



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.

[PR/322/2014/DD/341/2014/DC/492/2016]

In the matter of:

**Joint Director (CL)**

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

....Complainant

Versus

**CA. Anand Agarwal (M. NO. 095781)**  
68, First Floor, Uday Bank,  
New Delhi-110 049

....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 : 19<sup>th</sup> MARCH, 2024

DATE OF ORDER : 16<sup>th</sup> 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. Anand Agarwal (M. NO. 095781)** (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 (1) Part II of the Second Schedule to the Chartered Accountants Act, 1949.

*Rish*



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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 19<sup>th</sup> March 2024.

3. The Committee noted that on the date of hearing on 19<sup>th</sup> March 2024, the Respondent was present through video conferencing. During the hearing, the Respondent stated that he has already submitted majority of his submissions on 06<sup>th</sup> March 2024, on the Findings of the Committee. Thereafter, he also made verbal submissions, which, inter-alia, are given as under:-

(a) The instant complaint has been in place since 2016, and it was based on the FIR filed by Reebok India Company. After that, SFIO conducted an independent investigation and it was found that there is no case of money embezzlement and there is no case of recovery in the FIR or in the investigation report filed by the SFIO.

(b) There have been multiple procedural lapses, including the lack of authority of SFIO in filing a complaint against the Respondent, as he is an ex-employee of the Company who has left the Company even before the present case has started. His reason for leaving the Company was that he was a whistle blower and internal Complainant, which SFIO has failed to mention in their report and in several submissions to Bench.

(c) His proof of innocence lies in e-mail record available with SFIO but the SFIO failed to share that with the Committee.

(d) He filed a writ petition in the High Court of Punjab and Haryana for obtaining his e-mail records which is still pending in High Court.

(e) The Committee has accepted the SFIO's claims without any evidence and without conducting any independent investigation.

(f) In the last 6 years, there has been only one witness who has been examined by the Committee and that single witness has deposed in his favour.

(g) There is no forensic report on record or any external evidence that indicates he was at fault.

*Bisr*



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(h) He has suffered a great deal of stigma and lost hundreds of career opportunities as a result of the media trial that this case has generated.

(i) The Respondent sent an e-mail to Mr. Shahin Padath, in which he highlighted the procedural lapses.

(j) He initialed the balance sheet of the Company being an employee and was not an authorised signatory to the balance sheet. SFIO has filed the present complaint, considering him as an auditor.

4. The Committee also noted the written representation of the Respondent dated 06<sup>th</sup> March 2024 on the Findings of the Committee, which, inter-alia, are given as under:

(a) Paragraph 3 of the Findings contains the statements taken on 2 November 2012 when he was in police custody. Such a statement cannot be considered a valid statement which was taken while he was in police custody. These statements cannot be referred to or relied upon in the present Complaint or in any other proceedings as the same are violative of the fundamental rights guaranteed to him under the Constitution of India and Section 25 of the Indian Evidence Act, 1872.

(b) The Respondent raised procedural questions regarding the legitimacy of the complaint initiation process, referencing Rule 3(2) of the relevant Rules which mandates that complaints lodged by or on behalf of the Central or State Governments must be authorized and signed by officials of specified ranks within the government hierarchy. Only the Director of the SFIO, who holds the rank of a Joint Secretary to the Government of India, possesses the requisite authority to sanction such complaints. The apparent absence of explicit authorization by the SFIO Director as prescribed undermines the procedural foundation of the complaint, casting doubts on the legal validity of the entire proceeding against the Respondent.

(c) The reliance on the SFIO report without independent verification raises concerns about the fairness of the disciplinary process, and there is a need for critical re-examination of the evidence, suggesting that an independent assessment would reveal a misinterpretation of his actions and the contextual dynamics within the Company.

(d) The observation of the Disciplinary Committee regarding the Respondent's communication with various customers of the Company necessitates a clarification of roles and responsibilities within the organizational structure. The crux of the matter lies in the delineation

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of duties concerning the preparation and presentation of financial statements, which, according to corporate governance principles, rests squarely with the Board of Directors of the Company.

(e) The absence of corroborative evidence and the failure to seek additional information have significant implications on the integrity on the disciplinary process.

(f) The Respondent's adherence to the instructions from senior management should not be conflated with a personal or professional endorsement of those practices, especially in the absence of evidence demonstrating explicit knowledge or intent to engage in misconduct.

(g) The principle of natural justice demands that the adjudicatory body hearing a matter should remain consistent throughout the proceedings to ensure fairness, transparency, and the impartiality of the process. The potential for a different Disciplinary Committee to issue the final order diverges from the established legal doctrine that the adjudicators who hear the evidence and arguments should be the same as those who render the final decision.

(h) Accordingly, the Respondent should not have been held guilty of professional misconduct in the present matter and no punishment ought to be awarded to the Respondent under the circumstances.

5. The Committee considered the reasoning as contained in Findings holding the Respondent 'Guilty' of Professional and Other misconduct vis-à-vis verbal and written representation of the Respondent. The Committee noted that the issues/ submissions made by the Respondent as aforestated have been dealt with earlier by it at the time of hearing under Rule 18. As regards the submission of the Respondent that since there has been a change in the composition of the Committee and thus, fresh hearing is required in the case, the Committee keeping in view the following observations of the Honorable Appellate Authority in Para 8 of its Order dated 14th June 2021 passed in Appeal no. OS/ICAI/2020 in the matter of Devki Nandan Gupta –vs- ICAI and others, was of the view that there is no merit in the contention of the Respondent:

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

*We are of the view that no prejudice whatsoever was caused to the appellant due to change in the composition of the DC who had held him guilty of 'professional misconduct' under Clause 7 of Part – I of the Second Schedule and the one who had finally awarded punishment vide order dated 07.11.2019. In fact, the changed DC was not expected or required to hear arguments afresh on merits to find if the appellant*

*Bise*



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*was guilty of 'professional misconduct'. The said Findings had already been recorded by the previous DC in its order dated 08.02.2019 and attained finality qua the changed DC. The changed DC was required only to hear the appellant on the quantum of punishment/penalty and for that, the appellant was afforded reasonable opportunity of being heard."*

6. Thus, keeping in view the facts and circumstances of the case and material on record including verbal and written representation of the Respondent on the Findings, the Committee held that the role of the Respondent is clearly evident that he, being the then GM Finance of the Company, was responsible for the falsification of accounts. The Committee viewed that the Respondent was instrumental in executing the various tactics of the top management to inflate the sales and thereafter to manage the account receivables like in circuitous transactions with Shivam Group, managing/reducing the aging of accounts receivable by resorting to the malpractice of 'In and Out transactions', Franchisee Referral Program (FRP) and preparation of Regional Outstanding Reports (ROR). The Committee further held that the Respondent in the extant case has not discharged his duties diligently and involved in execution of the manipulative practices followed by the Company.

