the Respondent and Mr. Subhinder Singh Prem, the then MD with some customers, wherein the customers used to confirm the outstanding balance wrongly reported in the books as corrected by signing audit confirmation letters for the purpose of the Company's audit. The Committee was of the view that this statements show relationship with some customers and certain fraudulent acts which were alleged to have been committed by the Respondent in connivance with these customers.

8.26 The Committee observed that the SFIO in its Investigation Report had stated that ROR referred to a format of reporting by regional accountants and sales teams of RIC to report on the status of actual collectibles of Accounts Receivables to the Gurgaon Headquarters. Since, the management of the Company had been stuffing the franchisee channels aggressively with more and more stock, the retail stores were overstocked. Consequently, there was a practice in the Company to accept sales return by issuing credit notes. However, discretion was used by the top functionaries of the Company even at the time of issuing credit notes to manage the top-line and the bottom-line.

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8.27 A large number of the franchisee stores were run on Minimum Guarantee (MG) model, wherein, the franchisee was assured of a minimum return on investment besides reimbursement of retail operating expenses. As per the terms of these MG agreements, the MG payments were to be settled at the end of each month and finally at the end of each year. However, in practice, these terms of settlement were not followed regularly. Non-reconciliation of MG claims led to variations in the Accounts Receivable (AR) balance as per the Adirace ERP software and the details maintained at the level of the franchisee stores. MG claims made by the franchisee were also recorded in the ROR. Here again, discretion was used by the top functionaries of the Company to entertain these claims and to enter them into the ERP system leading to falsification of books of account and violation of matching principle of accounting.

8.28 The Committee further observed that Investigation had revealed that the Company had a well-defined format of 'Regional Outstanding Report' (ROR) which was used since 2005-06 by Regional head offices to send information on the actual status of accounts receivable of various debtors parties which were compiled at Head Office of the Company at Gurgaon and substantial part of transactions relating to items mentioned in the ROR were kept out of the ERP system. The Summary of transactions relating to RIC during investigation revealed that as per ADIRACE (ERP System of RIC), ARs were standing at Rs. 1006.93 crore as on 31.12.2011, whereas, as per ROR the same stood at Rs. 476.76 Crores only. It was accordingly viewed that the Respondent being the then CFO/COO of the Company was responsible to maintain true and transparent position of receivables. Omission of such system from ERP system and failure on part of the Respondent to bring in any official document to justify the action of local management to maintain ROR signified that the local management of the Company fraudulently overstated the ARs with a malafide intention of managing earnings over the years.

8.29 Thus, the Committee was of the opinion that the Respondent being one of the top most official/Key managerial personnel of the Company was required to show a true and fair view of its Financials, which however, he knowingly failed to do so. Accordingly, the Committee held the Respondent guilty on this count.

8.30 After noting the above findings, the Committee perused documents on record and noted the Ministry of Corporate Affairs, Government of India under section 235 of the Companies Act, 1956 vide order dated 29.05.2012 directed the Serious Fraud Investigation Office to investigate into the affairs of the Company. On perusal of the copy of the Investigation Report brought on record by the Complainant, it is noted that the investigation report was prepared on the basis of books of account and other records maintained by the Company for the year ended 31st December, 2011, which were signed by the Respondent as Chief Operating Officer of the Company.

8.30.1 Upon perusal of Investigation Report, the Committee noted the following instances/events where involvement of the Respondent had been revealed:

8.30.1.1 *"Investigation revealed that Subhinder Singh Prem and Vishnu Bhagat (Respondent), the top two executives of the Company, managed the affairs of the Company with complete discretion and got the financial statements prepared in a manner aimed at showing a very rosy picture of the business of the Company, not reflecting the true and fair picture of the affairs of the Company. There are evidences to show that the expat nominees of Adidas Group responsible for managing the financial affairs of the Company were also not completely oblivious of these happenings".*

8.30.1.2 *"Absence of strict internal controls and failure on the part of the Company Board to monitor the affairs of the Company resulted in complete exercise of discretion by the local management in running the business of the Company. Subhinder Singh Prem and Vishnu Bhagat (Respondent), the top two functionaries, with a select set of trusted executives of the Company, manipulated the books of account of the Company in order to show a healthy Balance Sheet and Profit and Loss Accounts".*

