



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/296/2015-DD/144/2016-DC/763/2018]

In the matter of:

Shri. K. S. Kaushik

Deputy Director, SFIO,

Ministry of Corporate Affairs, Govt. of India,

2nd Floor, Paryavaran Bhavan, C.G.O Complex,

Lodhi Road, New Delhi-110003

...Complainant

Versus

CA. Jagvinder Bir Singh (M. No. 086787)

M/s ATJ & Associates

Chartered Accountants

204, Mandir Commercial Complex,

NDSE-II,

New Delhi – 110049

...Respondent

MEMBERS PRESENT:

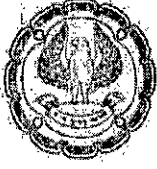
1. Shri Jiwesh Nandan, I.A.S (Retd.), (Presiding Officer and Government Nominee) (In person)
2. Ms. Dakshita Das, I.R.A.S. (Retd.), Government Nominee (Through VC)
3. CA. Abhay Chhajed, Member (In person)

DATE OF HEARING : 19th MARCH, 2024

DATE OF ORDER : 17th 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. Jagvinder Bir Singh (M. No. 086787)** (hereinafter referred to as the **Respondent**) is **GUILTY** of Professional Misconduct falling within the meaning of Item (6), (7) and (8) of Part I of the Second Schedule to the Chartered Accountants Act, 1949.

2. That pursuant to the said Findings, an action under Section 21B(3) of the Chartered Accountants (Amendment) Act, 2006 was contemplated against the Respondent and a



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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 present through video conferencing. The Respondent stated that he has already submitted his written representation before the Committee vide email dated 19th February 2024 and has nothing more to add in this case. The Committee also noted the written representation of the Respondent dated 19th February 2024 on the Findings of the Committee, which, inter-alia, are given as under:

- (a) Negative observations have been made against him to reach at the verdict of guilt.
- (b) The figure of CWIP of Rs. 7,01,90,486/- was actually settled value of the Planned & Partly Executed Capital Works at various branches of the Company in question, against which part payment had also been made & the balance due was reflected as outstanding in the books for the year.
- (c) The repeated assertion of the Respondent that the typographical error in the Notes to the Audited Balance Sheet for FY 2007-08 was corrected at the time of signing of the Balance Sheet by the Directors, has been discarded for "want of evidence".
- (d) In the Audit Report for all subsequent years after the F.Y. 2007-08, the Audit Opinion is not a clean opinion but has been made subject to all Notes to Account, which also contained Notes relating to outstanding expenditures under the head 'Deferred Revenue Expenditure'/'Capital Work in Progress', etc.
- (e) All entries contained in the Balance Sheet for FY 2007-08 are duly supported by the Trial Balance from the books of accounts. SFIO has also fully disregarded the Audit Report of the Independent/Special Auditor.
- (f) The present complaint needs to be dismissed.

4. The Committee considered the reasoning as contained in Findings holding the Respondent 'Guilty' of Professional Misconduct vis-à-vis verbal and written representation of the Respondent. The Committee noted that the issues/ submissions made by the Respondent as aforesaid have been dealt with by it at the time of hearing under Rule 18.

5. Thus, keeping in view the facts and circumstances of the case, material on record including verbal and written representation of the Respondent on the Findings, the Committee noted that the Respondent's explanations and assertions were without any supporting evidence



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and were found to be contradictory in nature. The Committee held that there was a lack of clarity on the part of Respondent in regard to proper accounting treatment of expenditures related to the development of ERP software for the Financial Year 2007-08. The uncertainty surrounding whether these expenditures should be capitalized or treated as 'Deferred Revenue Expenses' suggests a fundamental lack of understanding or due diligence on the part of the Respondent.

6. The Committee noted that the Respondent had carried forward significant balances as 'Deferred Revenue Expenditure' and 'Capital Work in Progress' in subsequent financial years, without qualifying his audit reports. The Committee noted the statement of the Respondent recorded before the Complainant Department that it was not known at the time of preparation of the balance sheet for FY 2007-08 as to whether the expenses incurred were to be capitalized or were to be treated as Deferred Revenue Expenditure and finally, the same was kept as 'CWIP' in the balance sheet. Accordingly, the Committee held that this admission of the Respondent itself shows that at the time of audit, compliance of the conditions of Para 44 of AS 26 was not checked by the Respondent and the amount of Rs. 7,01,90,486/- was recognized in an arbitrary manner. Hence, the Professional 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.

7. 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 Misconduct.

8. Thus, the Committee ordered that the name of the Respondent i.e., CA. Jagvinder Bir Singh (M. No. 086787) be removed from the register of members for a period of 02 (Two) years.