7. The Committee was of the view that even though the Respondent has claimed to not have been a part of the decision making authority in the Company, yet in his capacity as GM (Finance), he would have been a part of the execution of those decisions. The Committee held that being GM (Finance), the Respondent was in fact directly involved in execution of the manipulative practices followed by the Company. Therefore, he cannot escape from his liability by merely stating that he was not a part of the decision-making process.

8. The Committee was of view that a Chartered Accountant in capacity as a senior employee of the Company 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 and failure on the part of the Respondent has clearly brought 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 05<sup>th</sup> February 2024, which is to be read in consonance with the instant Order being passed in the case.

9. 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.

*Bisr*



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10. Thus, the Committee ordered that the name of the Respondent i.e., CA. Anand Agarwal (M. NO. 095781) be removed from the register of members for a period of 01 (One) year and also imposed a fine of Rs. 1,00,000/- (Rupees One Lakh) 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

बिष्वा 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  
आइसीआईएआई भवन, विश्वास नगर, शाहदरा, दिल्ली-110032  
ICAI Bhowan, Vishwas 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: [PR/322/2014/DD/341/2014/DC/492/2016]**

**IN THE MATTER OF:**

**Joint Director (CL)**

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

.....COMPLAINANT

**Versus**

**CA. ANAND AGARWAL (M. NO. 95781)**

68, First Floor, Uday Bank,  
New Delhi-110 049

.....RESPONDENT

**MEMBERS PRESENT:**

**CA. Ranjeet Kumar Agarwal, Presiding Officer (In person)**

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

**CA. Mangesh P Kinare, Member (Through VC mode)**

**DATE OF FINAL HEARING : 21<sup>st</sup> November 2023**

**DATE OF DECISION TAKEN : 09<sup>th</sup> January, 2024**

**PARTIES PRESENT**

**Ms. Akanksha Bhadouria, Sr. Assistant Director :- Complainant's Representative**

**Shri Alok Singh, Advocate: – Counsel for Complainant**

**CA. Anand Agarwal:- Respondent**

**CA. A P Singh:- Counsel for Respondent**

**CA. Utsav Hirani:- Counsel for Respondent**

**(Above person(s) appeared through video conferencing from their respective place(s))**

**1. Background of the case:**

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 Reebok India Company (hereinafter referred as '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 31<sup>st</sup> December, 2011. The Respondent, who is Chartered Accountant and member of ICAI was working with the Company as General Manager (Finance) and was responsible for maintaining the true and correct affairs of the accounts of the Company. The focus on achieving global sales targets led to manipulation of sales returns, resulting in inflated sales figures over several years. The SFIO conducted investigation and the investigation has concluded that the Respondent being the General Manager (Finance) misused his power and played an active part in fudging and falsification of the accounts of the Company and even used the forged documents as genuine, which caused wrongful loss to the Company.

**2. Charges in Brief:**

The Respondent who is a Chartered Accountant was expected to be aware of all statutory provisions and correct procedures relating to treatment of deposits, receivables in the books of accounts of the Company but deliberately connived with other officials of the local management and aided the management in the falsification of the books of account of the Company, which resulted in not giving the true and correct picture of the affairs of the Company. Hence negligent being a Chartered Accountant had misled the public and shareholders, including Adidas AG and other stakeholders.

**3. The relevant issues discussed in the Prima facie opinion dated 08<sup>th</sup> December, 2014 formulated by Director (Discipline) in the matter in brief are given below: -**



3.1 Statement of the Respondent the then General Manager (Finance) of the Company was recorded on oath u/s 240(2) on 02<sup>nd</sup> November 2012, wherein in regard of ARs (Accounts Receivables) he stated that:

- i) "In & Out" transactions were booked with the objective of managing and reducing the ageing of the outstanding ARs (Accounts Receivables).
- ii) The instructions were issued by the CFO to write emails to various customers from whom this money was to be arranged.
- iii) The back dated cheques were collected in first week of January 2011 on the specific instructions of the CFO.
- iv) The funds were routed to the customers' bank accounts by the Company through RTGS or cheques, since these customers had no sufficient balance in their accounts to honour the cheques purported to have been received as payments for outstanding ARs (Accounts Receivables).
- v) After transfer of funds from the Company the cheques were deposited in bank and payment realised.
- vi) The ledger accounts of such customers and some other customers were adjusted for such receipts even though the Company did not receive the net cash inflow.

3.2 The statement of the Respondent was recorded on oath on 02.11.2012, when he was under the judicial custody, after due permission by the Hon'ble Court. In his statement, in respect of RORs (Regional Outstanding Reports) it was stated by him that **(C-150)**:

- i) The system of RORs was started in the year 2005 when adirace system was not even existence.
- ii) RORs were introduced to help the regional accountants to monitor and keep control over the various reconciliation items claimed by different customers.
- iii) Most of the claims suggested by these customers were eventually found to be much lesser in value than were initially claimed.

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- iv) After verification of these claims and approval by the CFO, these claims were passed and reflected in the books of account and then removed from the RORs.
- v) RORs were nothing but the working papers to reconcile the various items of claims, which were to be settled against the official ARs pending against such customers.
- vi) The very purpose of RORs was to have better grasp and control over the outstanding receivables and if such ARs were locked up for long, the reasons for the same.
- vii) He did not know if the words "RORs" were in the knowledge of the Global/Regional HQs, but he could certainly say that it would be very naive on his part to suggest that the items mentioned in the RORs for reconciling the outstanding ARs were not known to them, especially with the background that the outstanding ARs had a DSO of nearly a year continuously for last two years i.e. 2010 & 2011.

3.3 In his statement recorded on oath under Section 240(2) of the Companies Act, 1956 on 02.11.2012 the Respondent in respect of FRP (Franchisee Referral Programs) stated that:-

- i) FRP Scheme was introduced by the management to collect advances from prospective customers as there was a dire need for finances and also to reduce the ageing of the ARs (Accounts Receivables);
- ii) this scheme was under the knowledge and approval of the Global Finance Team (headed by Mr. Clause Heckerott);
- iii) no separate ledger account was opened to record the FRP collections; and,
- iv) collections were clubbed and accounted for in the existing customers ledger accounts and reduced the existing outstanding ARs (Accounts Receivables). This was done with the view to reduce the existing ARs (Accounts Receivables) on the specific instructions of the CFO.

3.4 Falsification of books of account and Financial Statements by booking fictitious sales through raising prices of goods already sold retrospectively for 2010 and 2011.