8.30.1.3 *"Investigation revealed that the senior executives of the Company falsified the books of account and the annual financial statements of the Company by inflating sales during the period 2008 to 2011 by raising fictitious invoices. In most of*

the cases, the buyers against whom these fictitious invoices were raised had no knowledge of such invoices. During 2008 to 2011, sales were inflated by a total amount of Rs 185.54 crore by raising such fictitious invoices. The sales were also inflated during 2010 and 2011 by retrospectively increasing the price of goods already sold to the franchisees, which resulted in inflation of sales by Rs 31.83 crore and Rs 53.78 crore in 2010 and 2011, respectively. The sales were also inflated by not accounting for the goods returned by the customers during the period 2007 to 2011 as correct booking of sales returns would have had a negative impact on the net sales of the Company. The total impact of such "cookie jar" policy of selective booking of sales return was to the tune of Rs 62.91 crore over the period 2007 to 2011".

8.30.1.4 "Investigation revealed that there were instances that the fictitious invoices, which were raised to inflate sales, were also used fraudulently to raise finance from the Banks/Financial Institutions. The customers in whose favour such invoices were raised were neither aware of such invoices, nor know that finances were raised by the Company against such invoices through bill discounting. These fictitious invoices were settled later on by raising credit notes. Further, this mechanism was also used for improving the profits of aging accounts receivable to avoid creation of provision for bad debt, falsifying the financial results in the process".

8.30.1.5 "Investigation also revealed that the top functionaries of the Company had also adopted the method of recognising revenue prematurely for inflating sales. Accordingly, invoices were raised and revenue recognised but goods were not dispatched to the customers against these sales. This resulted in falsification of sales account and the consequent distortions in the customer ledgers, corresponding accounts receivable and inventory account of the Company. This practice of "goods billed but not dispatched", known as BBND, a practice followed at least since 2008, resulted in falsification of accounts and financial statements of the Company for the years 2008 to 2011 to the extent of minimum of Rs 321.57 Crore. Temporary warehouses were maintained to store BBND goods, sales returns but the payment of rents to these warehouses was camouflaged through fictitious expense entries. A parallel set of books known as Regional Outstanding Registers (ROR) was used for

recording details of transactions/claims which were not recorded in the ERP system in the regular course of business”.

8.30.1.6 “Investigations further revealed that forever-greening the worsening position of accounts receivable, the top functionaries resorted to ‘In and Out’ transactions, to show fictitious collection against debtors of the Company. The main accomplice in this process was Ashana Group, owned by one Lamba family, who helped the top functionaries of the Company by providing accommodation entries, in booking fictitious collections from sundry debtors. Funds were transferred out of the Company multiple times and re-infused as receipts/realisations against outstanding receivables from sundry debtors. During 2010, the books of account and financial statements have been falsified by this practice to the extent of at least Rs 98.40 crore”.

8.30.1.7 “Investigations further established that the Company had also raised finance from public through short term deposits with pre-assured return, in the garb of Franchisee Referral Program (FRP) in violation of Section 58A of the Companies Act, 1956. Holding a declared status of ‘private Company with unlimited liability’, the Company was not permitted to raise funds from the general public. The top functionaries of the Company however, resorted to camouflaging device of FRP, by not recording the deposits collected in its books of account as ‘deposits’ but showing the same as collections from sundry debtors. The interest charged on these deposits was also booked in a fictitious customer account ‘M/s River Pentland Pvt Ltd.’ to avoid detection. During 2010 and 2011, the books of account and financial statements have been falsified by an amount of at least Rs 60.85 crore and Rs 24.76 crore, respectively on account of FRP”.