Sd/-

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

(PRESIDING OFFICER AND GOVERNMENT NOMINEE)

Sd/-

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


GOVERNMENT NOMINEE

Sd/-

(CA. ABHAY CHHAJED)

MEMBER

प्रमाणित सत्य प्रतिलिपि / Certified True Copy


अनिल भट्टनागर / Anil Bhatnagar
सहायक सचिव / Assistant Secretary
अनुशासक निदेशक / Disciplinary Directorate
भारतीय सनदी लेखाकार संस्थान
The Institute of Chartered Accountants of India
आइसीएआई, भवन, मिहवा नगर, शहदरा, दिल्ली-110092
ICAI Bhawan, Mihwa Nagar, Shabdra, Delhi-110092

Order- CA. Jagvinder Bir Singh (M. No. 086787)

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/296/2015-DD/144/2016-DC/763/2018]

In the matter of:

Shri. K. S. Kaushik

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...Complainant

-versus-

CA. Jagvinder Bir Singh (M. No. 086787)

M/s ATJ & Associates

Chartered Accountants

204, 2nd Floor, Mandir Commercial Complex,

South Extension-II,

New Delhi – 110049

...Respondent

MEMBERS PRESENT:

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

Shri Jiwesh Nandan, I.A.S. (Retd.) (Govt. Nominee) (In person)

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

CA. Mangesh P Kinare, Member (In Person)

CA. Cotha S Srinivas, Member (In person)

DATE OF FINAL HEARING : 22nd January 2024

PARTIES PRESENT:

Complainant : Ms. Akanksha Bhadouria (Through VC)

Counsel for the Complainant : Advocate Nitin A. C. G. C. (Through VC)

Respondent : CA. Jagvinder Bir Singh (Through VC)

1. **Background of the Case:**

1.1. The Hon'ble High Court of Delhi vide order dated 23rd July, 2012 held that M/s Life Business Projects Private Limited (hereinafter referred to as the "Company") was involved in committing fraud upon the employees of the Company all over India which needs to be investigated and thus, keeping in view this fact, the Hon'ble High Court of Delhi referred the said matter to Serious Fraud Investigation Office under the Ministry of Corporate Affairs. The SFIO, during the investigation, found that the Respondent Firm, represented by CA. Jagvinder Bir Singh ('Respondent'), was appointed as the Statutory Auditor of the Company, for the Financial Year 2007-08 and thus, summoned the Respondent to appear before the SFIO. The Respondent on such summon, appeared on 19.02.2013, and furnished the financial statements of the Company for the Financial Year 2007-08 (including balance sheets, profit & loss account, Auditor's Report and Director's Report).

1.2. The SFIO, on examination and analysis of the aforesaid financial statements, had found that the Company had collected total amount of Rs.19,77,07,673/- on account of 'Security Deposits' from its employees (who were fresh graduates recruited through Campus Recruitment) and utilized the amount of Rs. 11,93,37,448/- on account of 'Deferred Revenue Expenditure' and other expenses out of total receipt of Rs.19,77,07,673/- and the balance amount of Rs.7,01,90,486/- was adjusted under the head 'Capital Work in Progress' (CWIP). But on enquiry, the Respondent stated that the Company had incurred some expenses on development of ERP Software which were carried forward under the head 'Capital Work in Progress' (CWIP) in the balance sheet. However, upon perusal of the balance sheet, it was found that the Company had already showed expenditure on ERP Software amounting to Rs.15,82,33,893/- under the head of 'Deferred Revenue Expenditure' as detailed above in the balance sheet for the year ending 31.03.2008.

1.3. Thus, it had been concluded in the investigation report that the entry of Rs. 7,01,90,486/- booked under the head 'Capital Work in Progress' (CWIP) in

the balance sheet, was fictitious and false. On the aforesaid investigation report, the Complainant filed the present complaint against the Respondent by stating that he, deliberately and wilfully, misstated the facts which he knew to be false in the balance sheet for the year ending 31.03.2008.

2. Charges in brief:

2.1 In view of the above background, it had been concluded in the investigation of the Complainant Department that the Respondent, deliberately and wilfully, misstated the facts which he knew to be false in the balance sheet of the Company for the year ending 31.03.2008 and thereby, falsified the books of accounts of the Company by showing fictitious entries in the financial statement. Thus, the financial statements of the Company did not present true and fair view of its affairs. Therefore, in the light of the above facts and circumstances, it had been concluded that the Respondent who was the Statutory Auditor of the Company failed to ensure compliance of Accounting Principles as issued by the Institute of Chartered Accountants of India and mandatory provisions of the Companies Act, 1956 as well as the correct procedures relating to the treatment of transactions in the books of accounts of the Company and failed to discharge his duties as contemplated under Section 227 of the Companies Act, 1956.

