



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/218/2015-DD/233/2015-DC/807/2018]

In the matter of:

Mr. Anil Kumar Sahay

703-704, GD-ITL Northex Tower, A09,

Netaji Subhash Place, Pitampura,

New Delhi - 110034

... Complainant

Versus

CA. Monish Uppal (M. No. 090133)

M/s Monish Uppal & Associates,

Chartered Accountants

Optek House, 30/29, 303, 3rd Floor,

East Patel Nagar,

New Delhi - 110008

... 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. Monish Uppal (M. No. 090133)** (hereinafter referred to as the **Respondent**) is **GUILTY** of Professional and Other Misconduct falling within the meaning of Clause (1) of Part II of Second Schedule and Clause (2) of Part IV of the First Schedule to the Chartered Accountants Act, 1949.

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

3. The Committee noted that on the date of hearing on 19th March 2024, the Respondent was physically present at ICAI Bhawan, New Delhi. The Respondent verbally reiterated his written representation dated 18th March 2024 on the Findings of the Committee, which, inter alia, are given as under:-

a) That as a Chartered Accountant with a longstanding reputation for integrity and professionalism, he has been deeply dismayed by the events that led to this disciplinary action, due to personnel vendetta. Throughout 30 years of career of the Respondent, he has upheld the highest ethical standards and has always prioritized the trust and confidence of his clients and colleagues.

b) That in many years of service, no complaint for any such professional misconduct has ever been filed against him.

c) He requested the Committee to take a lenient view in the matter, especially when the alleged complaint is private in nature.

4. 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.

5. Thus, keeping in view the facts and circumstances of the case, material on record including verbal and written representation of the Respondent, the Committee held that the Respondent has provided bookkeeping services to the subject Companies during the period when he was also acting as the Statutory Auditor of these Companies. The Committee also held that the Respondent was retaining the password and documents of the companies causing unwanted inconvenience to both the Complainant and the Companies, as email from the Respondent explicitly denying possession of same was not brought on record.

6. The Committee held that the demand of Rs. 2,12,500/- was over and above the contract of services entered into by the Respondent with the subject Companies and such an act of the Respondent demanding an additional amount was not justified causing undue hardships to the Companies. As regards the issue that Respondent was not performing the professional services



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and audit work without any information and also not resigning from the post of auditor of the Companies, the Committee held that even if the Respondent found certain irregularities, he was duty bound to complete the audit and report those irregularities in his audit report by adequate qualifications as per the provisions of relevant Standards on Auditing. The Committee was of the view that in case, the qualification of the opinion was inadequate to communicate the gravity of the situation, the Respondent had the option to either resign or to disclaim his audit opinion as per Para 13 of Standard on Auditing (SA) 705 – 'Modifications to the Opinion in the Independent Auditor's Report.

7. Hence, the Professional and Other Misconduct on the part of the Respondent is clearly established as spelt out in the Committee's Findings dated 05th February 2024, which is to be read in consonance with the instant Order being passed in the case.

8. 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.

9. Thus, the Committee ordered that the Respondent i.e., CA. Monish Uppal (M. No. 090133), be REPRIMANDED and also imposed a fine of Rs. 2,00,000/- (Rupees Two Lakhs) upon him, which shall be paid within a period of 60 (sixty) days from the date of receipt of the Order.

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Sd/-

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

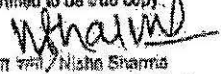
Sd/-

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

Sd/-

(CA. ABHAY CHHAJED)
MEMBER

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


निशा शर्मा / Nisha Sharma
वरिष्ठ कार्यकारी अधिकारी / Sr. Executive Officer
अनुशासनात्मक निदेशालय / Disciplinary Directorate
इंस्टीट्यूट ऑफ चार्टर्ड एकाउंटेंट्स ऑफ इंडिया
The Institute of Chartered Accountants of India
आईसीएआई भवन, विश्वास नगर, शाहदरा, दिल्ली-110032
AI Bhawan, 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/218/2015-DD/233/2015-DC/807/2018]

In the matter of:

Mr. Anil Kumar Sahay
703-704, GD-ITL Northex Tower, A09,
Netaji Subhash Place, Pitampura,
New Delhi - 110034

... Complainant

Versus

CA. Monish Uppal (M. No. 090113)
M/s Monish Uppal & Associates,
Chartered Accountants
Optek House, 30/29, 303, 3rd Floor,
East Patel Nagar,
New Delhi - 110008

... Respondent

MEMBERS PRESENT:

CA. Ranjeet Kumar Agarwal, Presiding Officer (in person)
Shri Jiwesh Nandan, I.A.S. (Retd.), Government Nominee (in person)
Ms. Dakshita Das, I.R.A.S. (Retd.), Government Nominee (through VC)
CA. Mangesh P Kinare, Member (in person)
CA. Cotha S Srinivas, Member (in person)

DATE OF FINAL HEARING : 18th December 2023

DATE OF DECISION TAKEN : 09th January 2024

PARTIES PRESENT:

Complainant : Shri Anil Kumar Sahay (in person)

Counsels for Complainant: Adv. Tarun Khanna and CA. Utsav Hirani (in person)

Respondent : CA. Monish Uppal (in person)

Counsels for Respondent: Adv. Arun Kumar Saxena and Adv. Vikas Ashwani (in person)

1. Background of the Case:

The Complainant was the Director of M/s. Marut Techno Tools Pvt. Ltd. and M/s Mega Self Lube Bearings Pvt. Ltd. (hereinafter referred to as the "Companies"). The Respondent firm was the Statutory Auditor of the subject Companies, since their incorporation.

2. Charges in brief:

2.1 That the Respondent had retained the documents and passwords of the Companies.

2.2 That the Respondent had raised the professional bill for Rs. 2,00,000/-, in respect of those services, which were already a part of the contract made with him.

2.3 That the Respondent was engaged in auditing as well as bookkeeping work of the Companies.

2.4 That the Respondent was not doing the audit work and professional services without any information and was also not resigning from the post of the Statutory Auditor of the Companies.

3. The relevant issues discussed in the Prima facie opinion dated 25th November 2017 formulated by the Director (Discipline) in the matter in brief, are given below:

3.1 As regards the first allegation, the Respondent stated that the Directors of the Company could reset the password of the Income Tax by login on NSDL etc. without any assistance of their Chartered Accountants and therefore, the

management was agitating the issue of passwords with the sole objective to tarnish his firm's impeccable goodwill and reputation so that they may eventually succeed in their nefarious plans of removing them as Statutory Auditors. The Respondent also stated that either he or his firm, were not in the possession of the books of account, other documents, or passwords of the Companies as alleged.

3.2 The allegation was made with the presumption that the books of accounts were being maintained in physical form which were in possession of the Statutory Auditors, whereas the books were maintained by the Companies in electronic form and the same was evident from the fact that various accounting information was sent by the Companies to Respondent's office through e-mail from time to time. Further, the Respondent stated that the Companies were maintaining books in SAP. Also, the cost of SAP was capitalized in the books of subject Companies since FY 2012-13 onwards.

3.3 The Complainant, in his Rejoinder, denied that all books were maintained in SAP at the registered office of the Companies. The Companies had started giving training to its officials to use SAP software, however, the same was not being used completely for the maintenance of books. The Complainant had not provided any evidence such as copy of acknowledgement of receipt of documents and password by the Respondent. The copy of documents / e-mails establishing that the books of accounts and password were necessarily handed over to the Respondent and he did not return the same. However, keeping in view of the fact that the Respondent was providing bookkeeping services to the Companies, he could not be exonerated of this allegation at prima facie stage.

3.4 As regards the second allegation, the Respondent stated that his firm had undertaken extra work for both Companies over and above the work as mutually agreed upon. The details of the extra work being undertaken, had been duly informed by them to the Directors of the Companies vide e-mail dated 29th July 2014. Thereafter, on several occasions, the Respondent had reminded the Complainant for the payment of the additional work undertaken by them and finally vide email dated 20th May 2015, a written request was

made for the payment of additional work as the same which was due since long. However, the Complainant made a false and frivolous averment that the Respondent had raised a bill for the services which were already a part of the contract. On perusal of the documents, it was observed that the services for which the Respondent charged extra bills of Rs.2 lakh, appeared to be a part of the contract of services.