8.30.1.8 “The Reebok story can be summarised as follows:

- a) The focus of the local management was on achieving the Primary Sales Targets set by the global head office by
 - i) Multiplying the number of retail stores leading to channel stuffing;
 - ii) Inflating sales through;

- iii) *Raising fictitious invoices, retrospective price increase & non-booking of sales returns.*
 - *Storing Goods billed but not dispatched in temporary warehouses and resorting to camouflaged accounting entries for hiding warehouse rentals.*

- b) *Managing the Accounts Receivable through:*
 - *Parallel sets of books: Regional Outstanding Reports*
 - *Subsequent reversal of sales by issuance of credit notes*
 - *Adjusting aging debtors by using fund flows from unrelated sundry sources: 'in-and-out', FRP, Hundi discounting etc.*
- i) *Raising funds from financial institutions in connivance with a select set of vendors through:*
 - *Double discounting of bills under vendor financing.*
 - *Using fictitious sales invoices for raising funds by discounting of said bills*

- c) *The local management headed by Subhinder Singh Prem and Vishnu Bhagat, resorted to innovative 'Franchise Referral Program' to get additional finances from local sundry sources at exorbitant rates of interest, by circumventing the provisions of law;*

- (d) *The management indulged in:*
 - (i) *outward repatriation of foreign exchange through payment of buying commission to related party in violation of FIPB approval.*
 - (ii) *in suspicious financial transactions with a select group of entities for falsification of books of account and siphoning off funds through commission payments and payments for inflated purchase to Ashana Group entities.*

- (f) *The management manipulated the financial statements to present a picture, which was not reflecting true and fair view of the affairs of the Company;*

- (g) *Lack of internal controls, and absence of an effective supervisory mechanism by the Board of Directors leading to exercise of undue discretion by local management, and failure on the part of the auditors to exercise independent oversight, completed the story"*

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8.30.1.9 It was also noted from the observations in the investigation report as under:
"It is clear that Prima Facie, the top two functionaries of the Company, Shubhinder Singh Prem & Vishnu Bhagat (Respondent), along with Shri Shahin Padath, Director (finance), GM (Finance) and Shri Manish Marwah, GM (Receivable) inflated the sales for the years 2010 and 2011 to the extent of Rs 31.83 crore and Rs 53.78 crore, respectively, and thus falsified the books of account of the Company for the years 2010 and 2011.

Transactions with Mochiko Shoes Pvt Ltd.

Shri Rajender Taneja, Director (Finance) in his Statement on oath...confirmed as under:

"On being asked regarding the officials, who were instrumental in preparation of these hundis and releasing the same to Mochiko, he stated that the authorisation letters along with the duly accepted hundis were signed by Shri Subhinder Singh Prem and Shri Vishnu Bhagat (Respondent).

8.30.1.10 *"Investigation report reveals that Shri Subhinder Singh Prem, Vishnu Bhagat (Respondent), Mr. Manish Marwah, Lalit Marwah, Soumyabrata Mukherjee, Kapil Agarwal, Sandeep Mathur, Preetpal Singh, Nikhil Upadhye, Akshat Sharma, Ms Snigdha Roy, Amit Dwivedi, Naveen Sharma of the Company colluded with these selected customers and appeared to be instrumental in execution of the in-out transaction, which resulted in reduction of the AR (Accounts Receivable) Balance, distorted the true nature of operating cash flows leading to falsification of the books of the accounts of the Company. Therefore, the said officials of the Company appear to be liable for prosecution u/s 477A of IPC for falsification of books of accounts of the Company for the year 2010 and 2011. In addition, the persons amongst them, who made the financial statements for the year 2010 are also liable for prosecution u/s 628 of the Companies Act, 1956 for furnishing false financial statements with knowledge attributable to them".*

8.30.1.11 Investigation further reveals that *"the top two functionaries of the Company, Shubhinder Singh Prem and Vishnu Bhagat (Respondent) engineered the*

instrument of ROR (Regional Outstanding Report) in collusion with the following officials to falsify the books of account of the Company:

Name of the officials	Designation
Anand Agarwal	GM (Finance)
Manish Marwah	GM (Receivables)
Soumyabrata Mukherjee	Manager Receivables

Therefore, the above referred officials of the Company, along with Shri Subhinder Singh Prem and Vishnu Bhagat, prime facie, appear to have been involved in the manipulations resulting in falsification of accounts and have rendered themselves liable for prosecution u/s 477A of IPC for falsification of books of account of the Company for the year 2010 and 2011. Amongst them, the persons who had made the financial statements for the year 2010 are also liable for prosecution u/s 628 of the Companies Act, 1956 for furnishing false financial statements”.