In respect of above allegation, the Investigation Report of SFIO reveals that:

*"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) (Respondent) 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".*

3.5 In respect of allegation of falsification of accounts receivable (debtors) in the books of account by in-out transactions with selected customers to show fictitious collections during 2010 and 2011; investigation report reveals that:

*"During investigation, the following officers/officials of the Company were found involved for manipulating the Accounts Receivable of the Company as they had contacted the selected customers, as stated by them in their statements on oath:*

<b>Sl. No.</b>	<b>Officials of the Company who contacted customers</b>	<b>Names of Customers to whom officials of the Company contacted</b>
1	Soumyabrata Mukherjee Preetpal Singh Anand Agarwal Akshat Sharma	Shri Munish Bali, Proprietor of M/s Munish Enterprises
2	Preetpal Singh	Shri Vikas Gupta, Director of Singh Olympics P Ltd. (SOPL)
3	Soumyabrata Mukherjee Anand Agarwal Kapil Agarwal	Shri Jatin Lamba, Proprietor of Ashana Enterprises
4	Soumyabrata Mukherjee Kapil Agarwal	Smt Pragati Lamba, Proprietor of Pragati Enterprises
5	Soumyabrata Mukherjee Preetpal Singh Anand Agarwal Nikhil Upadhaye	Shri Sushil Jaju, Proprietor of M/s Basics
6	Soumyabrata Mukherjee Kapil Agarwal	Shri Rajiv Lamba, Proprietor of M/s Ashana Overseas

Therefore, the following officials of the Company are found to be liable for falsification of accounts:

1. Shri Soumyabrata Mukherjee, Manager (Accounts Receivable)
2. Shri Preetpal Singh, Regional Sales Manager (North)
3. Shri Anand Agarwal, General Manager (Finance)
4. Shri Akshat Sharma, Executive (Finance)
5. Shri Kapil Agarwal, Manager (Finance)
6. Shri Nikhil Upadhye, National Sales Manager

3.6. During investigation, Shri Anand Agarwal (Respondent), the then General Manager (Finance) of the Company stated on oath that on the specific instructions by Shri Vishnu Bhagat, 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.

3.7. The Respondent claims to have not been a part of the decision-making authority in the Company, yet it was clear that in his capacity as GM(Finance) he would have been a part of the execution of those decisions.

3.8. The Director (Discipline) in Prima facie Opinion dated 8<sup>th</sup> December 2015, has held that the Respondent is prime facie guilty of professional and Other misconduct falling within the meaning of Clause (2) of Part IV of First Schedule and Clause (1) of Part II of Second Schedule to the Chartered Accountants Act, 1949. The said Clause to the Schedule to the Act, states as under:

Clause (2) of Part IV of the 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 (1) of Part II of the Second Schedule

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

(1) *contravenes any of the provisions of this Act or the regulations made thereunder, or any guidelines issued by the Council."*

3.9. The Prima Facie Opinion formed by Director (Discipline) was considered by the Disciplinary Committee at its meeting held on 28<sup>th</sup> December 2015. The Committee on consideration of the same, concurred with the reasons given against the charges and thus, agreed with the prima facie opinion of the Director (Discipline) that the Respondent is prima facie **GUILTY** of Professional and Other Misconduct falling within the meaning of Clause (2) of Part IV of First Schedule and Clause (1) of Part II of Second Schedule to the Chartered Accountants Act, 1949 read with Chapter II of Council General Guidelines 2008 1-CA(7)/02/2008 dated 08th August, 2008 which deals with conduct of a member being an employee and accordingly, decided to proceed further under Chapter V of the Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007. 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 (Discipline) be sent to the Complainant and the Respondent including particulars or documents relied upon by the Director (Discipline), if any, during the course of formation of Prima Facie Opinion and the Respondent be asked to submit his Written Statement in terms of the provisions of the aforesaid Rules, 2007.

**4. Date(s) of Written submission / pleading by parties**

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

S.No.	Particulars	Dated
1.	Complaint in Form 'I' filed by the Complainant.	20 <sup>th</sup> October, 2014
2.	Written Statement filed by the Respondent.	04 <sup>th</sup> March, 2015
3.	Prima Facie Opinion by the Director (Discipline).	08 <sup>th</sup> December 2015
4.	Further Written Submissions by the Respondent.	03 <sup>rd</sup> April 2019 20 <sup>th</sup> May 2019 20 <sup>th</sup> July 2019 08 <sup>th</sup> April 2023 09 <sup>th</sup> September 2023, 11 <sup>th</sup> December 2023

**5 Written Submissions filed by the Respondent:**

The Respondent made written submissions, which are summarized as under:-

**5.1 Submissions of the Respondent made vide letter dated 03<sup>rd</sup> April 2019 and 20<sup>th</sup> May 2019:**

5.1.1 The Director (Discipline) in prima facie opinion has not pin-pointed any specific act of gross negligence or violation of the provisions of the Chartered Accountant Act, other than relying upon the SFIO investigation report. In the absence of specific charge(s) against him, he could not file written submissions in this case.

5.1.2 The Respondent requested to summon the following witnesses:

- a) Sandeep Mathur, Ex-DGM Finance, Reebok India Company.
- b) Vikas Uppal, Ex-Manager Receivables, Reebok India Company.
- c) Anurag Sharma, Ex-Sales Head, Reebok India Company.
- d) Amit Dwivedi, Ex-Finance Executive, Reebok India Company.

5.2 Submissions of the Respondent made vide letter dated 20<sup>th</sup> July 2019..

5.2.1 The Respondent was an employee of the Company (RIC) and was duty bound to execute the established SOP of Company in accordance with Indian GAAP. No benefit was obtained by the Respondent from alleged fraud in the Company. Performing duties in accordance with SOPs of the Company should not be treated as professional misconduct.

5.2.2 He was working as GM (Finance) in the Company. He was not an authorised signatory to authenticate the financial statement of the company.

5.2.3 He had no role in retrospective or prospective price increases. It was a normal practise to increase prices of products periodically.

5.2.4 Transactions with Shivam Group were at arm's length price and in any case, he had no role to play in choosing/awarding/finalizing any transaction with said entity.

5.2.5 The Respondent was not part of team who formulated FRP (Franchise Referral Programme). He had not signed any approval sheet of FRP and was not beneficiary to this scheme.

5.3 Submissions of the Respondent made vide letter dated 08<sup>th</sup> April 2023 and 09<sup>th</sup> September, 2023:

5.3.1 Subject complaint was not signed/authorized by an officer of the rank of the Joint Secretary as per requirement of the Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007. Director (Discipline) has expanded the scope of the allegations by referring and quoting the SFIO Report.

5.3.2 The Respondent raised objection on maintainability of subject complaint case. He submitted that authorisation letter dated 23.04.2014 of Complainant Department, authorised Joint Director, SFIO to file complaint against the Statutory Auditor and

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Company Secretaries of the Company only. The Respondent was neither a Statutory Auditor nor was Company Secretary. Accordingly, the whole proceedings of this case stand void-ab-initio.

5.4 Submissions of the Respondent made vide E-mail dated 11<sup>th</sup> December 2023:

5.4.1 The Respondent raised objection regarding authority letter of the Complainant for filing subject complaint case against the Respondent with ICAI.