3.5 In respect of third allegation relating to doing the audit and bookkeeping work of the Companies simultaneously, the Respondent stated that his firm was not providing any kind of bookkeeping services to the Companies. The Companies had got adequate internal accounting staff and had also additionally engaged the services of one Mr. Kundan Kumar, for voucher/data entry in the SAP. The Complainant provided the copy of monthly bills charged by the Respondent as well as copy of contract of services to show that he was also doing the work of bookkeeping for the Companies besides rendering the service of auditing. In addition, the Complainant also provided the copy of Affidavit of the Accountants stating that the Respondent and/or someone from Respondent's office used to visit the registered offices of the Companies for the purpose of bookkeeping and maintenance of accounts.

3.6 It was observed that the contract of services, signed by the Respondent, also included the services of audit and voucher entry, finalization of books of accounts, and thus, it appeared that the Respondent was also providing the service of bookkeeping besides the service of auditing, which was not permitted as per Guidance Notes issued by the Institute on "Independence" and Section 144 of the Companies Act, 2013.

3.7 As regards the fourth allegation, the Respondent stated that his team members regularly visited the office of both Companies from time to time to carry out the audit as also was evident from the emails exchanged from time to time between the Companies and his firm. Further, the relevant monthly reports were handed over to the accounts team of the Companies regularly on or before 7th day of next calendar month. Further, his office was regularly following up with both Companies for the completion and finalization of Audit

for the Financial Year 2014-15 which was also evident from several e-mails addressed to the Companies. The Complainant unilaterally terminated the professional services arrangement without any authority. Accordingly, there was no point of communication from his side for not giving professional services furthermore. Further, as per the provisions of Companies Act, 2013, a director had no authority to seek resignation from the Statutory Auditors and the Auditor could only be removed from his office before the expiry of his term by a special resolution passed by the Company, after obtaining prior approval of the Central Government.

3.8 The Companies conducted their respective EGM on 26th October 2015 passing special resolution for the removal of Statutory Auditors before the expiry of his term. The said resolutions were passed illegally, and the matter was pending before the Office of the Hon'ble Regional Director, MCA, New Delhi.

3.9 The Respondent stated that due to the non-cooperation and lackadaisical attitude of the management of the Companies, he had to face hardships in adhering to the statutory compliances of the Companies. The Complainant in his Rejoinder stated that no statutory audit requires the submission of any monthly audit report to the Company. If the Statutory Auditor was involved in the monthly reporting of the financials of the Company, the entire objective of having an independent statutory auditor gets frustrated. The Complainant further stated that despite repeated requests from him, the Respondent failed to resign from the post of Statutory Auditor and failed to give NOC. The Complainant referred to his various e-mails to establish the fact that the Respondent despite repeated requests, failed to resign as Statutory Auditor. Further, due to the unprofessional, negligent and reckless behaviour of the Respondent, the audit of the Companies for the financial year 2014-15 could not be done in a timely manner and the Company had to seek extension from ROC on the ground of non-cooperation of the Statutory Auditor and the Company filed application under Section 140 of the Companies Act, 2013 for removal of the Respondent as Statutory Auditor of the Companies and the same was pending before the Regional Director.



3.10 It was observed from various e-mails on record that the Complainant was asking the Respondent to resign from the post of Auditor since May 2015. From the letter dated 29th September 2015 written to the Registrar of the Companies by the Complainant, it appeared that the dispute between the Complainant and the Respondent arose when the Respondent had sent the invoice of professional fees of Rs.2 lac. It was also mentioned in the said letter that the Directors in a meeting held on 5th May 2015 told the Respondent that he could not continue to provide the management service and bookkeeping services to the Company being the Statutory Auditors. It appeared that no specific instance of non-cooperation by the Respondent was established in the matter, but in view of the Respondent's ineligibility to act as Statutory Auditor of the Company on account of the bookkeeping service being provided by him / his firm to the Company, the instant allegation was required to be further investigated.

3.11 The Director (Discipline) in his Prima Facie Opinion dated 25th November 2017 opined that the Respondent was Guilty of Professional and Other Misconduct falling within the meaning of Clause (1) of Part II of Second Schedule and Clause (2) of Part IV of the First Schedule to the Chartered Accountants Act, 1949. The said Clauses of the Schedule to the Act, states as under:

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."

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."

3.12 The Prima facie opinion formed by the Director (Discipline) was considered by the Disciplinary Committee at its meeting held on 20th April 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 and Other Misconduct falling within the meaning of Clause (1) of Part II of the Second Schedule and Clause (2) of Part IV of the First 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 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 submissions/Pleadings by parties:**

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

S. No.	Particulars	Dated
1.	Date of Complaint in Form 'I'	14 th September 2015
2.	Date of Written Statement filed by the Respondent	16 th December 2015
3.	Date of Rejoinder filed by the Complainant	27 th January 2016
4.	Date of Prima facie Opinion formed by Director (Discipline)	25 th November 2017
5.	Date of written submissions filed by the Respondent after PFO	19 th July 2018, 10 th October 2019, 29 th August 2022, 20 th September 2022, 08 th January 2024.
6.	Date of written submissions filed by the Complainant after PFO	13 th October 2019, 06 th January 2020, 17 th August 2022, 23 rd August 2022, 16 th November 2023, 27 th December 2023.

5. Written submissions filed by the Complainant:

5.1 The Complainant vide letter dated 13th October 2019 has submitted the following documents:

- i) Copy of two orders both dated 20th June 2018 of Regional Director, Northern Region of MCA under Section 140(1) of the Companies Act 2013 regarding removal of the Respondent from both the Companies in which the Complainant was the promoter/Director.
- ii) Copy of the agreement sent by the Respondent to the Companies for other services.
- iii) Copy of order in the matter of Sharad Chandra M. Kulkarni v. CA. Mahen J. Dholan (DD/34/08/DC/7/2008), where the Chartered Accountant being a tax auditor was also engaged in writing of books of accounts of the Auditee and accordingly, was held Guilty.

5.2 The Complainant vide letter dated 06th January 2020, has inter alia stated as under:

- i. That both Companies filed an application before the Ld. Regional Director on 14.11.2015 vide e-form ADT-2 for the removal of Statutory Auditor i.e., the Respondent from the Companies. Aggrieved by one of the orders dated 19.10.2016 passed by the Ld. Regional Director, the Respondent filed a Writ petition No. 11230/2016 before the Hon'ble High Court of Delhi for taking stay on the order dated 19.10.2016. The Hon'ble High Court of Delhi vide its order dated 01.11.2017 rejected the Writ Petition of the Respondent and granted liberty to the Companies to file a fresh application with the Ld. Regional Director. That vide order dated 20.06.2018, the Ld. Regional Director recorded the lack of due diligence by the Respondent in conducting professional duties as Statutory Auditor and approved the removal of the Respondent from the Companies.

- ii. That vide e-mail dated 19th May 2015, the Respondent was asked to return the documents of the Companies which were in his custody and in response

to the same, the Respondent instead of tendering resignation or giving any indication on the return of all documents and password in his custody, raised another unreasonable additional demand of Rs. 2,12,500/- in an e-mail dated 20th May 2015 for the services which were already a part of the contract with him without even providing any invoice for the same which shows the malafide intentions of the Respondent to extort unreasonable demand from the Companies. That in response to this e-mail requesting return of all passwords and documents, the Respondent sent an e-mail after a period of 5 months mentioning that he was not in the possession of any documents or passwords. As regards to the change of password of one of the Directors in August 2015, the Companies were following up with the Respondent to return the password but despite several attempts, there was no response from the Respondent, and thus, the Companies approached the Income Tax Department and thereafter, with grave difficulty, they were able to reset the password. It was a fact that the Respondent received the intimation of password change which was sent to his registered e-mail ID which shows that the Respondent was still the primary contact in the records of Income Tax Department. That the Companies had never defaulted in the filing of ITRs but due to the retention of the documents and other information with the Respondent, the Companies faced delay in filing the returns for FY 2014-15.

- iii. That in the month of April 2015, the Complainant refused to increase the remuneration of the Respondent on account of financial difficulties and reduction of business activities of the Companies and due to the fact that he was performing his services which were deficient in nature. The Complainant based on professional misconduct and non-professional attitude of the Respondent asked him to handover the resignation along with all passwords and documents in the Respondent's custody in an e-mail dated 19th May 2015. In response, the Respondent instead of tendering resignation or giving any indication on the return of all the documents and password in his custody, raised another unreasonable additional demand of Rs. 2,12,500/- in an e-mail dated 20th May 2015 for the services which were already a part of the contract with him without even providing any invoice for the same.