8.30.1.12 “Shri Subhinder Singh Prem and Shri Vishnu Bhagat (Respondent) along with Shri Parvez Munshi, Anand Agarwal and Soumyabrata Mukherjee of the Company in collusion with Shri Sanjeev Mishra of Shivam Group have participated in the transactions between the Company and the Shivam Group. Through circuitous transactions they have, prima facie, falsified the books of account of the Company for the years 2009, 2010 and 2011. The above said top functionaries of the Company were instrumental in making manipulated sales against the same goods for which refurbishing charges were paid and the consequent falsification. By doing so, they appear to have rendered themselves liable for action under Section 464 for preparation of false invoices, Section 471 for using the same (along with the Company) and 477A IPC for falsification. Amongst them, the persons who made the financial statements for the years 2009 and 2010 also appear to be liable for prosecution u/s 628 of the Companies Act, 1956 for furnishing false financial statements.”.

8.30.1.13 On 26th May, 2011, the financial statements of the Company for 31st December, 2010 were adopted and the accounts were signed by the directors Shri

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Subhinder Singh Prem, Managing Director, Vishnu Bhagat, CFO/COO (Respondent), Shri Shahin Padath, Director and Shri Anand Agarwal, GM (Finance).

The said accounts had intentional fraudulent transactions and falsification as had already been discussed in this report, which would not render them true and fair.

The details of such falsification in the accounts for 31st December, 2010 are as under:

Details of falsification of accounts during 2010

Methods used for falsification	Rs in Crore
<i>Inflation of Sales through</i>	31.46
• <i>Fictitious invoices</i>	
• <i>Retrospective price increase</i>	31.83
<i>Sales returns not booked by the Company</i>	12.76
<i>Goods billed but not dispatched (BBND)</i>	109.11
<i>In-Out transactions (Cheques in hand)</i>	98.4
<i>Franchisee Referral Program (FRP)</i>	60.85
TOTAL	344.41

8.30.1.14. "All the signatories to the financial statements for the period 2007 to 2010, including Shri Shahin Padath, Shubhinder Singh Prem and Vishnu Bhagat (Respondent) were aware of the matters relating to such falsification and based on said discussions with auditors, were apprised of the enormity of the issues. They singularly and collectively failed to discharge their fiduciary duties as responsible officers/directors of the Company.

Prime facie, it appears that all the signatories of the financial statements are involved in manipulations as discussed hereinabove, resulting in disclosing and issuing the financial statements, which do not represent true and fair position of the affairs of the Company".

SHIVAM ENTERPRISES

8.30.1.15 "The documentary evidence, the following officials of the Company were liable for falsification of accounts for the year 2009, 2010 and 2011, as detailed above:

- i) Shri Subhinder Singh Prem, the then MD of the Company,
- ii) Shri Vishnu Bhagat (Respondent), the then CFO of the Company,
- iii) Shri Pervez Munshi, the then Manager (Sales)
- iv) Shri Anand Agarwal, the then GM (finance)
- v) Shri Soumyabrata Mukherjee, the then Manager (Receivables)

8.30.1.16 Since, the financial statements for the years 2009 and 2010 have been signed/made by Shri Subhinder Singh Prem, MD, Vishnu Bhagat (Respondent), CFO/COO and Anand Agarwal, GM (Finance), which are false in material particulars stated hereinabove, knowing the same to be false as is evident from the referred to evidences, they are liable for prosecution under Section 628 of the Companies Act, 1956, which reads as follows:

"682. Penalty for False Statements:

If in any return, report, certificate, balance sheet, prospectus, statement of other document required by or for the purpose of any of the provisions of this Act, any person makes a statement (a) which is false in any material particular, knowing it to be false; or (b) which omits any material fact knowing it to be material;

He shall, save as otherwise expressly provided in this Act, be punishable with imprisonment for a term which may extend to two years, and shall also be liable to fine".