5.4.2 The Respondent submitted that his name was not mentioned in the FIR lodged with Police Authorities. He himself was an internal Complainant and a whistle blower, exposing operational deficiencies between the former Chief Financial Officer/ Chief Operating Officer and Managing Director. He resigned from the services of the Company in August 2011 a year before when the action was taken by SFIO or the filing of an FIR.

5.4.3 The Respondent requested to call for internal correspondence/e-mails exchanged among the senior officials/top management of RIC Limited during the period 01<sup>st</sup> January, 2012 to 31<sup>st</sup> December, 2012 to enable him to defend properly.

5.4.4 He further submitted that the Complainant (SFIO) made similar complaints with 20 other agencies (including the ROC, ED, FIPB, ICSI, CBDT, PCOAB-USA, German Tax Authorities etc.) for initiating action in this matter. However, no single agency has named the Respondent as an accused or guilty of allegations as contained in subject complaint case made by SFIO.

5.4.5 Thereafter, the Respondent submitted that in year 2019, the Committee examined one witness who supported the arguments of the Respondent. The request of the Respondent to summon other witnesses was not acceded to by the Disciplinary Committee.

5.4.6 There is no report/order on record passed by any other Authority to whom complaint(s) was made by the Complainant (SFIO). The Respondent was an ordinary employee of the Company and had not signed/certified the Company's financial statements.



**6 Brief of the Proceedings:**

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

Particulars	Date of Meeting(s)	Status
1 <sup>st</sup> Meeting	26 <sup>th</sup> October 2016	Meeting cancelled due to unavoidable circumstances
2 <sup>nd</sup> Meeting	22 <sup>nd</sup> November 2016	Adjourned at the request of the Complainant
3 <sup>rd</sup> Meeting	28 <sup>th</sup> March 2017	Adjourned at the request of the Complainant
4 <sup>th</sup> Meeting	12 <sup>th</sup> July 2017	Adjourned at the request of the Respondent
5 <sup>th</sup> Meeting	22 <sup>nd</sup> August 2017	Adjourned at the request of the Respondent.
6 <sup>th</sup> Meeting	03 <sup>rd</sup> April 2019	Adjourned at the request of the Complainant
7 <sup>th</sup> Meeting	27 <sup>th</sup> May 2019	Part heard and adjourned
8 <sup>th</sup> Meeting	24 <sup>th</sup> September 2019	Part heard and adjourned
9 <sup>th</sup> Meeting	15 <sup>th</sup> October 2019	Adjourned
10 <sup>th</sup> Meeting	22 <sup>nd</sup> March 2023	Part heard and adjourned
11 <sup>th</sup> Meeting	11 <sup>th</sup> April 2023	Part heard and adjourned
12 <sup>th</sup> Meeting	26 <sup>th</sup> July 2023	Adjourned
13 <sup>th</sup> Meeting	10 <sup>th</sup> August 2023	Part heard and adjourned
14 <sup>th</sup> Meeting	14 <sup>th</sup> September 2023	Part heard and adjourned
15 <sup>th</sup> Meeting	25 <sup>th</sup> October 2023	Fixed and adjourned at the request of the Respondent
16 <sup>th</sup> Meeting	21 <sup>st</sup> November 2023	Hearing concluded and Judgement Reserved
17 <sup>th</sup> Meeting	09 <sup>th</sup> January 2024	Decision taken

6.2 On the day of hearing on 22<sup>nd</sup> March 2023, the Committee noted that the Complainant along with Investigating Officer and Respondent were present before it for hearing through video conferencing mode. Thereafter, they all made a declaration that there was nobody except them in the room from where they were appearing and that they would neither record nor store the proceedings of the Committee in any form.

The Committee enquired from the parties to the case that since the composition of the Committee had changed after the hearing held on 15<sup>th</sup> October 2019 in this case, whether they wished to have a de-novo hearing or would continue from the stage it was last heard. The Respondent opted for de novo hearing and accordingly both parties i.e. Complainant and the Respondent were administered on Oath. As the proceedings started de-novo in the current year, the facts of proceedings commencing from current year are given in this finding. The Committee enquired from the Respondent as to whether he was aware of the charges; and the same were read out. The Respondent replied that he is aware of the charges but pleaded Not Guilty to the charges levelled against him.

The Committee, looking into the fact that the matter is placed before it for hearing for the first time, decided to adjourn the matter for hearing to a future date in view of Rule 18 (9) 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.

6.3 Thereafter on the day of hearing on 11<sup>th</sup> April 2023, the Committee noted that authorized representative from Complainant Department along with Counsel and the Respondent along with his Counsels were present through VC before it for hearing. As this case was part heard, the Committee asked the Complainant to substantiate the charges against the Respondent. The counsel for the Complainant made his submissions.

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The Counsel for the Respondent raised the issue that the complaint filed in Form "I" dated 20<sup>th</sup> October 2014 was without proper authorization as prescribed in the Chartered Accountants (Procedure of Investigation of Professional and Other Misconduct and Conduct of Cases) Rules, 2007. The Committee advised the Complainant to provide the copy of authorization given at relevant time from their records.

At this stage, the Counsel for the Respondent requested the Committee to call for and provide the entire set of internal correspondence/e-mails exchanged among the senior officials/top management of RIC Limited during the period 01<sup>st</sup> January 2012 to 31<sup>st</sup> December 2012 to enable the Respondent to defend himself properly. The Committee, in this regard, noted that the onus of production of relevant documents/evidence in his defence was on the Respondent. In view of the same, the Committee did not accede to the request of the Respondent.

6.4 On the day of hearing on 26<sup>th</sup> July 2023, the Committee deferred consideration of the captioned case.

6.5 On the day of hearing on 10<sup>th</sup> August 2023, the Committee noted that Ms. Saumiya Bansal, Senior Prosecutor, SFIO was present through Video Conferencing mode. The Counsel, Mr. Alok Singh, Advocate from Complainant Department was present in person. The Committee further noted that the Respondent along with the Counsel were present through Video conferencing mode. Thereafter, they gave a declaration that there was nobody present apart from them from the place they were appearing and that they would neither record nor store the proceedings of the Committee in any form.

The Counsel for the Respondent submitted that at last meeting held on 11<sup>th</sup> April 2023, the Complainant was asked to provide the authority letter of the Complainant Department for filing subject complaint case with the disciplinary directorate of ICAI. The

Counsel for the Complainant placed on record, the copy of the authority letter and pointed out that there was clerical error regarding the date of the said letter, as the letter was dated 23<sup>rd</sup> April 2014, whereas in Form I, the date of letter was mentioned as 25<sup>th</sup> April 2014. He further informed, that the said letter has been provided to the Committee vide email dated 03<sup>rd</sup> May 2023.