- iv. That the Respondent was responsible for providing professional services to both the Companies in all matters such as ROC compliances including filing of Annual return, certification of annual returns, certification of annual forms etc., income tax filings, TDS return filing, compilation of data for TDS, tax planning for returns, consultancy on income tax matters and bookkeeping services for head office and branch office which includes maintaining books of accounts, voucher entry, reconciliation of bank statement, reconciliation of debtors, finalization of book of accounts and other. The Complainant has annexed certain proofs substantiating the fact that the Respondent was rendering bookkeeping services:

S. No.	Document
1.	E-mail dated 11.04.2015 sent by the Respondent stating, "please find attached the Contract for the services rendered by our firm".
2.	Letter dated 16.07.2009 sent by the Respondent to MEGA containing the bill for professional services for the period from 01.04.2009 to 30.06.2009.
3.	E-mail dated 22.11.2014 sent by the Respondent sharing the Balance Sheet for the FY 2013-14 for both the Companies.
4.	E-mail dated 29.11.2014 sent by the Respondent sharing the trading accounts for both the Companies.
5.	E-mail dated 05.02.2015 sent by the Respondent sharing the Ledger accounts for the Companies.
6.	Copy of letter dated 21.10.2015 sent by the Respondent to both the Companies wherein the Respondent has admitted that " <i>if our services were deficient and were not upto the mark, they why did we were offered to continue as an accounting firm.</i> "

- v. That the Respondent was indulged in fraudulent activities of unilaterally increasing the monthly professional fee from Rs. 33,000/- to Rs. 41,600/-

w.e.f. April 2014 without any consent and approval from the Complainant. After arguments between the Complainant and the Respondent, the Respondent reduced the fee to Rs. 33,000/- p.m., however the bill numbers for both the amounts remained the same. The details of the bills raised by the Respondent on monthly basis are as follows:

S. No.	Bill dated	Description of Bill	Bill No.	Amount (Rs.)
1.	03.07.2014	Professional fee for the month of April 2014 to June 2014 (on account)	MUA/2014-2015/051	1,25,000/-
2.	03.07.2014	Professional fee for the month of April 2014	MUA/2014-2015/051	41,600/-
3.	03.07.2014	Professional fee for the month of April 2014	MUA/2014-2015/051	33,000/-
4.	17.07.2014	Professional fee for the month of May 2014	MUA/2014-2015/055	41,600/-
5.	17.07.2014	Professional fee for the month of May 2014	MUA/2014-2015/055	33,000/-
6.	17.07.2014	Professional fee for the month of June 2014	MUA/2014-2015/056	41,600/-
7.	17.07.2014	Professional fee for the month of June 2014	MUA/2014-2015/056	33,000/-

5.3 The Complainant vide letter dated 17th August 2022 has inter alia submitted the following:

- i. That the Respondent despite being removed as the Statutory Auditor of the Companies and not being associated with the Companies in any capacity, had continuously tried to drag the Companies before various forums such as Income Tax Department, ROC and various other forums etc. by raising baseless complaints which had arisen from the negligence of his own work during the period of his association with the Companies. After being removed as the Statutory Auditor of the Companies by Ld. Regional Director's order, the Respondent tried to influence the newly appointed auditor by presenting false and baseless allegations against the Companies. The Complainant also stated that the Companies received three letters dated 07th August 2018 sent by the Respondent regarding the recovery of Rs. 2,12,500/- which was unreasonable.

5.4 The Complainant vide letter dated 23rd August 2022 has inter alia stated the following:

- i. That the Respondent had filed an application u/s 156(3) of Cr.P.C. seeking registration of FIR against the Complainant, however, the said application was dismissed vide order dated 22.01.2020 by the Ld. MM, Saket Court. That the Respondent had also filed a Criminal Revision Petition before the Sessions Court assailing the order dated 22.01.2020 passed by the Ld. Magistrate, however, the said petition was dismissed as withdrawn vide order dated 11.04.2022.

5.5 The Complainant further vide letters dated 16th November 2023 and 27th December 2023 has inter alia submitted the following:

- i. That the Respondent sent an e-mail dated 11.04.2015 to the Complainant which mentioned the services rendered by him and also, asked the Complainant for renewal of the contract. Clause 3 of the contract of services mentioned the services of "Books of Accounts" by the Respondent. The invoices for professional services were regularly issued by the Respondent on monthly basis, primarily for the preparation of the books of accounts. The fees for monthly professional service totaled Rs. 4,37,948/- for the financial

year ending 2014-15 in respect of both Companies and in stark contrast to the statutory audit fees, which amounted to only Rs. 37,000/- plus service charges. This discrepancy raises concerns under the Companies Act 2013, which stipulates that the payment of non-audit services should not surpass the audit fees.

- ii. Further, the Code of Ethics mandates the maintenance of the auditor's independence and avoidance of any conflict of interest. The substantial interest between the non-audit and audit services suggests the breach of the auditor's independence, thereby contravening the guidelines set forth by ICAI and the regulatory framework of the Companies Act, 2013. The Complainant also referred to the legal notices dated 07.08.2018 issued by the Respondent to the Complainant that demonstrate that the Respondent initiated recovery actions for the total amount of Rs. 2,12,500/- towards his unreasonable additional demand.
- iii. That the Respondent was receiving every information about the Companies from the Income Tax Authorities as he had mentioned his e-mail ID to the Income Tax Authorities. The Complainant has also sent a legal notice dated 16.04.2023 to the Respondent for the commission of offences under IT Act & IPC.
- iv. That the Respondent had not completed the audit assignment for the financial year 2014-15 and consequently, no returns for the said financial year were filed by him. Despite this, the Respondent issued several bills for monthly retainership, and bill dated 03.04.2014 amounting to Rs. 37,000/- plus service charge towards audit fees. All these charges were duly paid by the Complainant which was also reflected in the Balance Sheet of the Companies.
- v. That the Respondent did not challenge the order passed by Regional Director, MCA, New Delhi, which indicates an acknowledgment regarding the allegations of professional misconduct.

6. Written submissions filed by the Respondent:

6.1 The Respondent vide his letters dated 19th July 2018 and 10th October 2019, inter alia stated the following:

- i. That the Complainant had created and fabricated ante-dated documents to seek approval of the Hon'ble Regional Director for removal of the Respondent as Statutory Auditors for the Financial Year 2014-15. Thereby, the Respondent filed a police complaint, recorded his preliminary written statement, followed up with office of DCP and requested to take cognizance of the criminal offences committed by the Complainant and register the necessary FIR.
- ii. That with regard to the recovery of professional fees of Rs. 2 Lakhs for additional work, the Respondent had issued show cause notice on the Complainant, Directors as well as both Companies and some of the said notices as addressed to the Directors had got returned due to old address as these Directors had not updated their addresses on the MCA records.
- iii. That the Complainant forced the Respondent to cover up all violations in the Financial Statement for the Financial Year 2014-15 and once the Respondent refused to accommodate the illegal demands of the Complainant, he devised the entire mechanism of false allegations to tarnish the image of Respondent as well as to remove him from the office of Statutory Auditor for the Financial Year 2014-15.
- iv. That the allegation levelled by the Complainant against the Respondent for retaining the documents and the password of the Companies was false, baseless and malevolent as he had not retained any records / documents and password of the said Companies of any kind whatsoever.
- v. That the Complainant at all times had complete access to the password of both Companies and he had changed the same even before lodging the

instant complaint against him. Even, the income tax password of one of the erstwhile Directors of the Company namely Mrs. Poonam Sahay was changed on 12.08.2015 and she also linked her Aadhaar number with her PAN number. It was relevant to mention that the same was not possible in case one does not have the password to access the login/account. On 13.08.2015, Mrs. Poonam Sahay further updated her secret question and simultaneously changed her password. On 05.09.2015, she changed her contact details. Also, on 05.09.2015, the Complainant who was the director in both Companies, changed his Income Tax password and on 13.08.2015, he updated his contact details. This cannot be possible in case one does not have the password to access the login / account. On 13.08.2015, Ms. Urvashi Sahay, who was the director in one of the Companies also changed her income tax password and on 05.09.2015, she updated her contact details.