8.30.1.17 Shri Subhinder Singh Prem, MD, Vishnu Bhagat (Respondent), CFO/COO and Anand Agarwal, GM (Finance) and Soumyabrata Mukherjee, Manager (Receivables), have wilfully and knowingly falsified the books of account of the Company for years 2009, 2010 and 2011 with an intent to defraud, as is evident from the referred to evidences, and hence are liable to be prosecuted under Section 477A of the Indian Penal Code, which reads as follows:

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"477A. Falsification of accounts – whoever, being a clerk, officer or servant, or employed or acting in the capacity of a clerk, officer or servant, wilfully, and with intent to defraud, destroys, alters, mutilates or falsifies any book, paper, writing, valuable security of account which belongs to or is in the possession of his employer, or has been received by him for or on behalf of his employer, or wilfully, and with intent to defraud, makes or abets the making of any false entry in, or omits or alters or abets the omission or alteration of any material particular from or in, any such book, paper, writing, valuable security or account, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

Explanation:- it shall be sufficient in any charge under this section to allege a general intent to defraud without naming any particular person intended to be defrauded or specifying any particular sum of money intended to be the subject of the fraud, or any particular day on which the offence was committed".

8.30.1.18 In view of the above, it is clear that the top two functionaries of the Company, Subhinder Singh Prem, Ex MD and Vishnu Bhagat, Ex CFO/COO, in collusion with Shri Anand Agarwal, Ex GM (Finance) and Shri Manish Marwah, Ex GM (Receivables) inflated the sales for the years 2010 and 2011 to the extent of Rs 31.83 crore and Rs 53.78 crore, respectively, and thus falsified the books of account of the Company for the years 2010 and 2011. Shri Shahin Padath, Director was aware of this manipulation but did not take steps to reverse it.

8.30.1.19 Since, the financial statements for the year 2010 have been signed/made by Shri Subhinder Singh Prem, MD, Vishnu Bhagat (Respondent) , Ex CFO/COO, in collusion with Shri Anand Agarwal, Ex GM (Finance) and Shahin Padath, Director, which are false in material particulars as stated hereinabove, knowing the same to be false as is evident from the referred to evidences, they are liable for prosecution under section 628 of the Companies Act, 1956 which reads as follows:-

"682. Penalty for False Statements:

If in any return, report, certificate, balance sheet, prospectus, statement of other document required by or for the purpose of any of the provisions of this Act, any

person makes a statement (a) which is false in any material particular, knowing it to be false; or (b) which omits any material fact knowing it to be material; he shall, save as otherwise expressly provided in this Act, be punishable with imprisonment for a term which may extend to two years, and shall also be liable to fine”

8.30.1.20 Shri Subhinder Singh Prem, MD, Vishnu Bhagat (Respondent), CFO/COO in collusion with Shri Anand Agarwal, Ex GM (Finance) and Shri Manish Marwah, Ex GM (Receivable) inflated the sales for the years 2010 and 2011 to the extent of Rs 31.83 crore and Rs 53.78 crore, respectively, and Shri Shahin Padath, Director (for the year 2011). All these officials falsified the books of account of the Company with an intent to defraud, as is evident from the referred to evidences, and hence are liable to be prosecuted under Section 477A of the Indian Penal Code, 1860 which reads as follows:

“477A. Falsification of accounts – whoever, being a clerk, officer or servant, or employed or acting in the capacity of a clerk, officer or servant, wilfully, and with intent to defraud, destroys, alters, mutilates or falsifies any book, paper, writing, valuable security of account which belongs to or is in the possession of his employer, or has been received by him for or on behalf of his employer, or wilfully, and with intent to defraud, makes or abets the making of any false entry in, or omits or alters or abets the omission or alteration of any material particular from or in, any such book, paper, writing, valuable security or account, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

Explanation:- it shall be sufficient in any charge under this section to allege a general intent to defraud without naming any particular person intended to be defrauded or specifying any particular sum of money intended to be the subject of the fraud, or any particular day on which the offence was committed”

8.30.1.21 During investigation, “Shri Anand Agarwal, the then General Manager (Finance) of the Company stated on oath that on the specific instructions by Shri Vishnu Bhagat (Respondent), the then CFO of the Company, emails were written to various customers from whom the money was to be arranged and the back dated cheques were also collected in the month of January, 2011. The authorisation letter

of remittance of funds through RTGS to the customer accounts were signed by Shri Subhinder Singh Prem, the then MD of the Company and Shri Vishnu Bhagat, the then CFO of the Company”.