The Counsel for the Respondent submitted that he has not received the said authorization letter and requested the Committee to provide a copy of the same to him and after perusal of the said letter, he would file his submissions on this matter, as it has been placed on record by the Complainant department after 09 years of filing of this complaint. The Counsel for the Complainant submitted that the said authority letter already existed as on the date of filing of Form I, and same may have filed earlier also which he would check the record for this effect. The Committee directed the office to provide the copy of the authority letter to the Respondent and directed the Respondent to file his Written Submissions within one week time with a copy to the Complainant. With this, the case was part heard and adjourned.

6.6 On the day of hearing on 14<sup>th</sup> September 2023, the Committee noted that Ms. Saumiya Bansal, Senior Prosecutor, SFIO along with Mr. Alok Singh, Advocate were present through Video Conferencing mode. 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 apart from them from the place they were appearing and that they would neither record nor store the proceedings of the Committee in any form.

The Counsel for the Respondent contended that the authorization letter dated 23<sup>rd</sup> April 2014 filed by the Complainant department (i.e. SFIO) as per directions of the Committee was not proper. The Counsel submitted that as per said letter, Joint Director, SFIO was authorized to file complaints with the ICAI and ICSI against the Statutory Auditors and Company Secretaries and there was no mention and/or authorization to file complaint against the employees of the Company and that the Respondent was an

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employee of the Company. So, in the absence of specific authorization to file a complaint against the Respondent, this matter may be closed. The Counsel for the Complainant submitted that the authority letter of Complainant department has been filed. Since, the matter was related to the fraud of Rs. 870 Crores, Respondent was required to make his submissions on merits and not to discuss the technicalities of the matter. He added that the intent of the authority letter of SFIO was to file a complaint against any Chartered Accountant with the ICAI who is involved in wrongdoing in subject matter.

The Committee also noted the contents of relevant judgement in the case of Subash Agarwal Vs. ICAI of Hon'ble Calcutta High Court, wherein Hon'ble Calcutta High Court mentioned that technical lapse in the authorization to file complaint is curable. In accordance with the above judgement, the Committee was of the view that in any case the defect, if any, in the authorization for filing complaint was curable as such. The Committee observed that substance over form should be seen and accordingly the matter be proceeded with and submissions in the matter be made on merits by the parties. The Committee asked the Counsel for the Respondent to continue with his submissions on merits.

The Counsel for the Respondent submitted that although the reputation of the Respondent is at stake, the issues raised by him were relevant. However, he agreed to go ahead as per the instruction of the Committee and will accordingly proceed ahead and make his submissions on merits at next hearing. The Committee advised both parties to make their submissions on merits at the next hearing. With this, the case was part heard and adjourned.

6.7 Thereafter on the day of hearing on 25<sup>th</sup> October 2023, the Committee noted that the Respondent vide email dated 24<sup>th</sup> October 2023 had sought adjournment due to medical exigency. Acceding to the above plea of the Respondent, the Committee adjourned the case to a later date with a view to extending 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 the next hearing, the matter would be proceeded ex-parte the Respondent. With this, the case was adjourned to a future date.

6.8 On the day of final hearing held on 21<sup>st</sup> November 2023, the Committee noted that Ms. Akanshka Bhadouria, Senior Assistant Director, SFIO alongwith Mr. Alok Singh, Advocate were present through Video Conferencing mode. 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 the Respondent was already on Oath and asked the Counsel for the Complainant to make his submissions. The Counsel for the Complainant referred to prima facie opinion. The Committee asked the Counsel for the Complainant with regard to the status of cases filed in various other forums/authorities on the subject matter and whether any order had been passed in the matter by any other forum/authority. The Counsel for the Complainant replied that he needs to ascertain the same and the instant case is filed before ICAI for professional misconduct as the Respondent is Chartered Accountant/member of ICAI.

The Committee asked the Counsel for the Respondent to make his submissions further to previous hearing(s). The Counsel for the Respondent submitted that the Respondent was working as General Manager (Finance) of the Company and had not attested the financial statements of the Company. Further, he referred to his submissions dated 03<sup>rd</sup> April 2019 and provided a list of witnesses to be summoned for examination. The list included the (i) Ex-DGM (ii) Manager Receivables (iii) GM Sales and (iv) Finance Executive of the Company, namely S/Shri Sandeep Mathur, Vivek Uppal, Anurag Sharma and Amit Diwedi as witness before the Committee. The

Committee noted that as per records available with it, the request of the Respondent was accepted by the Committee and these persons were summoned as witnesses of the Respondent before it. Thereafter, Mr. Amit Diwedi who appeared before the Committee was examined by the Respondent/Counsel for the Respondent in the meeting of Disciplinary Committee held on 24<sup>th</sup> September 2019. In view of the said facts, the Committee overruled the request of the Counsel for the Respondent for further examination of witness(es).

Thereafter, the Counsel for the Respondent requested the Committee to call for and provide the entire set of internal correspondence/e-mails exchanged among the senior officials/top management of RIC Limited during the period 01<sup>st</sup> January, 2012 to 31<sup>st</sup> December, 2012 to enable the Respondent to defend himself properly. The Committee instructed the Counsel for the Respondent that the said plea was raised by him during the hearing held on 19/04/2023 and the same was declined by the Committee. Thus, for speedy disposal of the case, he should not repeat the arguments, which were already on record.

The Counsel for the Respondent further submitted that the Director (Discipline) totally relied upon the report of the SFIO, while forming prima facie opinion and there were no corroborated evidences on record, which would prove the misconduct on the part of the Respondent who was employee of the Company.

Based on the documents and information available on record and after considering the oral and written submissions made by the Counsel for the Respondent and Complainant respectively, the Committee concluded hearing in the matter.

Further, the Committee directed the Counsel for the Complainant to submit the Order (if any) passed by any other authority in this matter. The Committee also directed the Counsel for the Respondent to file his written submissions, if any, within next 10 days.

With this, hearing in the case was concluded and Judgement was Reserved.

6.9 Thereafter on the day of hearing on 09<sup>th</sup> January 2024, the Committee noted that the subject case was heard by it at length in the presence of the parties concerned and concluded the hearing at its meeting held on 21.11.2023 and the judgment was reserved. During the hearing held on 21.11.2023, the Committee directed the Complainant to submit the order if any, passed by any other Authority/Court(s) in this matter and directed the Respondent to submit his written submissions if any, within 10 days. The Committee noted that the Complainant has not provided any order passed by the other authority/Court(s) as directed by the Committee, whereas the Respondent has submitted his written submissions as per the direction of the Committee through email dated 11.12.2023 and the same was considered by the Committee.

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 the Counsel for the Respondent before it, the Committee passed its judgement.

**7. 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 provided its findings as under:

7.1 The Committee noted that certain preliminary objections were raised by the Respondent and same have been considered and disposed by it and the decisions taken thereof are given in para 6 above.