- vi. That the then Directors of both Companies had the income tax passwords with themselves and had unhindered and complete access to login to their accounts. Notably, the Complainant had changed the said passwords even prior to the filing of the Complaint dated 15.09.2015 and copies of auto generated emails reflecting the change of password has also been provided by the Respondent.
- vii. That the Respondent never had the relevant records of the Companies in question in his possession. The representatives, from the office of the Respondent, used to visit the registered office of the Companies in question, on two days in first week of the month, for the purposes of auditing its books of accounts, after coordinating with the designated staff members of the Companies. The Representatives of the Respondent had on no occasion carried any document / record of the Companies along with them.
- viii. That as per the provisions of the Companies Act 1956/2013, it was mandatory that all records of the Company had to be maintained at its registered office. However, the Companies under consideration in the present case, had not filed any declaration with the Registrar of Companies

under Section 209 of the Companies Act, 1956 or Section 128 of the Companies Act, 2013, intimating thereby the maintenance of statutory books of accounts at a place other than its Registered Office. Thus, by necessary implication, it was clear that the statutory books of accounts and / or other relevant documents of the Companies were being maintained at the registered office of the respective companies.

- ix. That the alleged Companies had filed their ITR for financial year 2014-15 as on 24.03.2017 and VAT Returns from time to time. Thus, filing of the sales tax / VAT returns and Income Tax Returns, pertaining to the Companies in question clearly shows that the statutory books and other relevant records of the respective Companies were in possession and control of its then Directors(s) i.e., the Complainant therein and the question of the Respondent possessing / retaining them does not arise at all.
- x. That the Income Tax Return for the financial year 2012-13 pertaining to M/s Mega Selflube Bearings Private Limited came under scrutiny and during the course of proceedings, the said Company had submitted various documents and ledgers before the Income Tax Assessing Officer. Thus, implying that the Company was at the relevant time having all the records in its possession.
- xi. That M/s Mega Selflube Bearings Private Limited through its Director had filed an online appeal dated 20th April 2016 before the Commissioner of Income Tax (Appeals) vide Form 35 for financial year 2013-2014. The fact that the said appeal had been prepared and filed online by the Company clearly establishes that the then Directors were in possession of the records / books of accounts of the Company as well as its login /passwords.
- xii. That the malicious intentions of the Complainant were evident from the fact that after the dispute arose between the parties in the month of May 2015, the Complainant on 19th May, 2015 sent an email to the Respondent wherein he had nowhere alleged that the books of accounts pertaining to the Companies were in the possession of the Respondent. However, in a subsequent email dated 19th September, 2015, the Complainant as an

afterthought to implicate the Respondent for false and fabricated cases, had alleged that the Tally data of both Companies for all the financial years were in the possession of the Respondent.

- xiii. That the Company appointed M/s A. Mendiratta and Associates, Chartered Accountants, as its Statutory Auditors for the financial year 2014-15. The said Chartered Accountant vide email dated 29th June 2018 intimated the Respondent about his appointment as Statutory Auditors of the Companies for FY 2014-15. The Respondent vide an email dated 30th June 2018 itself, intimated M/s A. Mendiratta and Associates, Chartered Accountants, about the irregularities and findings discovered during regular Statutory Audit of Company carried out by him, during monthly visits at registered office of the Companies. However, on the very next day of their appointment i.e., on 30th June 2018, M/s A. Mendiratta and Associates, Chartered Accountants, resigned as Statutory Auditors for the Financial Year 2014-15.
- xiv. That the Complainant subsequently appointed one M/s PAN and Co., Chartered Accountants as the Statutory Auditors of the Companies. The Companies deliberately did not file and upload the relevant Form ADT-1 till 09.07.2018 so that the appointment of the said Chartered Accountant firm could be concealed. However, on 10th July 2018, the Respondent came to know about the change of Chartered Accountant, and he immediately sent an email to M/s PAN & Co. However, it was revealed that the Financial Statement for the financial year 2014-15 pertaining to the Companies was signed by the said Chartered Accountants on 05th July 2018 itself. The said action only signifies and confirms that all the records and books of account were in the possession of the Companies. The said Statutory Auditors had nowhere qualified the Financial Statements in their report on account of non-availability of books of accounts and records. That all passwords and books of accounts and records of the said Companies were in the due possession of the Complainants at their respective Registered Offices.
- xv. That in respect of professional bill of Rs. 2,00,000/-, it was submitted that the professional services provided by the Respondent were in addition to the scope of work mutually agreed upon. It was further submitted that the said

additional work involved revision of old TDS returns, Income Tax demand rectification, income tax scrutiny case, issue of certificates, stock verification, certification of Form GNL-2/Form8. The additional professional work pertains to earlier FYs but it was executed during the FYs 2013-14 and 2014-15.

- xvi. It was also submitted that vide email dated 03rd September 2014, the Respondent had informed the respective Companies that the professional fee for the revision of TDS return of each quarter will be Rs. 1500/- plus Service Tax @ 12.36% and reimbursement of actual TDS return filing fees of NSDL. The same had been duly accepted by the Company vide its email dated 12th September 2014, and directed to provide TDS challans of both Companies for rectifying the default payment of TDS from 2007 to 2014. That vide email dated 25th July 2014, the Complainant had also acknowledged the filing of the Income Tax Return of M/s Marut Techno, a partnership firm, which was beyond the mutually agreed scope of work.
- xvii. That with regard to the allegation of Professional misconduct on the part of the Respondent for simultaneously performing Auditing and bookkeeping work, the Respondent stated that both Companies had booked accounting charges in their respective Profit & Loss Account for past so many financial years, briefed as under:

Accounting Charges booked in P&L A/c:

Financial years	Mega Selflube Bearings Private Limited	Marut Techno Tools Private limited
2009-10	18,000/-	18,000/-
2010-11	18,000/-	25,000/-
2011-12	24,000/-	25,000/-
2012-13	30,000/-	NIL

- xviii. Since the Companies were independently booking the accounting charges, thereby it was clear that the book writing was being done by an external agency, independent of the Respondent and furthermore, there was internal accounting staff employed by the Companies to assist in book writing who were specifically assigned for bookkeeping work. Additionally, the contract of

service(s) signed by the Respondent included the services of audit voucher entry, finalization of books of accounts. However, on no occasion, the Respondent had provided the bookkeeping service(s) to the Companies in question. Thereby, there was no professional misconduct on the part of the Respondent.

- xix. That the representatives from the office of the Respondent used to visit the registered office of the Companies in the first week of each calendar month for 2-3 days which was apparent from the email dated 19.09.2015 sent by the Complainant to the Respondent. However for the sake of arguments, though not admitted, even if it is presumed that the Respondent was providing book keeping services to the Companies in question by visiting their respective Registered Office(s) for 2-3 days in first week of the month, then the question that arises for consideration is that how and who were maintaining the books for the rest of 27 days of the month, since books are required to be maintained on daily basis. When both Companies were fully functional, the activities / transactions become imperative to be conducted therein on day-to-day basis. This includes issuing sales Bills, updating debtor & stock position, recording of Purchase bill, maintenance of cash balance, vendor payments had to be drawn and maintained on day-to-day basis.
- xx. That the Complainant had not come before the disciplinary committee with clean hands and was not stating true facts. In the affidavits dated 27th January 2016 and 28th January 2016 submitted by the staff members of the Company namely Mr. Abhimanyu Kumar Singh and Mr. Neelotpal, respectively, they had affirmed that both Companies were maintaining their accounts in TALLY software and that the SAP module was not implemented by the Companies till March 2015. However, in the Rejoinder dated 28.01.2016 filed by the Complainant, he had submitted that the books of accounts pertaining to the Companies were partly being maintained in SAP Software and also that the Company had started imparting training to its officials to use SAP Software. The foregoing clearly shows that there was a stark contradiction in the statement of the officials of the Companies and the Complainant being the Director of the Companies, with regard to the

implementation of SAP software and maintaining of books of accounts thereon.