3. The relevant issues discussed in the Prima facie opinion dated 9th December 2017 formulated by the Director (Discipline) in the matter in brief, are given below:

3.1. The Company had collected an amount of Rs.19,77,07,673/- as security deposit from the employees who were professionals fresh graduate recruited through Campus Recruitment, which as per the Complainant were siphoned off / misappropriated by the Company's Directors because the assets shown to have been purchased by the Company were not available and the expenditure was not supported by relevant document. The details of amounts, so received, and utilized by the Company is as follows:

Sr.No	Particulars	Amount (Rs.)
1.	Deferred Revenue Expenditure as on 31.03.2008	15,82,33,893/-

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2.	Add Expenses booked in P & L (2007-08)	29,61,034/-
3.	Add Expenses booked in P & L (2006-07)	2,26,881/-
4.	Add addition to fixed asset (2006-07)	40,77,065/-
5.	Add addition to fixed asset (2007-08)	5,03,29,578/-
6.	Less Outstanding liabilities for expenses	9,64,91,0043/-
	Net utilization	11,93,37,448/-

3.2. As per Note 5 of Balance Sheet, the expenditure on ERP software had been shown as 'Miscellaneous Expenditure' (Deferred Revenue Expenditure), hence, again showing the same under CWIP indicated that it was a fictitious entry. It had been observed from the "Guidance Note on Audit of Miscellaneous Expenditure (Revised)" that it clearly lays down the responsibility of an auditor for verifying the related expenditure. Paragraph 26 of stated Guidance Note clearly states that such an expenditure was eligible for capitalisation if and only if the requirements of Paragraph 44 of AS26 were met and for that, Paragraph 28 of said Guidance Note prescribes the audit procedures that should be adopted in relation to same. In the extant case, the Respondent had not referred to any conditions specified in Paragraph 44 of AS 26. Moreover, in case, if on deployment of software developed by the Company, sufficient income could not be generated, it was not a convincing reason to continue to carry the same as CWIP. Furthermore, the Respondent had failed to reproduce any documents based on which the said expenditure was verified.

3.3. The Respondent contended that he was informed that the Company had incurred some expenses for development of ERP Software. The expenses incurred were not taken as revenue expenses and were carried in the balance sheet as Capital Work in Progress. It was to be taken as Deferred Revenue Expenditure and to be written off over the next few years, when the ERP software would be in working condition and would be capitalised in the books. However, during the next year, the income generated was not sufficient to write it off, so the same was shown as CWIP. It was observed that the word 'Capital Work in Progress' had been corrected as 'Misc. Expenditure' in the said note by hand correction. It was not clear whether the same had been done at the time of signing of the balance sheet or later on.

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- 3.4. The Complainant had contended that the Company had classified 'Deferred Revenue Expenditure' as 'Capital Work in Progress' which was against the norms of accounting standards. In this regard, it was observed that before AS-26 became mandatory on 1.4.2004, such expenses were capitalised under the head 'deferred revenue expenditure'. But once AS-26 was adopted if an expenditure meets criteria of 'asset' or in extant case, the conditions specified in paragraph 44 of AS-26, it could be capitalised under the head 'Intangible under development' which was to be amortised over the period when economic benefit will arise. But the Respondent failed to consider this aspect in his statement before the inspector of SFIO.
- 3.5. The Respondent in his Written Statement had failed to categorically state in his defence the circumstances that led to the adoption of such accounting treatment. Notably, Note No. 5 of Schedule 10 of the balance sheet pertains to 'Capital Work in Progress' that was the focal point of the allegations. Furthermore, the Respondent's aforementioned claim was called into question when such facts related with the audit reports of the Company for the years 2009 to 2011 were produced on record. It was noted that the trial of the Respondent had also been started vide Court order dated 8th December, 2015.
- 3.6. The Director (Discipline) in his Prima Facie Opinion dated 9th December 2017 has held that the Respondent was prima facie Guilty of Professional Misconduct falling within the meaning of Item (6), (7) and (8) of Part – I of the Second Schedule to the Chartered Accountants Act, 1949. The said Item of the Schedule to the Act, states as under:

Item (6) of Part I of the Second Schedule:

"A Chartered Accountant in practice shall be deemed to be guilty of professional misconduct if he:

(6) Fails to report a material misstatement known to him to appear in a financial statement with which he is concerned in a professional capacity.

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

"A Chartered Accountant in practice shall be deemed to be guilty of professional misconduct if he:

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

Item (8) of Part I of the Second Schedule:

"A Chartered Accountant in practice shall be deemed to be guilty of professional misconduct if he:

(8) fails to obtain sufficient information which is necessary for expression of an opinion, or its exceptions are sufficiently material to negate the expression of an opinion;

- 3.7. The Prima facie opinion formed by the Director (Discipline) was considered by the Disciplinary Committee at its meeting held on 26th & 27th March 2018. 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 GUILTY of Professional Misconduct falling within the meaning of Item (6), (7) and (8) of Part – I of the Second Schedule to the Chartered Accountants Act, 1949 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 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 submissions/Pleadings by parties:

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

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S. No.	Particulars	Dated
1.	Date of 'Complaint in Form-I'	8 th April 2015
2.	Date of Written Statement filed by the Respondent	18 th July 2016
3.	Date of Rejoinder filed by the Complainant	5 th August, 2016
4.	Date of Prima facie Opinion formed by Director (Discipline)	9 th December 2017
5.	Date of written submissions filed by the Respondent after PFO	28 th May 2018, 4 th June 2018, 22 nd December 2022, 23 rd January 2023, 28 th February 2023, 8 th August 2023 and 9 th January 2024
6.	Date of written submissions filed by the Complainant after PFO	27 th January 2023 and 13 th October 2023