7.2 The Respondent in his written submissions dated 11/12/2023 further submitted that the Disciplinary Committee in single hearing had concluded the subject case. The Committee noted the said objection of the Respondent and observed that since this case was first listed before the Committee for hearing in year 2016 and thereafter the same was adjourned due to various reason. The Respondent made his submissions/arguments in various hearing (s) fixed in captioned case and even on the day of final hearing of captioned case, the Counsel for the Respondent made his

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arguments at length. In view of this, the Committee was of the view that said objection of the Respondent is not tenable.

7.3 Further, the Committee noted that the Investigation Report of SFIO led to the framing of following charges against the Respondent:

- a) Falsification of books of accounts of the Company for the Financial Years 2007, 2008, 2009, 2010 and 2011 using the retrospective price increase, non-booking of sales return, inflated sales to shivam group, ROR, in out transaction method, and falsification of the financial statement of the company for the year 2010.
- (b) collection of deposits in the garb of FRP during the year 2010,2011.
- (c) Non-maintenance of books of accounts of the company for the year 2010.
- (d) Financial statement not giving a true and fair view of the affairs of the company for the year 2010.
- (e) The Respondent connived with other officials of the Management and aided the management in the falsification of the books of account of stakeholders, which did not give the true and correct picture of the affairs of the Company.

7.4 On perusal of the investigation report of SFIO, the Committee observed in as under:

*"It is clear that Prima Facie, the top two functionaries of the Company, Shubhinder Singh Prem & Vishnu Bhagat, along with Shri Shahin Padath, Director (finance), the Respondent, 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.*

*"There is another email dated 04.03.2008 from the Respondent to Shubhinder Singh Prem on sales flash. The contents of which are reproduced below:*

*"We need to report the sales flash today.*

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*The current month's actual net sales are 48.5 crore against a plan of 40.2 crore and a forecast of 36.2 crore. As discussed with Vishnu Bhagat, we are planning to adjust Rs 6.5 crore of credit notes to report net sales of Rs 41.8 crore which will be 4% above plan and 15% above forecast.*

*As a result of these credit note adjustments, the GP will be at 11.6 crore (28%) against a plan of 12.05 crore (31%) and a forecast of 11.4 (31%).*

*The explanation of the increased sales will be opening of 4 new stores in February, which were earlier planned for Q2.*

*The GP at 11.6 crore is in line with forecast.*

*Please suggest if you want me to revise any workings. On your confirmation, I shall mail out the sales flash".*

On the same day, Shubhinder Singh Prem replied to the Respondent saying:

*"I would adjust more credit notes and report GP on forecast"*

*This email clearly brings out the earnings management done at the Company by the local management team through management of top line by issuing credit notes to accommodate sales returns at its discretion. The Company had shown gross invoiced sale of Rs 51.88 crore, sales return of Rs 1.89 crore and net invoiced sale of Rs 49.99 crore for the month of February, 2008 which is quite close to the actual net sales of Rs 48.50 crore as stated in the above email. The same modus operandi could also be seen in 2011 as is evident from the email dated 23<sup>rd</sup> September, 2011 and 11<sup>th</sup> October, 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. All communications in this matter were made with*

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*the Respondent, Mr. Sandeep Mathur and MR. Girish Goel on behalf of the Company”.*

7.5 In his statement recorded on oath under Section 240(2) on 05.10.2012, Shri Soumyabrata Mukherjee, Manager (Receivables) of the Company stated that:

- i) *In the first week of January 2011, the Respondent in the presence of Mr. Manish, Mr. Lalit Marwah & Mr. Sandeep Mathur explained to him that the Company was running short of collection to meet the AR (Accounts Receivable) targets and gave name of few customers with whom in-out transaction was to be operated.*
- ii) *The Respondent explained that first the Company will do RTGS to the respective customers from its various bank accounts between 4<sup>th</sup> January, 2011 to 12<sup>th</sup> January, 2011 and amount similar to the remitted figure needs to be collected from the customer in the next day or two.*
- iii) *Then the cheques that we collect will be posted in December 2010 and the payouts won't be posted till the time direction comes from Senior Management.*
- iv) *The accounting entries made were under the direction of his seniors Mr. Lalit Marwah, Mr. Manish Marwah & the Respondent.*
- v) *Details of collections submitted to Mr. Manish Marwah were manipulated by him while forwarding the same to Shahin Padath.*

7.6 During investigation, statement of the Respondent, the then General Manager (Finance) of the Company was recorded on oath u/s 240(2) on 2.11.2012, wherein he stated that:

- i) *“In & Out” transactions were booked with the objective of managing and reducing the ageing of the outstanding Ars (Accounts Receivables).*
- ii) *The instructions were issued by the CFO to write emails to various customers from whom this money was to be arranged.*
- iii) *The back dated cheques were collected in first week of January 2011 on the specific instructions of the CFO.*

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- iv) The funds were routed to the customers' bank accounts by the Company through RTGS or cheques, since these customers had no sufficient balance in their accounts to honour the cheques purported to have been received as payments for outstanding ARs (Accounts Receivables).
- v) After transfer of funds from the Company the cheques were banked and payment realised.
- vi) Accordingly, the ledger accounts of such customers and some other customers were adjusted for such receipts even though the Company did not receive the net cash inflow.

7.7 "The copies of RTGS payment authorisation slips, cheques issued by these customers, transaction details reflected in the bank accounts of the Company and summarised sheet containing details of In-Out Transactions. Enquiries were made from the following six customers and their statements were recorded under Section 240(2) of the Companies Act, 1956 wherein it was stated by them that the officials of the Company contacted them for these in-out transactions. The list of official of the Company who contacted these customers for in-out transactions as per their statements recorded on oath is as under:

Sl. No.	Names of the Person and Customers of the Company	Officials who contacted these persons/customers
1	Shri Munish Bali, Proprietor of M/s Munish Enterprises	Soumyabrata Mukherjee Preetpal Singh Anand Agarwal Akshat Sharma
2	Shri Vikas Gupta, Director of Singh Olympics P Ltd.	Preetpal Singh
3	Shri Jatin Lamba, Proprietor of Ashana Enterprises	Soumyabrata Mukherjee Anand Agarwal (Respondent) Kapil Agarwal

4	Smt Pragati Lamba, Proprietor of Pragati Enterprises	Soumyabrata Mukherjee Kapil Agarwal
5	Shri Sushil Jaju, Proprietor of M/s Basics	Soumyabrata Mukherjee Preetpal Singh Anand Agarwal (Respondent) Nikhil Upadhaye
6	Shri Rajiv Lamba, Proprietor of M/s Ashana Overseas	Soumyabrata Mukherjee Kapil Agarwal

7.8 From the depositions of the customers of the Company, it emerges that:-

- The officials of the Company wanted to reduce its aging debtors and meet its collection targets.
- The officials of the Company asked its debtors to issue ante dated cheques for the purpose.
- Debtors issued cheques but having no funds to honour these cheques.
- The officials of the Company, then, transferred the funds to them through RTGS in January, 2011.
- Subsequently, these customers transferred back the money in the bank account of the Company in January, 2011 itself.
- Cheques were ante dated for the last week of December 2010 whereas these were issued in the month of January, 2011 only.