- xxi. That both Companies had maintained their books of accounts internally and the same was corroborated by way of several documents/emails provided by the representative staff of the Companies to the representatives of the Respondent from time to time.
- xxii. That the Respondent had never raised any professional bill for bookkeeping services as was being alleged by the Complainant and the Complainant had failed to provide proof of the allegations made by him.
- xxiii. That raising of monthly bills for the professional services rendered by the Respondent was owing to mutual arrangement between the Complainant and Respondent and the same was specifically done at the request of the Complainant to prevent the financial burden on the Companies at one instance. Moreover, the perusal of bills raised by the Respondent for professional services, would show that none of them had been raised for providing professional services for maintenance of books of accounts.
- xxiv. That with respect to the allegation that the Respondent failed to carry out professional services without providing prior notification, neglected their responsibilities as an Auditor by not performing the required tasks, and refused to resign from the position of Auditor, the Respondent stated that the provision of Section 144 (provides for the services which the auditor cannot perform) came into effect from 01st April 2014 with a cool off / moratorium period of one financial year as per first proviso to Sub Section (1) and henceforth, the provision of Section 144 became effective from 01st April 2015 i.e., from financial year 2015-16 and all allegations against the Respondent pertained to the period prior to the FY 2014-15. Hence, the provisions of Section 144 were not applicable on the Respondent.
- xxv. That the background of the entire dispute was that the Respondent found various financial irregularities in the affairs of the said Companies while carrying out the audit of their books of accounts. When he pointed out the

said irregularities to the Complainant, he was asked to cover up the said irregularities in his Audit Report. But when he bluntly refused to conceal the said irregularities in his Audit Report, he was asked to resign.

- xxvi. That the Respondent along with his submissions, had also submitted the additional documents in his defence, which inter alia are as under:

S. No	Documents submitted by the Respondent
1.	Copy of Form AOC-4 in respect of M/s Marut Techno Tools for the FYs 2014-15, 2015-16, 2016-17 and 2017-18.
2.	Copy of Form No. MGT-7 in respect of M/s Marut Techno Tools for the FYs 2014-15, 2015-16, 2016-17 and 2017-18.
3.	Copy of Form AOC- 4 in respect of M/s Mega Selflube Bearings Ltd. for the FYs 2014-15, 2015-16, 2016-17 and 2017-18.
4.	Copy of Form No. MGT-7 in respect of M/s Mega Selflube Bearings Ltd. for the FYs 2014-15, 2015-16, 2016-17 and 2017-18.
5.	Copy of Form No. ADT-3 dated 30.06.2018 filed by A. Mandiratta & Associates in respect of both the Companies resigning from the post of Statutory Auditors.
6.	Copy of Form No. ADT-1 filed in respect of both the Companies for the period 2014-15.
7.	Copy of Independent Auditors report alongwith the balance Sheet in respect of both the Companies dated 05.07.2018 signed and audited by Abhishek Gulati of M/s PAN & Co.
8.	Copy of e-mails sent by the Respondent regarding the TDS outstanding in respect of both the Companies.
9.	Copy of e-mail dated 29 th July 2014 sent by the Respondent attaching the bill for the additional work carried out by him in respect of both the Companies for the FY 2013-14.

- xxvii. The Respondent had also annexed the list of additional work being carried out by him in respect of the Company, M/s Mega Selflube Bearings Private Limited. The Respondent has stated that the below mentioned work was

beyond the agreement/arrangement (oral) and accordingly was charged extra.

S. No.	WORK	Date of execution FY 2013-14	Date of execution FY 2014-15
1.	Income Tax rectification AY 2012-13. Demand of Rs. 122100/-	12.08.2013	
2.	TDS return revised FY 2012-13-QTR-IV		
3.	Professional fee for Form No. GNL-2		14.10.2014
4.	Additional TDS work for 20 quarters		02.09.2014
5.	Filing of power of Attorney, Consultation of case and attendance of case with the Department		15.09.2014

xxviii. The Respondent has also annexed the list of additional work being carried out by him in respect of the Company, M/s MARUT Techno Tools Private Limited. The Respondent has stated that the below mentioned work was beyond the agreement/arrangement (oral) and accordingly was charged extra.

S. No.	WORK	Date of execution FY 2013-14	Date of execution FY 2014-15
1.	No due certificate No. 18 dated 11.06.2013 for SIDBI	11.06.2013	
2.	Certificate no. 19 dated 14.06.2013 for SIDBI	14.06.2013	
3.	Certificate No. 20 dated 19.06.2013 for details of shareholders.	19.06.2013	
4.	Net Worth certificate No. 25 dated 19.07.2013 for SIDBI	19.07.2013	
5.	Provisional Balance Sheet as on 31.12.2012.		
6.	Certificate No. 60 dated 10.01.14 for	08.01.2014	

	Dayton remittance		
7.	Certificate No. 61 dated 10.01.14 for Dayton remittance	10.01.2014	
8.	Certificate no. 052 for Export Turnover dated 30.12.2014		30.12.2014
9.	Professional fee for Form No. GNL-2		14.10.2014
10.	Draft of letter to Union Bank of India for fraud case	28.11.2013	
11.	Filing of Form No. 8 of SIDBI	13.07.2013	
12.	Additional TDS work for 10 quarters		02.09.2014
13.	Stock verification of MARUT at Rai		17.05.2014

6.2 The Respondent vide letters dated 29.08.2022 and 20.09.2022 inter alia stated as under:

- i. The Respondent submitted an application for seeking an opportunity of being heard before the Committee by referring the judgment of D.K. Aggarwal v. Council of the Institute of Chartered Accountants of India in the matter.
- ii. The Respondent submitted the following documents:

S. No.	Documents
1.	Copy of affidavit dated 25.03.2022 sworn by the ex-employee, Mr. Neelotpal of both the Companies alongwith his copy of Aadhar Card.
2.	Copy of e-mail dated 08.07.2020 from HR Company, M/s Progressive Infovision Pvt. Ltd. alongwith CV of Abhimanyu Kumar Singh.
3.	Copy of the fiscal order of the Hon'ble DC of ICSI declaring PCS Rahul Yadav Guilty of Professional Misconduct for wrongly signing the Form AOC-4 for the FY 2014-15, 2015-16 and 2016-17 of both the Companies.
4.	Copy of the criminal case details and order dated 26.03.2021, 16.08.2021, 04.10.2021 and 28.03.2022 of ACMM (Special

	Acts): Central District, THC: Delhi filed by the Hon'ble ROC, Delhi against the Company MEGA and its Directors, Poonam and Anil Sahay for the violation of S. 96 of the Companies Act 2013, which is punishable under S. 99 of the Companies Act 2013.
5.	Copy of the criminal case details and order dated 26.03.2021, 16.08.2021, 04.10.2021 and 28.03.2022 of ACMM (Special Acts): Central District, THC: Delhi filed by the Hon'ble ROC, Delhi against the Company MARUT and its Directors, Poonam and Anil Sahay for the violation of S. 96 of the Companies Act 2013, which is punishable under S. 99 of the Companies Act 2013.
6.	Copy of the criminal case details and order dated 04.03.2022, 28.04.2022 and 26.08.2022 of ASJ-03 & Special Judge (Companies Act) Dwarka Court (SW)/New Delhi, against the Company MEGA and its Directors for the violation which is punishable under S. 134(8) of the Companies Act 2013.
7.	Copy of the criminal case details and order dated 04.03.2022, 28.04.2022 and 26.08.2022 of ASJ-03 & Special Judge (Companies Act) Dwarka Court (SW)/New Delhi, against the Company MARUT and its Directors for the violation which is punishable under S. 134(8) of the Companies Act 2013.
8.	Copy of the RTI dated 12.01.2022 filed with the Hon'ble ROC, Delhi alongwith the reply dated 11.02.2022 informing that inspection u/s 206(5) has already been ordered by Ministry against both the Companies.
9.	Copy of demand Show Cause notice of Rs. 30,07,870/- issued to the Company MEGA, by the office of Commissioner, CGST; Delhi West; 4 th & 5 th floors, EIL Annexe Building dated 30.09.2020.
10.	Copy of demand Show Cause notice of Rs. 30,07,870/- issued to the Company MARUT, by the office of Commissioner, CGST; Delhi West; 4 th & 5 th floors, EIL Annexe Building dated 30.09.2020.