5. Written submissions of the Respondent after PFO:

The Respondent vide letters dated 28th May 2018, 04th June 2018, 22nd December 2022, 23rd January 2023, 28th February 2023, 8th August 2023 and email dated 09th January 2024 filed his written submissions inter alia stating as under:

5.1 The Respondent was duly appointed as the Statutory Auditor to conduct the audit of the Company, M/s Life Business Projects Private Limited for the Year Ending 31st March 2008. On appointment, the required form 23B has been duly filed with MCA. The Audit was to be conducted based on the books of accounts and other supporting documents maintained by the Company. As per the given mandate, the Statutory Audit was duly conducted based on books of account & supporting as produced by the management and on completion of the same, an audit report dated 01.09.2008 was issued to the members of the Company. This Audit was completed strictly in terms of the rules/ regulations/ guidelines as laid down by ICAI & by law.

5.2 In meetings with Mr. Bhuvnesh Chaturvedi, the Company's Director, he gained insights into the business model, ongoing projects, and future plans, including the development of ERP software and the establishment of branches nationwide. During the financial year 2007-08, the Company, primarily focused on developing ERP software, meticulously categorized the

total project expenses according to established accounting principles and applicable standards. He verified these allocations during the audit, cross-referencing them with the Company's records. Any required clarifications were sought and obtained from both the management and the designated accountant.

- 5.3 However, subsequently, the Respondent learnt that on a complaint made by some employees of the Company, the Hon'ble High Court of Delhi had vide order dated 23.07.2012 referred the said matter to Serious Fraud Investigation Officer (SFIO) to investigate the affairs of the Company for committing the fraud on its employees. The Respondent was called upon to provide a copy of the Balance Sheet and other documents relating to the Company. The Respondent duly appeared before the inspectors of SFIO on 19.02.2013 and furnished the financial statements of the Company for the year ended on 31.03.2008 which included the Balance Sheet, Profit & Loss Account, Auditors Report and Director's Report.
- 5.4 Incidentally, at the time of submission of the Balance sheet, the Respondent was also asked to reply to some questions on 19.02.2013 (based on the balance sheet for the year ended 31.03.2008) and he replied the same to the best of his information. In fact, without giving any SCN, the Respondent's Statement too was recorded after a gap of more than 5 years, and he was not given any opportunity to look at the details of the various figures and his working papers lying at his office.
- 5.5 Later, the Respondent learnt that SFIO had filed a Criminal Complaint No 27/3 of 2015 before the Court of Ld. ACMM, Central (Special Acts), Tis Hazari Courts, Delhi on 12/01/2015 for the alleged Fraud committed by the management of the Company against its employees. It was also claimed by SFIO that during investigations, they could not find / tally the investments as depicted in the balance sheets of the Company with the physical position. All allegations levied in this complaint were the same, as had been levied in the current complaint to ICAI. In the said Criminal Complaint filed by SFIO, the promoters / directors were made Accused No 1 to 4 and the Respondent was made Co-accused no. 5.

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- 5.6 The promoters/ directors/ management who had been arraigned as Accused Nos. 1 to 4 in the Criminal Complaint, had never attended these complaint proceedings and it was only the Respondent who was attending the proceedings without fail.
- 5.7 That in the complaint case 516116/2016 pending before ACMM (Spl. Acts)- Central District-Tis Hazari Court, the SFIO was yet to produce their complete witnesses for even pre-charge evidence. SFIO was still to produce evidence against the Respondent at the pre-charge stage and, they had been taking adjournment after adjournment in the Court, for the same.
- 5.8 No document/complete report of SFIO/the initial EOW wherein another Professional CA engaged by EOW, had given a detailed report and duly explained all allegations of money-siphoning etc. as levied by SFIO against the Promoters/Directors/then Auditor of the Company with due supporting evidence from the books of accounts seized from custody of the Company and now in custody of EOW/SFIO had not been forwarded to the Respondent despite specific request for the same to all concerned.
- 5.9 The bald allegations of SFIO against the Respondent-which form the basis of the present complaint to ICAI were all unproven till date. Even the jurisdictional magistrate Court was yet to take judicial cognizance of SFIO criminal charges against the Respondent.
- 5.10 The Respondent requested that SFIO may kindly be directed to pass on a copy of their investigation Report as well as the complete Report (with all the annexures thereto) of EOW as well as of the Due Diligence Report given by special Chartered Accountant Firm appointed by the erstwhile investigating agency/the EOW which emphatically points out/explains the actual spending/use of money raised by the promoters of the subject company for its developmental project/for capital/Deferred revenue expenditure etc. with full documentary evidence from the Books of Account of the Company in the custody of the EOW/SFIO and thus, negated the blatantly false & defamatory allegations as had been levied against him.