7.9 Prima facie, it appears that Shri Subhinder Singh Prem, Vishnu Bhagat, the 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 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

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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”.

7.10 The statement of the Respondent was recorded on oath on 2.11.2012, when he was under the judicial custody, after due permission by the Hon'ble Court. In his statement, it was stated by him that:

- i) The system of RORs (Regional Outstanding Reports) was started in the year 2005 when adirace system was not even existence.
- ii) RORs (Regional Outstanding Reports) were introduced to help the Regional accountants to monitor and keep control over the various reconciliation items claimed by different customers.
- iii) Most of the claims suggested by these customers were eventually were found to be much lesser in value than were initially claimed.
- iv) After verification of these claims and approval by the CFO, these claims were passed and reflected in the books of account and then removed from the RORs (Regional Outstanding Reports).
- v) RORs (Regional Outstanding Reports) were nothing but working papers to reconcile the various items of claims, which were to be settled against the official ARs pending against such customers.
- vi) The very purpose of RORs (Regional Outstanding Reports) was to have better grasp and control over the outstanding receivables and if such ARs were locked up for long, the reasons for the same.
- vii) He did not know if the words “RORs” (Regional Outstanding Reports) were in the knowledge of the Global/Regional HQs, but he could certainly say that it would be very naive on his part to suggest that the items mentioned in the RORs for reconciling the outstanding ARs were not known to them, especially with the background that the outstanding ARs

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had a DSO of nearly a year continuously for last two years i.e. 2010 & 2011.

7.11 The top two functionaries of the Company, Subhinder Singh Prem and Vishnu Bhagat 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 mentioned 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.

7.12 **CIRCUITOUS TRANSACTIONS WITH 'SHIVAM' GROUP OF SANJEEV MISHRA**

*"Shri Subhinder Singh Prem and Shri Vishnu Bhagat 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*

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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."

7.13 In his statement recorded on oath under Section 240(2) of the Companies Act, 1956 on 2.11.2012 the Respondent stated that:-

- i) FRP (Franchisee Referral Scheme) Scheme was introduced by the management to collect advances from prospective customers as there was a dire need for finances and also to reduce the ageing of the ARs;
- ii) this scheme was under the knowledge and approval of the Global Finance Team (headed by Mr. Clause Heckerott);
- iii) no separate ledger account was opened to record the FRP collections; and,
- iv) collections were clubbed and accounted for in the existing customers ledger accounts and reduced the existing outstanding ARs. This was done with the view to reduce the existing ARs on the specific instructions of the CFO.

7.14 On 26<sup>th</sup> May, 2011, the financial statements of the Company for 31<sup>st</sup> December, 2010 were adopted and the accounts were signed by the directors Shri Subhinder Singh Prem, Managing Director, Vishnu Bhagat, CFO/COO, 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 31<sup>st</sup> December, 2010 are as under:

#### **Details of falsification of accounts during 2010**



<b>Methods used for falsification</b>	<b>Rs in Crore</b>
<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
<b>TOTAL</b>	<b>344.41</b>

7.15 All the signatories to the financial statements for the period 2007 to 2010, including Shri Shahin Padath, Subhinder Singh Prem, Vishnu Bhagat and the 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**

7.16 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, 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)

7.17 Since, the financial statements for the years 2009 and 2010 have been signed/made by Shri Subhinder Singh Prem, MD, Vishnu Bhagat, CFO/COO and Anand Agarwal, GM (Finance), which are false in material particulars, 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".*

7.18 Shri Subhinder Singh Prem, MD, Vishnu Bhagat, 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 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:

*"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.*

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*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”.*

7.19 Falsification of books of account and financial statements by booking fictitious sales through raising the prices of goods already sold retrospectively for 2010 and 2011:

*“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”.*

7.20 Since, the financial statements for the year 2010 have been signed/made by Shri Subhinder Singh Prem, MD, Vishnu Bhagat, 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:-

*“628. 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”*

7.21 Shri Subhinder Singh Prem, MD, Vishnu Bhagat, 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"*

7.22 Falsification of accounts receivable (debtors) in the books of account by in-out transactions with selected customers to show fictitious collections during 2010 and 2011:

*During investigation, the following officers/officials of the Company were found involved in manipulating the Accounts Receivable of the Company as they had contacted the selected customers, as stated by them in their statements on oath:*

<b>Sl. No.</b>	<b>Officials of the Company who contacted customers</b>	<b>Names of Customers to whom officials of the Company contacted</b>
1	Soumyabrata Mukherjee Preetpal Singh Anand Agarwal Akshat Sharma	Shri Munish Bali, Proprietor of M/s Munish Enterprises
2	Preetpal Singh	Shri Vikas Gupta, Director of Singh Olympics P Ltd. (SOPL)
3	Soumyabrata Mukherjee Anand Agarwal Kapil Agarwal	Shri Jatin Lamba, Proprietor of Ashana Enterprises
4	Soumyabrata Mukherjee Kapil Agarwal	Smt Pragati Lamba, Proprietor of Pragati Enterprises
5	Soumyabrata Mukherjee Preetpal Singh Anand Agarwal Nikhil Upadhaye	Shri Sushil Jaju, Proprietor of M/s Basics
6	Soumyabrata Mukherjee Kapil Agarwal	Shri Rajiv Lamba, Proprietor of M/s Ashana Overseas

Therefore, the following officials of the Company are found to be liable for falsification of accounts:

1. Shri Soumyabrata Mukherjee, Manager (Accounts Receivable)
2. Shri Preetpal Singh, Regional Sales Manager (North)
3. Shri Anand Agarwal, General Manager (Finance)
4. Shri Akshat Sharma, Executive (Finance)
5. Shri Kapil Agarwal, Manager (Finance)
6. Shri Nikhil Upadhaye, National Sales Manager

7.23 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, 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.

- 7.24 Shri Subhinder Singh Prem, MD, Vishnu Bhagat, 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.
- 7.25 Shri Anand Agarwal had, in fact, designed the format of the RORs used in the Company. Shri Manish Marwah, being the General Manager (Receivables) assisted Shri Anand Agarwal in selectively posting the items/ transactions in the books of account of the Company.
- 7.26 "Since, the financial statements for the years 2010 have been signed/made by Shri Subhinder Singh Prem, MD, Vishnu Bhagat, 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".
- 7.27 Shri Anand Aggarwal has signed the Balance Sheet and Profit & Loss account statements for the year 2010. He is officer of the Company, responsible for giving true and fair picture of the affairs of the Company in Balance Sheet and Profit & Loss account being General Manager (Finance). During investigation it is established that above statements were not correct on account of falsified sales returns, accounts receivables etc.