8.30.1.22 Shri Subhinder Singh Prem, MD, Vishnu Bhagat (Respondent), CFO/COO, along with Shri Soumyabrata Mukherjee, Manager (Accounts Receivable), Shri Preetpal Singh, Regional Sales Manager (North), Shri Anand Agarwal, General Manager (Finance), Shri Akshat Sharma, Executive (Finance), Shri Kapil Agarwal, Manager (Finance), Shri Nikhil Upadhye, National Sales Manager, Ms. Snigdha Roy, Manager (Payables) have wilfully and knowingly conspired to falsify the books of account of the Company for 2010 and 2011, with an intent to defraud, as is evident from the referred to evidences, and hence are liable to be prosecuted under section 477A of the Indian Penal Code.

8.30.1.23 “Since, the financial statements for the years 2010 and 2011 have been signed/made by Shri Subhinder Singh Prem, MD, Vishnu Bhagat (Respondent), CFO/COO, Shri Anand Agarwal, Ex GM (Finance) and Shri Shahin Padath, Director, which are false in material particulars stated hereinabove, knowing the same to be false as is evident from the referred to evidences, the Company, along with the said persons, is liable for prosecution under Section 628 of the Companies Act, 1956”.

8.30.1.24 “LOSS TO RIC ON ACCOUNT OF INTEREST PAYMENTS FOR FRP

“There are evidences to indicate participation of Subhinder Singh Prem and Vishnu Bhagat (Respondent), Anand Agarwal, Manish Marwah, Lalit Marwah, Kapil Aggarwal, Soumyabrata Mukherjee, Sajid Shamim, Nikhil Upadhye, Preetpal Singh, Sunil Malhotra and Bhatiaji participated in collection of deposits under FRP and appear to be liable for action under Section 58A of the Companies Act, 1956, along with the Company”.

8.30.1.25 “Shri Subhinder Singh Prem, MD, Vishnu Bhagat (Respondent), CFO/COO, along with Shri Soumyabrata Mukherjee, Manager (Accounts Receivable), Shri Preetpal Singh, Regional Sales Manager (North), Shri Anand Agarwal, General Manager (Finance), Shri Akshat Sharma, Executive (Finance), Shri Kapil Agarwal, Manager (Finance), Shri Nikhil Upadhye, National Sales Manager, Ms. Snigdha Roy, Manager (Payables) have wilfully and knowingly

conspired to falsify the books of account of the Company for year 2010 and 2011, with an intent to defraud, as is evident from the referred to evidences, and hence are liable to be prosecuted under section 477A of the Indian Penal Code”

8.31. After noting the above grave charges and observations in the investigation report of SFIO, the Committee observed that the submissions / arguments of the Counsel for Respondent in the recent hearings before it, remained more or less the same, and it mainly revolved around raising issues on the Rules and process followed in the hearing, and at any point of time, the Counsel for the Respondent neither submitted nor desired to submit her arguments on merits of the case. The Committee further observed that the issues raised by the Respondent have been responded appropriately keeping in view the relevant provisions of the Rules. The Committee was of the view that ample opportunities were given to the Respondent to make submissions on merits before it, but the Respondent did not make any submissions / arguments on merits of the case in hearings so far held. The proceedings of the Committee in the present matter were held by following due process of law and sufficient opportunity have been given to the Respondent in accordance with the provisions of the Chartered Accountants Act/Rules. The Committee felt that as a quasi-judicial body, the role and responsibility of the Respondent in a particular assignment in the context of professional misconduct has to be considered and decided by it, as per the provisions of the Chartered Accountants Act, 1949 and Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007. The Committee further felt that sufficient time and opportunity have already been given to the Respondent. The Committee perused all written submissions of the parties, documents/ materials, and Prima Facie Opinion of the Director(Discipline) available on record, and based upon said documents/ material on record concluded the case.