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- 5.11 SFIO in its complaint before the ICAI, had concluded that the entry of Rs 7,01,90,486/- under the head of CWIP in progress, in the balance sheet, was fictitious and false. In this regard, the Respondent stated that as the Company was continuing with the execution of its project of developing a comprehensive but costly ERP software etc. which costed Rs 14,57,19,910/- and expenses amounting Rs 29,03,996/- which were purely related to admin activities for that year, were taken to the Profit and Loss account.
- 5.12 That the Statutory Audit was performed as per norms and based on the books of accounts and other supporting vouchers/documents etc. as produced before the Company Management and the Audit Report was duly qualified wherever adequate information and explanations were not forthcoming. That the SFIO report was given in a very casual, perfunctory and unprofessional manner. There was complete non-appreciation of the exact scope of the statutory audits as well as a clear absence of knowledge as regards the various accounting aspects and applicable accounting standards.
- 5.13 All entries contained in the Balance Sheet for FY 2007-08 were duly supported by the underlying Trial Balance from the Books of account. These figures also stand independently proved from the Report of the Independent / Special Auditor engaged by the investigating authorities as well as the statements of the various employees as well as the major vendor M/s Power Track Systems (though its proprietor). SFIO had for some strange reasons or out of negligence / incompetence completely disregarded the statement of this Proprietor as well as the documents produced by him. They had also fully disregarded the Audit Report of the Independent/Special Auditor. They had also for some strange reason applied the policy of pick & choose while framing their cash flow statement & had levied baseless allegations without any evidence.
- 5.14 During statutory audit, on verification of various accounts with supporting produced, he found that the Trial balance produced tallied with the books and the draft financial statements were based on the same. He also placed reliance on financial statements for the preceding year which had been audited by another firm, M/s R.K. Rustogi & Associates, Chartered
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Accountant for all opening balance figures in the books produced as well as the nomenclature/ head wise classifications made by the said auditor. After detailed discussion with the management and its authorized accountant who carried the books as regards the various business activities during the year, the business model followed by the Company, the capital works in progress and various other issues, detailed scrutiny was undertaken with the supporting produced.

- 5.15 The management affirmed all balances in the books with a categorization of various heads of expenditure he had insisted on having third party confirmation of all these major balances.
- 5.16 That the Statutory Audit was performed as per norms and based on the books of accounts and other supporting vouchers/ documents etc. as were produced before him by the Company Management and the Audit Report were duly qualified wherever adequate information and explanations were not forthcoming. This Statutory Audit was never / not at all an Investigation Audit or a Forensic Audit.
- 5.17 There was no cause for negligence or misconduct on the part of Respondent while performing the subject audits as well as in complying with the various applicable accounting standards as all these applicable standards etc. had been duly kept in mind while doing the Audits even if there was no explicit mention of the same.
- 5.18 That his statement was recorded without any formal notice and not give any time to see/ prepare from the working papers lying in the office.
- 5.19 That the Respondent duly qualified the audited accounts, and this was the maximum he could do or could be expected to do under the law applicable to statutory auditors.

6. Written Submissions filed by the Complainant dated 27th January 2023:

- 6.1 The Complainant had reiterated the facts pertaining to the collection of amounts, deferred revenue expenditure, capital work in progress, expenses incurred for the development of ERP software, non-compliance of guidance notes etc., as stated by him in his complaint as well as in the Rejoinder. The Complainant vehemently denied the written statement / replies filed by the

Respondent asserting that the Respondent was only trying to make frivolous submissions in order to delay the present case.

6.2 The Complainant submitted that the proceedings under the Chartered Accountant Act, 1949 were distinct from the proceedings under Cr.P.C. As regards to the averment of the Respondent, that the current proceedings before the Disciplinary Committee may presently be adjourned sine die and be taken up only after the criminal case stands disposed off, the Complainant submitted that proceedings before ICAI (Disciplinary Committee) were not affected by the same and were to run independently. It was submitted that a disciplinary proceeding was not a criminal proceeding and that the standard of proof required in a disciplinary proceedings/inquiry was that of preponderance of probability and not of proof beyond reasonable doubt.

6.3 The Complainant further asserted, that the ambit of proceedings before a Disciplinary Committee was to investigate the scope of Professional Misconduct and not to look into the culpability of the act. It was also submitted that the Hon'ble Supreme Court in catena of judgments held "*that findings of criminal court are not binding on disciplinary proceedings as approach and objective of criminal proceedings and disciplinary proceedings are altogether distinct and different. The evidence led in both the proceedings are on different footing although the evidence is same.*"

6.4 The Complainant vide his letter dated 13.10.2023 has submitted certain Bank statements of the Company.

7. Brief facts of the Proceedings:

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

Particulars	Date of meeting(s)	Status
1 st time	26 th December 2022	Part heard and adjourned in the absence of the Respondent.
2 nd time	7 th January 2023	Part heard and adjourned.
3 rd time	11 th / 19 th April 2023	Part heard and adjourned.
4 th time	26 th July 2023	Part heard and adjourned.
5 th time	25 th August 2023	Adjourned at the request of the Complainant.
6 th time	16 th October 2023	Adjourned at the request of the Respondent.
7 th time	9 th January 2024	Part heard and adjourned.
8 th time	22 nd January 2024	Hearing concluded and decision taken.