11.	Reply of Additional Evidence by way of Affidavit dated 23.08.2022 filed by the Complainant alongwith the copy of complaint against Mr. Kundan Kumar, SAP Consultant of the Companies and with the orders of the Hon'ble Court.
12.	Copy of the review petition of MEGA filed with the Secretary, MCA on 29.06.2018 and with Hon'ble Regional Director (Northern Region) on 29.06.2018 against the order of the Hon'ble Regional Director (Northern Region) dated 20.06.2018.
13.	Copy of the review petition of MARUT filed with the Secretary, MCA on 29.06.2018 and with Hon'ble Regional Director (Northern Region) on 29.06.2018 against the order of the Hon'ble Regional Director (Northern Region) dated 20.06.2018.
14.	Copy of the Independent Auditors Report alongwith the relevant Financial Statements for the FY 2013-14 of MEGA proving that the order of the Hon'ble Regional Director (Northern Region) dated 20.06.2018 was made on wrong facts.
15.	Copy of the Independent Auditors Report alongwith the relevant Financial Statements for the FY 2013-14 of MARUT proving that the order of the Hon'ble Regional Director (Northern Region) dated 20.06.2018 was made on wrong facts.

6.3 The Respondent vide letter dated 08.01.2024 inter alia stated as under:

- i. The Respondent was associated with both the Companies since their incorporation and handled the Audit work with professional commitments. The present controversy started when the Respondent was conducting preliminary examination of the books of accounts and records of the Companies for the FY 2014-15 and observed serious financial irregularities and non-compliances of various provisions of the Companies Act, 2013, which were communicated to the Complainant. The Complainant pressurized the Respondent to conceal the above said irregularities in the Audit Report by illegal means and cover up the illegalities of the Companies. On disagreement by the Respondent and refusal to conceal the said irregularities, the Complainant filed the complaint.

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- ii. That only after filing the instant complaint, the Complainant sent a letter dated 23.09.2015 asking the Respondent to resign from the office of Statutory Auditor, illegally. It was apparent from the facts that the Complainant was illegally by-passing the procedure given under Section 140 of the Companies Act, 2013 for the removal of auditor, as the Board of Directors of the Companies had no authority to ask the resignation from the Statutory Auditor and were illegally pressurizing the Respondent for resignation.
- iii. That the allegation with respect to the increase of fee was not part of Form - I. However, the Complainant has raised the issue during the proceedings that the Respondent demanded an increase in fee in April 2015. However, during the cross-examination on 20.09.2022, on asking the evidence of communication regarding increase in fees as alleged by the Complainant, he responded negatively.
- iv. That the Complainant wrongly interpreted the order dated 20.06.2018 passed by the Regional Director, by mischievously reproducing only one paragraph of the order and contending that adverse remark was given against the Respondent by the Regional Director. The judgment dated 20.06.2018 passed by the Regional Director was concluded with the reasoning that there was deadlock between the parties and hence, to end the dead lock between the parties, the Regional Director allowed the application filed under section 140(1) of the Companies Act, 2013. Therefore, the interpretation of this order as presented by Complainant was misleading and defeats the purpose of justice. Further, the Respondent had already filed the Review Application against the Hon'ble Regional Director's Order dated 20.06.2018 passed under Section 140 of the Companies Act, 2013, with the Regional Director, MCA, on 29.06.2018 and with the Hon'ble Secretary, Ministry of Corporate Affairs on 29.06.2018 and the decision of the same was still awaited.
- v. With regard to the allegation of Professional misconduct on the part of the Respondent for retaining documents and password of the Company, the Respondent stated that it was an admitted fact that the Complainant had

already changed the login password of income tax portal even prior to the filing the present complaint. It is the admitted position that passwords can only be changed when Complainant had all the requisite details, therefore, the question that Respondent was retaining the password does not arise. The Complainant had the sole control over the login password and could change it anytime. The Respondent's inclusion in the Income Tax portal was for work purposes, not to provide user credentials. During cross examination regarding the change of password, the Complainant mentioned that he did not remember, which establishes the fact that the Complainant was holding the entire information including password and had full control to change it on his will.

- vi. Regarding allegation of retaining the documents of Companies, the Respondent stated that his representatives had audited the books of the Companies at its registered office by visiting only for few days of each month. Consistent possession and submission of necessary records gets demonstrated with the fact that the Company filed its FY 2014-15 Income Tax Return on 24.03.2017 before the audit on 05.07.2018, and submitted its VAT returns. Even, during an Income Tax Department scrutiny for FY 2012-13, the Companies provided relevant documents to the Assessing Officer and later on filed an appeal in 2016. The cross-examination of the Complainant affirmed the submission of all records to the Income Tax Authority during scrutiny. The Complainant also acknowledged producing the Board of Directors report for the financial year 2014-15 in 2018, wherein no mention of unavailability of relevant records or adverse remarks against the outgoing Auditor was found. The Complainant confirmed compliance with accounting standards in preparing the balance sheet.
- vii. That the Complainant, during cross-examination, stated that for auditing purpose, documents were sent to the Respondent's office, and were not audited on-site / at the register office of the Company. However, the Complainant earlier admitted that the Respondent's staff visited their office for 2-3 days in the first week of every month for the purpose of Audit in the e-mail dated 19.09.2015. Additionally, the Complainant mentioned that the

Respondent took records of the Companies in a pen drive. Therefore, even, if documents were on a pen drive, they're likely copies, and the originals remain with the Company, as per the Complainant's own admission.

- viii. That the Complainant had failed to produce any evidence to substantiate his allegation that the Respondent was in possession of records and withholding the documents.
- ix. With respect to the allegation of raising the professional bill of Rs. 2,00,000/- for the services which was the part of the contract with the Respondent, the Respondent stated that the present allegation was not sustainable in absence of any evidence because there was no such bill of Rs.2,00,000/- ever raised by the Respondent and that the Complainant failed to produce any evidence in this regard to support his contention. The Complainant further confirmed this fact during the cross examination dated 02.11.2023 that there was no invoice of Rs. 2,00,000/-. Additionally, on asking the Complainant to produce the said bill, the Complainant failed to produce the same and admitted that there was no such invoice of Rs. 2,00,000/-.
- x. Regarding allegation of Professional misconduct for simultaneously performing the Auditing & bookkeeping work, the Respondent stated that this allegation was based on the unverified and untitled document, which had no value under the law of evidence, because the Complainant failed to produce the original copy of the alleged document. It was further admitted by the Complainant during cross examination that the said contract was related to the period of 2011 to 2013, thus, there was no such contract on record for the relevant period of FY 2014-15. Further, it was also admitted by the Complainant that there was no invoice / bill on record for bookkeeping issued by the Respondent. Therefore, in the absence of concrete evidence, it was wrong to say that Respondent was providing bookkeeping services. Further, the Complainant had also admitted during the cross examination that there was no contract for FY 2014-15 and there was no appointment letter or correspondence that the Respondent was doing bookkeeping.

xi. Regarding allegation of not doing the professional services without any notification and not doing the Auditor's work and not resigning from the post of Auditor, the Respondent stated that he had always performed his professional duties, as evident from the email dated 15.09.2015 and 30.09.2015, whereby the Respondent sent the reminder to the Board of the Companies regarding the last date of completion of audit for FY 2014-15. Despite several reminders by the Respondent, the Board of Directors of the Company had not furnished the unaudited signed financial statements of the Company for the purpose of issuance of Auditor's Report for the FY 2014-15.

xii. The Respondent along with his submissions had submitted the following documents:

a. Documents submitted with regard to the Company i.e., M/s. Marut Techno Tools Pvt. Ltd.:

S. No.	Documents
1.	Bills for the month of January, February 2015
2.	Details of TDS for the month of January, February, 2015
3.	Details of outstanding bills for FY 2014-15, of Dython Progress Corporation of Japan
4.	Details of outstanding bills for FY 2014-15, of Dadco Inc.
5.	Details of Bank Reconciliation for FY 2014-15
6.	Extract of Purchase Register for the month of January February 2015
7.	Extract of Sales Register for the month of January February 2015
8.	Calculation showing the Raw Material and Finished Goods (Raw Material and Trading) Consumed as on 28 th February 2015.

b. Documents submitted with regard to the Company, M/s. Mega Selflube Bearings Private Limited:

1.	Bill for the month of April, May, August, October 2014
2.	Details of TDS for the month of April, May, August, October 2014.
3.	Calculation of Closing Stock / quantity wise stock for the as on April, May, August, October 2014.
4.	Details of Bank Reconciliation as on 30.04.2014, 31.05.2014, of

	HDFC Bank and Kotak Mahindra Bank as on 31.10.2014.
5.	Details of outstanding bills of Oils Corporation for FY 2014-15
6.	Extract of Purchase Register for the month of April, May, August, October 2014 of Faridabad and Netaji Subhash Place branch
7.	Extract of Sales Register for the month of April, May, August, October 2014 of Faridabad and Netaji Subhash Place branch
8.	Details of Stock as on 31.05.2014, 31.08.2014

- c. Extract of notification that sections of Companies Act, 2013 were effective from 01.04.2014, indicated irregularities in the Company only for FY 2014-15.
- d. Copy of Form ADT-1 along with the intimation letter and Resolution for appointment of M/s. A. Mandiratta & Associates in M/s. Marut Techno Tools Pvt. Ltd. and M/s. Mega Selflube Bearings Private Limited.
- e. Email dated 30.06.2018 addressed to CA. Anil Mandiratta sent by the Respondent enumerating both the Company's Audit findings / irregularities for the FY 2014-15 w.r.t the audit conducted by him.