8.32 On overall consideration of the facts of the matter, the oral as well as written submission made by the parties and the Investigation Report of SFIO, the Committee opined that the Respondent being a Key Managerial Personnel (Chief Operating Officer/Chief Financial Officer) of the Company, part of decision making authority in the Company and also signatory to its Financial Statements for the years ended 2009-2010 and 2010-11 was involved in the manipulations and falsification of

account. In the Investigation Report of SFIO too, the name of the Respondent is specifically referred at many places for certain violations and irregularities in the affairs of the Company. Therefore, in the context of the investigation report of SFIO, the Committee opined that the role of the Respondent in falsification of accounts of the Company is evident, which caused wrongful loss to the Company and stakeholders. A Chartered Accountant in capacity as an employee of Company (that too as Key Managerial Person) is expected to render his services in utmost professional manner with complete integrity and is supposed to protect the interest of all the stakeholders of his employer company failing which, would lead to bringing disrepute to the profession. Accordingly, the Committee was of the view that the misconduct on the part of the Respondent has been established within the meaning of Professional and Other Misconduct as defined in Sections 21 and 22 of the Chartered Accountant (Amendment) Act 1949.

8.33 In view of the above, the Committee was of the opinion that the Respondent is **GUILTY** of Professional and Other Misconduct falling within the meaning of Clause (2) of Part-IV of the First Schedule and Clause (4) Part II of the Second Schedule to the Chartered Accountants Act, 1949.

9 Conclusion

In view of the findings including findings given in Investigation Report of SFIO as stated in above paras, vis-a-vis material on record, the Committee gives its findings as under:

Charges (as per PFO)	Findings	Decision of the Committee
Para 2.1 as above	Paras 8.2 to 8.5 as above	Guilty - Clause (2) of Part-IV of the First Schedule and Clause (4) Part II of the Second Schedule
Para 2.2 as above	Paras 8.6 to 8.9 as above	Guilty - Clause (2) of Part-IV of the First Schedule and Clause (4) Part II of the Second Schedule
Para 2.3 as above	Paras 8.10 to 8.12 as above	Guilty - Clause (2) of Part-IV of the First Schedule and Clause (4) Part II of the Second Schedule
Para 2.4 as above	Paras 8.13 to 8.21	Guilty - Clause (2) of Part-IV of the First Schedule and Clause (4) Part II of the Second Schedule
Para 2.5 as above	Paras 8.22 to 8.24	Guilty - Clause (2) of Part-IV of the First Schedule and Clause (4) Part II of the Second Schedule
Para 2.6 as above	Paras 8.25 to 8.29	Guilty - Clause (2) of Part-IV of the First Schedule and Clause (4) Part II of the Second Schedule

- 10 In view of the above observations, considering the oral and written submissions of the Complainant and the Respondent and documents on record, the Committee held the Respondent **GUILTY** of Professional and Other Misconduct falling within the meaning of Clause (2) of Part-IV of the First Schedule and Clause (4) Part II of the Second Schedule to the Chartered Accountants Act, 1949.

Sd/-

(CA. RANJEET KUMAR AGARWAL)
PRESIDING OFFICER

Sd/-

(SHRI JIWESH NANDAN, I.A.S. {RETD.}) (MS. DAKSHITA DAS, I.R.A.S. {RETD.})
GOVERNMENT NOMINEE

Sd/-

GOVERNMENT NOMINEE

Sd/-

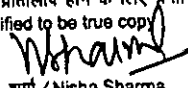
(CA. MANGESH P KINARE)
MEMBER

Sd/-

(CA. COTHA S SRINIVAS)
MEMBER

DATE: 05/02/2024
PLACE: New Delhi

सही प्रतिलिपि होने के लिए प्रमाणित /
Certified to be true copy


निशा शर्मा / Nisha Sharma
वरिष्ठ कार्यकारी अधिकारी / Sr. Executive Officer
अनुशासनात्मक निदेशालय / Disciplinary Directorate
इंस्टिट्यूट ऑफ चार्टर्ड एकाउंटेंट्स ऑफ इंडिया
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