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- 7.2 On the day of first hearing on 26th December 2022, the Committee noted that the Complainant along with her Counsel, were present through Video conferencing mode. The Committee noted that the Respondent was absent without any intimation of his absence. The Committee directed the office to convey its displeasure to the Respondent while also asking him to appear before the Committee without fail at next hearing.
- 7.3 On the day of next hearing on 7th January 2023, the Committee noted that the Complainant along with her Counsel and the Respondent were present through Video conferencing mode. Thereafter, the Respondent was put on oath and the Committee enquired from him as to whether he was aware of the charges as contained in Para 2 above and the same were also read out. On the same, the Respondent replied that he is aware of the charges and pleaded 'Not Guilty' on the charges levelled against him. The Respondent submitted that this case was also going on before the Hon'ble Tis Hazari Court, Delhi. The Respondent submitted that he had made written submissions through letter dated 22.12.2022. The Counsel for the Complainant stated that they did not have copy of written submissions of the Respondent. Thereafter, the Complainant's Counsel sought adjournment on the ground that he had been recently engaged and need time for preparation. Acceding to the said request of the Complainant's Counsel, the Committee adjourned the case to a later date. The Committee directed the Respondent to share his written submissions with the Complainant and directed the Complainant to file reply, if any with a copy to the Respondent. Thus, the matter was part heard and adjourned to a later date.
- 7.4 On the day of next hearing on 11th / 19th April 2023, the Committee noted that the Complainant along with Counsel, and the Respondent were present through Video conferencing mode. Thereafter, the Counsel for the Complainant presented his submissions that the Respondent was the Statutory Auditor of the Company and the Company received security deposits from job aspirants who were unemployed youth and the Respondent failed to report the same in his audit report. The Respondent also presented his submissions. The Committee recorded the submissions of the Complainant's Counsel and the Respondent and directed the parties that

they may file additional written submissions, if any, and thereby adjourned the case to a later date. Thus, the matter was part heard and adjourned.

7.5 On the day of next hearing on 26th July 2023, the Committee noted that the Complainant and the Respondent were present through Video conferencing mode. The Committee asked the Respondent to make his submissions. The Respondent submitted that no public money was involved in the matter except for security deposit received from the employees. There were about 1100 employees working at that time in the entity and all files/working papers had been taken away by the SFIO. The deposit from the employees were to be refunded if they worked with the Company for three years as per contract and therefore, the same was not public deposit. The Committee directed the Respondent to provide following documents/information pertaining to relevant financial year:

- Break up of share application money.
- Break up of deferred revenue expenses.
- Details of bills and party(ies) to whom the payment of Rs. 7 Crores was made for development of software.
- Status of case(s) in relation to subject matters pending in Court(s) and other forums.
- Details of administration expenses as shown in Schedule 9 of Balance Sheet for the year 2008.

The Complainant submitted that her submissions had already been made during last hearing. The Committee also directed the Complainant to provide books of accounts and relevant bank statements. Thereafter, the Committee adjourned the case to a later date. Thus, the matter was part heard and adjourned.

7.6 On the day of next hearing on 25th August 2023, the Committee noted that the Complainant vide email dated 23.08.2023 had sought adjournment on the ground that they were tracing the records viz., copy of the bank statements and books of accounts of the Company, which were sought from them during last hearing. The Committee acceded to the request of the Complainant and adjourned the matter to a later date.

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- 7.7 On the day of next hearing on 16th October 2023, the Committee noted that the Respondent vide email dated 14th October 2023 had sought adjournment stating that he had received documents from the Complainant on 14/10/2023. As these documents were voluminous, the Respondent requested additional time to prepare his reply. The Committee acceded to the request of the Respondent and adjourned the matter to a future date with direction that the Respondent be informed to be present at the next meeting and in case of his absence, the case be decided ex-parte, Respondent.
- 7.8 On the day of next hearing on 9th January 2024, the Committee noted that the Complainant along with Counsel and the Respondent were present through Video conferencing mode. The Committee asked the Respondent to make his submissions. The Respondent submitted that as per directions of the Committee, SFIO had submitted various bulky documents like bank statements, but there was no co-relation as to how these documents were related to the charges levelled in the subject case. The Committee then directed the Complainant to provide the current status of the case(s) which were filed by the SFIO with other authorities/court(s). With this, the case was part heard and adjourned to a future date.
- 7.9 On the day of final hearing on 22nd January 2024, the Committee noted that the Complainant along with Counsel and the Respondent were present through Video conferencing mode. The Committee asked the Complainant's Counsel to make his submissions. The Counsel stated that a criminal case was already pending adjudication before the trial court in case of Bhuvnesh Chaturvedi and Others which also included name of the Respondent and the same was at pre-charge stage. The Committee then asked the Respondent to make his submissions. The Respondent stated that he had already submitted his submissions before the Committee.
- 7.10 After detailed deliberations, and on consideration of the facts of the case, various documents / material on record as well as the oral and written submissions, the Committee concluded the hearing in the instant case.