7. Brief facts of the Proceedings:

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

Particulars	Date of meeting(s)	Status
1 st time	16 th October, 2019	Part heard and adjourned.
2 nd time	01 st June 2022	Adjourned due to paucity of time.
3 rd time	10 th August 2022	Part heard and adjourned.
4 th time	26 th August 2022	Hearing concluded and decision reserved.
5 th time	20 th September 2022	On the direction of the Hon'ble Delhi High Court, the matter was reheard. Part heard and adjourned.
6 th time	13 th October 2022	Adjourned due to paucity of time.
7 th time	26 th December 2022	Adjourned at the request of the Respondent.
8 th time	16 th January 2023	Part heard and adjourned.
9 th time	02 nd November 2023	Part heard and adjourned.
10 th time	18 th December 2023	Hearing concluded and judgment reserved.
11 th time	09 th January 2023	Decision taken.

- 7.2 On the day of first hearing on 16th October 2019, the Committee noted that the Complainant and the Respondent along with their respective Counsels were present. Thereafter, the Complainant and the Respondent were put on oath and 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 about the charges and pleaded 'Not Guilty' on the charges levelled against him. Thereafter, in view of Rule 18(9) of the Chartered Accountants (Procedure of Investigation of Professional and Other Misconduct and Conduct of Cases) Rules, 2007, the Committee adjourned the case to a later date and accordingly, the matter was part heard and adjourned.
- 7.3 On the next day of hearing on 01st June 2022, the matter was adjourned due to paucity of time.
- 7.4 On the next day of hearing on 10th August 2022, the Committee noted the presence of the Complainant and the Respondent along with their respective Counsels in person. The Committee informed the parties that the composition of the Committee had changed after the last hearing held on 16th October 2019 in the matter and thus, asked them if they wished to have a de-novo hearing or to continue from the stage it was last heard. The Counsel for the Respondent opted for de novo hearing and accordingly, both parties i.e., the Complainant and the Respondent were put on oath. Thereafter, the Committee enquired from the Respondent as to whether he was aware of the charges; and the same were also read out. The Respondent replied that he is aware of the charges and pleaded 'Not Guilty' to the charges levelled against him. The Committee asked the Counsel for the Complainant to substantiate the charges against the Respondent. The Counsel for the Complainant made his submissions in the matter. The Committee thereafter asked the Counsel for the Respondent to make submission in the matter. The Respondent's Counsel did not prefer to make his submissions on the merits of the matter and raised certain technical points. He further stated that the Respondent had pleaded Not Guilty and

thus, the Complainant had to lead evidence by way of Affidavit. The Committee directed the Complainant to file the affidavit with a copy to the Respondent. Thus, the matter was part heard and adjourned.

7.5 On the next day of hearing on 26th August 2022, the Committee noted the presence of the Complainant and the Respondent along with their respective Counsels in person. The Committee asked the Counsel for the Complainant to present his submissions in the matter. The Complainant's Counsel submitted that vide order dated 20.06.2018, the Ld. Regional Director, Northern Region (Ministry of Corporate affairs) recorded the lack of due diligence by the Respondent in conducting professional duties as Statutory Auditor and approved the removal of the Respondent from the subject Companies. Thereafter, the Counsel for the Respondent sought adjournment in the matter on the ground that his senior Counsel was unavailable. He also requested to undertake cross examination of the Complainant. The Committee noted that the present matter was fixed for hearing several times in the past. The Committee noted that the fact of change of advocate was informed only at the last minute at the time of hearing before the Committee. The Committee considered the fact that the matter was pending for long, and it was informed prior that the arguments would take place in the present meeting, still the main Counsel of the Respondent was not available to defend the matter. The Committee found no substance in the request of the Counsel for the Respondent for adjourning the matter on the ground of non-availability of senior Counsel and did not accede to the same as explanation to sub-rule (18) of Rule 18 provided that the inability of the advocate to appear shall not be treated as a valid reason for adjournment of a hearing. In view of the same, the Committee decided to proceed further in the matter. The Committee asked the Counsel for the Respondent to present his defence in the matter to which he expressed his inability and requested for time to enable appearance of senior counsel in the hearing. Based on the documents available on record and after considering the oral and written submissions made by the parties before it, the Committee concluded the hearing in the case and reserved its judgement. The Committee then asked

the Counsel for the Respondent to submit his additional written submissions within seven days.

- 7.6 On the next day of hearing on 20th September 2022, the Committee noted that in its meeting held on 26.08.2022, it had concluded the hearing in the present case and reserved its judgement. However, in the meanwhile, the Respondent moved the Hon'ble Delhi High Court by way of writ petition; and the Hon'ble Delhi High Court vide Order dated 15.09.2022 in W.P. (C) No. 13135/2022 (CA Monish Uppal vs. ICAI &Ors.) disposed of the writ petition with the observation that it shall be open to the petitioner to appear before the Disciplinary Committee on the date fixed and undertake the cross examination of the Complainant. The Court further observed that the said opportunity shall be provided to the petitioner (i.e., Respondent herein) notwithstanding the order of 26.08.2022 which has been impugned in the present writ petition. In view of the abovesaid directions of the Hon'ble Delhi High Court, the Committee provided the opportunity to the Respondent herein to undertake cross-examination of the Complainant herein in compliance of the Order dated 15.09.2022 of the Hon'ble Delhi High Court.

The Committee noted that both the Complainant and the Respondent along with their respective Counsels, were present physically before it. The Complainant thereafter was put on oath; and the Counsel for the Respondent examined the Complainant; and further examination involving remaining questions were adjourned as the Counsel for the Respondent indicated that he needed more time and accordingly, he asked for another date for hearing. The Committee accepted the request of the Counsel for Respondent and adjourned the matter. With this, the case was adjourned to the next date of hearing.

- 7.7 On the next date of hearing on 13th October 2022, the matter was adjourned due to paucity of time.
- 7.8 On the next date of hearing on 26th December 2022, the Committee noted that the Respondent vide e-mail dated 16.12.2022 had sought adjournment



with the request to give another date for cross-examination of the Complainant. The Committee acceded to the request of the Respondent and adjourned the matter to a later date.

7.9 On the next date of hearing on 16th January 2023, the Committee noted the presence of the Complainant and the Respondent along with their respective Counsels. The Committee noted that at the meeting held on 20th September 2022, the examination of the Complainant was partially conducted by the Respondent. The Committee directed the Counsel for the Respondent to continue and complete the examination of the Complainant as per Order dated 15.09.2022 of Hon'ble High Court of Delhi. The Counsel for the Respondent raised an objection in respect of the appearance of the Complainant through video conferencing mode claiming that an effective cross-examination cannot be undertaken through video conferencing mode. The Respondent's Counsel expressed his unwillingness to conduct cross-examination of the Complainant through Video Conferencing mode; as the independence of the witness could be affected, and there was a possibility of tutoring of witness by other(s) present in the same venue. Thereafter, the Counsel for the Respondent desired not to proceed with cross-examination of the Complainant unless he was present physically in the meeting venue. The Committee apprised him that as per general norms of e-hearing, the Complainant was also given the option to appear through video conferencing and he had exercised this option. After discussion, the Committee directed the Counsel for the Respondent to cross-examine the Complainant. As the Complainant and his assistant Counsel were located at the same venue in Delhi, the Counsel for Respondent objected to the same and requested for adjournment of the hearing by Disciplinary Committee asking for the physical presence of the Complainant in the next hearing. On an overall consideration and the fact that the Complainant and his Counsel were at same venue which could raise apprehension on the possibility of tutoring the witness and the fact that Counsel for Respondent as well as Counsel for Complainant had sought adjournment, the Committee acceded to their requests and adjourned the matter to a later date. The Committee further directed that the Complainant and Respondent should be present physically at the next

hearing for the purpose of cross examination. With this, the matter was part heard and adjourned.