Hence, Shri Anand Agarwal has violated the provisions of Section 209(1) of the Companies Act, 1956 who is responsible under Section 209(6) of the Act and thus is liable to be punished under Section 209(5) of the Act.

Shri Anand Agarwal has also violated the provisions of Section 211(1)(2) of the Companies Act, 1956 and thus is liable to be punished under Section 211(8) of the Act.

7.28 Falsification of accounts receivable (debtors) in the books of account by in-out transactions with selected customers to show fictitious collections during 2010 and 2011:

7.29 Therefore, the following officials of the Company are found to be liable for falsification of accounts:

1. Shri Soumyabrata Mukherjee, Manager (Accounts Receivable)
2. Shri Preetpal Singh, Regional Sales Manager (North)
3. Shri Anand Agarwal, General Manager (Finance)
4. Shri Akshat Sharma, Executive (Finance)
5. Shri Kapil Agarwal, Manager (Finance)
6. Shri Nikhil Upadhye, National Sales Manager

"Shri Subhinder Singh Prem, MD, Vishnu Bhagat, 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".

7.30. After noting the above instance(s) of the involvement of the Respondent, the Committee noted that the Respondent in his defence stated that he was working

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as General Manager (Finance) of the Company and resigned in September 2011. He was not an authorised signatory as defined under Section 215 of the Companies Act, 1956 to authenticate the financial statements of the Company. He was not an officer in default as defined under section 5 of the Companies Act, 1956. He was never the overall in-charge of Finance and Accounts function of the Company. He had neither been given any power of attorney to officiate under the Companies Act, nor had attended any board meeting of the Company. He was not in any position to either form any policy or prevent any practice. He was working as an employee and was answerable to the top management (CFO, COO & MD) who were the policy makers. He was duty bound to abide by the policies and procedures laid out by the management from time to time. There was no way the Respondent could have circumvented his duties and responsibilities and not follow the SOP's of the Company. He was not a beneficiary of any amount directly or indirectly from the Company except the lawfully earned emoluments as per his salary structure. Further, he was not named as an accused in the complaint filed by the Company with Gurgaon police.

- 7.31 The Committee observed that the Complainant department in its Investigation Report has clearly stated that the Respondent in order to execute the policy of 'In & Out Transactions' of the management, had contacted Company's customers viz. Mr. Jatin Lamba, Proprietor of Ashana Enterprises and Mr. Munish Bali, Proprietor of M/s Munish Enterprises. The Committee, on further perusal of Investigation Report of the Complainant department observed that the Respondent had stated before them on oath that, on specific instructions of Mr. Vishnu Bhagat, the then CFO of the Company, the emails were sent to various customers from whom the money was to be arranged and back dated cheques were also collected in the month of January, 2011. The Committee thus, was of the view that these transactions were the short term accommodation loans sought by the Company from certain selected parties which, in the books of accounts, were shown as realisation of overdues from the customers. In other



words, the fictitious entries were made in the books of accounts without any actual realisation of dues from customers concerned. The Respondent, being General Manager (Finance), was instrumental in arranging such a scheme of entries by approaching various parties through his subordinates as evident from the facts. It is also evident that one of the employees of the Company viz., CA Kapil Aggarwal, who obtained confirmation from the parties, has been separately held guilty by Disciplinary Committee vide reference no. PR/320/14/DD/339/14/DC/486/2017.

7.32 On consideration of the facts of the case, various documents and material on record as well as oral and written submissions made by the parties, the Committee observed that the role of the Respondent is clearly evident that he, being the then GM Finance of the Company, was responsible for the falsification of accounts. The Committee viewed that the Respondent was instrumental in executing the various tactics of the top management to inflate the sales and thereafter to manage the account receivables like in circuitous transactions with Shivam Group, managing/reducing the aging of accounts receivable by resorting to the malpractice of 'In and Out transactions', Franchisee Referral Program (FRP) and preparation of Regional Outstanding Reports (ROR).

7.33 The Committee also noted that a Chartered Accountant in employment should prepare the books of accounts or present the financial statement fairly, honestly and in accordance with the relevant Accounting Standards/ applicable financial reporting standards so that the information presented is disseminated to the stakeholders at large in a true and fair manner. The Respondent being General Manager (Finance) of the Company should maintain information in a responsible manner that describes clearly the true nature of business transactions, assets or liabilities; and represent the facts accurately and completely in all material respects. The Committee viewed that the Respondent in the extant case has not discharged his duties diligently and involved in execution of the manipulative practices followed by the Company

7.34 On a combined reading of the defence adopted by the Respondent with the findings in the investigation report, the Committee was of the view that the Respondent claims to have not been a part of the decision making authority in the Company, yet in his capacity as GM (Finance) he would have been a part of the execution of those decisions. The Committee was of the view that being GM (Finance), the Respondent was in fact directly involved in execution of the manipulative practices followed by the Company. Therefore, he cannot escape from his liability by merely stating that he was not a part of the decision-making process. The Committee was of view that a Chartered Accountant in capacity as a senior employee of the Company 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. Thus, in the opinion of the Committee, the Respondent has clearly brought disrepute to the profession and is guilty of "Other Misconduct" falling within the meaning of Clause (2) of Part IV of the First Schedule to the Chartered Accountants Act, 1949. Further since the alleged misconduct is in relation to his duties as an employee of the organisation, he is also held guilty of professional misconduct falling within the meaning of Clause (1) of Part II of the Second Schedule read with Chapter II of Council General Guidelines 2008 1-CA(7)/02/2008 dated 08th August, 2008.

7.35 In view of the above, the Committee was of the considered 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 (1) Part II of the Second Schedule to the Chartered Accountants Act, 1949 read with Chapter II of Council General Guidelines 2008 1-CA(7)/02/2008 dated 08th August, 2008.

**8 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 as above	Paras 7.3 to 7.35 as above	<b>Guilty</b> - Clause (2) of Part-IV of the First Schedule and Clause (1) Part II of the Second Schedule

9. 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 (1) Part II of the Second Schedule to the Chartered Accountants Act, 1949.

**Sd/-**

**(CA. RANJEET KUMAR AGARWAL)  
PRESIDING OFFICER**

**Sd/-**

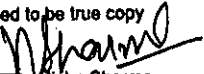
**(MS. DAKSHITA DAS, I.R.A.S. {RETD.})  
GOVERNMENT NOMINEE**

**Sd/-**

**(CA. MANGESH P KINARE)  
MEMBER**

**DATE: 05/02/2024****PLACE: New Delhi**

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

  
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वरिष्ठ कार्यकारी अधिकारी / Sr. Executive Officer  
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