8. Findings of the Committee:

8.1 The Committee thoroughly examined the charges levelled against the Respondent, that the balance sheet of the Company for the year ending 31.03.2008 was showing fictitious entries. In this regard, the Committee observed that the said charge primarily related to two transactions / entries, Capital Work in Progress of Rs. 7,01,90,486/- and Deferred Revenue Expenditure of Rs. 15,82,33,893/- disclosed under 'Application of Funds' in the Balance Sheet as on 31st March 2008. The Committee also observed that the Complainant had emphasized on the entry of Rs. 7,01,90,486/- disclosed under the head 'Capital Work in Progress' (CWIP) in the balance sheet, which was alleged to be fictitious and false. The Committee deliberated on these entries of Rs. 15,82,33,893/- and Rs. 7,01,90,486/- which were disclosed under as 'Deferred Revenue Expenditure' and 'Capital Work in Progress' respectively. At the outset, the Committee observed that as per Accounting Standard 8 – 'Accounting for Research and Development', in case the research and development expenditure was decided to be deferred on the basis of certain criteria laid down in paragraph 9 thereof, deferred research and development expenditure was required to be separately disclosed in the balance sheet under the head 'Miscellaneous Expenditure'. In this context, the Committee also observed that AS 8 was withdrawn from the date AS 26, 'Intangible Assets', became mandatory for the concerned enterprises. The Committee observed that AS 26 became mandatory in respect of expenditure incurred on intangible items during accounting periods commencing on or after 1-4-2003 for the following:

- i. Enterprises whose equity or debt securities were listed on a recognized stock exchange in India, and enterprises that were in the process of issuing equity or debt securities that will be listed on a recognized stock exchange in India as evidenced by the board of directors' resolution in this regard.
- ii. All other commercial, industrial, and business reporting enterprises, whose turnover for the accounting period exceeds Rs. 50 crores.
- iii. In respect of all other enterprises, AS 26 was mandatory in respect of expenditure incurred on intangible items during accounting periods commencing on or after 1-4-2004.

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8.2 The Committee observed that the present charge was related to development of ERP software during Financial Year 2007-08, thus, the Committee was of the view that the accounting had to be done as per the provisions of AS 26 in this case. The Committee examined the provisions of AS 26 – 'Intangible Assets' and observed that Para 44 deals with recognition of intangible assets arising from development subject to the fulfillment of certain requirements. In this regard, Para 44 of AS 26 states that:

"Development Phase

44. An intangible asset arising from development (or from the development phase of an internal project) should be recognised if, and only if, an enterprise can demonstrate all of the following:

(a) the technical feasibility of completing the intangible asset so that it will be available for use or sale;

(b) its intention to complete the intangible asset and use or sell it;

(c) its ability to use or sell the intangible asset;

(d) how the intangible asset will generate probable future economic benefits. Among other things, the enterprise should demonstrate the existence of a market for the output of the intangible asset or the intangible asset itself or, if it is to be used internally, the usefulness of the intangible asset;

(e) the availability of adequate technical, financial and other resources to complete the development and to use or sell the intangible asset; and

(f) its ability to measure the expenditure attributable to the intangible asset during its development reliably."

8.3 The Committee observed that one of the contentions of the Respondent was that the Company had incurred some expenses for development of ERP software and the expenses were disclosed in the balance sheet as CWIP. In this regard, the Committee examined the audit report of the Respondent issued for FY 2007-08 and observed that in Para (f) of the audit report, the Respondent has given his audit opinion subject to point 3, 4, and 5 of Notes to the Accounts of the Company for the relevant period. Para (f) of the audit report reads as under:

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"In our opinion and to the best of our information and according to the explanations given to us, the said accounts, read with the "Notes to the Accounts" mentioned in Schedule 10 subject to Point No. 3,4 and 5, give the information required by the Companies Act, 1956, in the manner so required and give a true and fair view:

- i) in the case of the Balance Sheet, of the state of affairs of the Company as at 31st March, 2008 and*
- ii) in the case of the Profit & Loss Account, of the Loss of the Company for the period ended on that date."*

8.4 The Committee then examined the notes to accounts of the Company for the relevant period and observed that Note no. 5 speaks about the treatment of expenses incurred on development of ERP software. The said Note no. 5 reads as under:

"Since the Company is in the process of developing ERP Software, which is still in the stage of development, the expenses incurred on its development had been transferred to Capital Work in Progress. The same will be treated as revenue expenses, once the sale of developed software will be done in the market."

8.5 The Committee examined the financial statements of the Company and audit reports issued by the Respondent as well as the submissions of the Respondent collectively and observed various contradictions therein which are as under:

- i.** In the financial statements of the Company for Financial Year 2007-08, in Note no. 5, the term 'capital work in progress' had been struck off and had been replaced with the term 'miscellaneous expenditure' and the said correction had been done by hand. In this regard, the Respondent asserted that the same was a typographical error and the said Point 5 was actually in respect of 'Deferred Revenue Expenditure' shown under the head, 'Miscellaneous Expenditure' and these corrections were made at the time of

signing of the balance sheet. However, the Committee observed that there were no evidence supporting this assertion of the Respondent.

- ii. The financial statements of the Company for Financial Years 2008-09, 2009-10 and 2010-11 had also been audited by the Respondent. In these financial statements also, similar Note no. 5 on 'Capital Work in Progress' had been given, but no correction was evident in these financial statements. In this regard, the Respondent again asserted that the above typographical error which was made in the financial statements for FY 2007-08, was occurring in the financial statements of subsequent three years and thus, these financial statements should also be treated to have been amended / corrected as stated above. However, the Committee did not find any evidence supporting this assertion of the Respondent.
- iii. In his submissions before the Complainant, when he was asked about the nature of the said amount disclosed under CWIP and justification for the classifying deferred revenue expenditure as CWIP, he submitted that the specified expenditures was in respect of development of ERP software and the said amount was to be taken as Deferred Revenue Expenditure and was to be written off over next few years. However, he also submitted that at the time of preparation of balance sheet of the Company for FY 2007-08, it was not known whether the said expenditures as incurred, were to be capitalized or to be treated as 'Deferred Revenue Expenses' but the same was kept as 'CWIP' in the balance sheet. Consequently, the Committee was of the view that there was no clarity on the part of the Respondent regarding accounting treatment of these expenditures purportedly made in the name of development of ERP software.
- iv. These balances of Rs. 15,82,33,893/- and Rs. 7,01,90,486/- as at 31st March 2008 were also carried forward to subsequent financial years 2008-09, 2009-10 and 2010-11 and were disclosed as 'Deferred Revenue Expenditure' and 'Capital Work in Progress' respectively therein. Further, the Respondent had issued unqualified audit report in respect of these two items for these Financial Years. The Committee was of the view that even though there was ambiguity and lack of understanding of the Respondent in respect of

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accounting treatment of these two items, yet he chose to remain silent regarding these specific items in his audit reports for the relevant period.

- 8.6 From the above observations, the Committee was of the view that the Respondent's explanations and assertions were without any supporting evidence and found to be contradictory in nature. The Committee observed that there was lack of clarity on the part of Respondent in regard to proper accounting treatment of expenditures related to the development of ERP software for the Financial Year 2007-08. The uncertainty surrounding whether these expenditures should be capitalized or treated as 'Deferred Revenue Expenses' suggests a fundamental lack of understanding or due diligence on the part of the Respondent.
- 8.7 The Committee also expressed concerns about the Respondent's decision to carry forward significant balances as 'Deferred Revenue Expenditure' and 'Capital Work in Progress' in subsequent financial years, without qualifying his audit reports. Furthermore, the Committee observed that a Company can recognize an intangible asset arising from development if certain conditions are met as coming under Para 44 of AS 26 and as also stated in Point 8.2 above. In this context, the Committee noted the statement of the Respondent recorded before the Complainant Department that it was not known at the time of preparation of balance sheet for FY 2007-08 as to whether the expenses incurred were to be capitalized or were to be treated as Deferred Revenue Expenditure and finally, the same was kept as 'CWIP' in the balance sheet. The Committee was of the view that this admission of the Respondent itself shows that at the time of audit, compliance of the conditions of Para 44 of AS 26 were not checked by the Respondent and the amount of Rs. 7,01,90,486/- was recognized in an arbitrary manner. Accordingly, the Committee held the Respondent **GUILTY** of Professional Misconduct falling within the meaning of Item (6), (7) and (8) of Part I of the Second Schedule to the Chartered Accountants Act, 1949.

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9. **Conclusion:**

In view of the findings stated in above paras, vis-a-vis material on record, the Committee gives its charge wise findings as under:

Charges (as per PFO)	Findings	Decision of the Committee
Para 2.1 as above	Para 8.1 to 8.7 as above	Guilty – Item (6), (7) and (8) of Part I of Second Schedule

In view of the above observations, considering the oral and written submissions of the Respondent and material on record, the Committee held the Respondent **GUILTY** of Professional Misconduct falling within the meaning of Item (6), (7) and (8) of Part I 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.})
GOVERNMENT NOMINEE

Sd/-

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

Sd/-

(CA. MANGESH P KINARE)
MEMBER

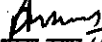
Sd/-

(CA. COTHA S SRINIVAS)
MEMBER

DATE: 05th FEBRUARY 2024

PLACE: New Delhi

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Certified to be true copy


अरुण कुमार / Arun Kumar
वरिष्ठ कार्यकारी अधिकारी / Sr. Executive Officer
अनुशासनात्मक निदेशालय / Disciplinary Directorate
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