7.10 Subsequent development vide letter dated 24.01.2023 received from the Respondent requesting for initiation of action against the Complainant for committing perjury in the conduct of proceedings of the Disciplinary Committee Meeting on 16.01.2023.

At the Meeting of the Disciplinary Committee held on 16.01.2023, the Counsel for the Respondent in the captioned case raised the objection that effective cross-examination could not be undertaken through Video Conferencing mode, as the Complainant had participated in the meeting through virtual mode and the Respondent was physically present in the meeting. The Counsel for the Respondent contended that the independence of witness could be affected and there was a possibility of tutoring of witness by others present in the same venue as the Complainant and his Counsel were present in the same venue itself. The Counsel for the Respondent desired not to proceed with cross-examination of the Complainant unless he was present physically in the meeting premises. The Disciplinary Committee therefore granted adjournment of the matter with the direction that the Complainant and Respondent shall be present physically in the next hearing for the purpose of cross-examination. That after completion of the Meeting on 16.01.2023, the Respondent sent a letter/email dated 24.01.2023 requesting for action against the Complainant for committing perjury and violation of principles of natural justice in the conduct of proceedings of the Disciplinary Committee meeting held on 16.01.2023 at the time of cross-examination and proceedings. The Respondent objected to the statement of the Complainant made at the time of Meeting on 16.01.2023 that the Complainant initially informed the Committee that he and his Counsel were at different place and upon objection raised by the Respondent, the Complainant later informed the Committee that he had reached the office of his Counsel at New Delhi. The Respondent contended that the Disciplinary Committee ought to have suo motu taken serious note of this mischievous act of making mockery of the judicial process by the Complainant in connivance with his Counsel. However, the Respondent by means of the

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present application had sought strict legal action as per rules, against the Complainant for maliciously and intentionally making false statement during the disciplinary proceedings and attempting to record evidence by being tutored by his Counsel and thereby vitiating the entire process.

7.11 On the date of next hearing on 02nd November 2023, the Committee noted the presence of the Complainant and the Respondent along with their respective Counsels in person. The Counsel for the Respondent submitted that the cross-examination of the Complainant was not completed at the last hearing as the witness was alleged to be tutored, therefore, the same was deferred and postponed to the next date of hearing. The Counsel further submitted that on 24th January 2023, he gave an application of perjury to ICAI. The Committee directed the Counsel for the Respondent to cross-examine the Complainant as he was already on oath. The Counsel examined the Complainant and examination was completed. Accordingly, the cross examination in the case was undertaken in compliance with the directions of the Hon'ble Delhi High Court as given in Order dated 15.09.2022. Thereafter, the Committee directed both parties to submit their queries/papers within next 7 days. With this, the matter was part heard and adjourned.

7.12 On the day of final hearing on 18th December 2023, the Committee noted that the Complainant and the Respondent along with their respective Counsels were present in person. The Committee noted that the cross examination of the Complainant was completed at its last meeting. Thereafter, the Committee directed the Counsel for the Complainant to make his submissions. The Counsel for the Complainant made his arguments at length and made his submissions allegation-wise citing relevant documents for reference of the Committee. Thereafter, the Counsel for the Respondent made his arguments at length, countering the submissions of the Counsel for the Complainant. The Committee after considering the submissions of the Complainant and the Respondent, directed both parties to submit their written submissions, if any within 10 days in addition to the submissions already made by them. With this, the hearing in the matter was concluded, and judgment was reserved.

7.13 Thereafter, in the meeting held on 09th January 2024, the Committee noted that hearing in the matter was concluded on 18th December 2023, and the judgment was reserved in the matter. The Committee based on the facts, documents, and information on record and after considering oral and written submissions made by the Counsels of the Complainant and the Respondent at the time of hearing, passed its judgment.

8. **Findings of the Committee:**

8.1 At the outset, the Committee considered the application dated 24.01.2023 of the Respondent requesting for initiation of action against the Complainant for committing perjury in the proceedings of the Disciplinary Committee Meeting on 16.01.2023. On consideration, the Committee was of the view that the proceedings before the Disciplinary Committee cannot be equated to a judicial proceeding, and there is no specific provision under the Chartered Accountants Act, 1949 and the Rules framed thereunder, vesting the Disciplinary Committee to deal with cases relating to Perjury. The Committee observed that Section 21C of the Chartered Accountants Act, 1949 confers the power of a civil court on the Disciplinary Committee which are limited; and that will not make it 'Court' for the purpose of offence of Perjury. In view of the same, the Committee decided that the matter relating to perjury cannot be considered and decided by it; and accordingly, did not consider the said application of the Respondent.

8.2 The Committee thoroughly examined the charges, outlined in Para 2.1 and 2.3 above, alleging that the Respondent was engaged in auditing as well as bookkeeping work of the subject Companies. Further, the Respondent had retained the documents and passwords of the Companies. At the outset, the Committee observed that the allegation centered around the issue of bookkeeping services being provided by the Respondent to the subject Companies due to which the Respondent had access to the original documents of the Companies which he allegedly retained and did not return to the Companies. Thus, the Committee observed that these two charges



were interrelated. Consequently, the Committee has addressed and analyzed these two charges collectively.

8.3 The Committee examined the copy of 'Contract of Services' pertaining to both Companies and Financial Year 2009-10 which had been signed by the Respondent. On examining the same, the Committee observed that these 'Contract of Services' included certain services in relation to the maintenance of books of accounts of the Companies viz., voucher entry, reconciliation of bank statements, preparation of stock & debtors' statements on monthly basis etc. The said 'Contract of Services' pertaining to M/s Mega Self Lube Bearings Private Limited for Financial Year 2009-10 are reproduced as under:

"1. REGISTRAR OF COMPANIES (ROC)

- 1) *Filling of Annual Return-23AC, 23ACA, 20B, 66*
- 2) *Certification of Annual Forms*
- 3) *Consultancy of ROC*

2. INCOME TAX.

- 1) *e Filling of Income Tax Return*
- 2) *e Filling-of-FBT-Return*
- 3) *e Filling of TDS Return Quarterly*
- 4) *Compellation of Data-for-FBT-Quarterly*
- 5) *Compellation of Data for TDS (Monthly)*
- 6) *Compellation of Data for TDS Return (Quarterly)*
- 7) *Certification for Import payments.*
- 8) *Tax planning for returns*
- 9) *Filling of Personal Income Tax Return*
 - 1) *Mrs. Poonam Sahay*
 - 2) *Mr. Anil Kumar Sahay*
- 10) *Consultancy of Income Tax Matters*

3. BOOKS OF ACCOUNTS (H.O & B.O)

- 1) *Voucher Entry (H.O & B.O.)*

- 2) *Reconciliation of bank statement*
- 3) *Preparing of Stock & Debtors Statement on Monthly basis*
- 4) *Reconciliation of Debtors (H.O. & B.O.)*
- 5) *Finalization of books of accounts (H.O. & B.O.).*
- 6) *Statutory Audit and Tax Audit*

- 8.4 The Committee also observed that a similar 'Contract of Services' had also been signed by the Respondent in respect of other Company, M/s Marut Techno Tools Private Limited for the said period. Furthermore, similar 'Contract of Services' / 'terms of engagement' signed by the Respondent for the period from April 2011 to March 2013 were also examined by the Committee which was prepared on similar lines and contained details of similar services.
- 8.5 The Committee also examined the details of professional fee charged by the Respondent in case of M/s Mega Self Lube Bearings Private Limited for Financial Years 2013-14 and 2014-15. On examination, the Committee observed that monthly bills had been raised by the Respondent on the Company against which monthly payments had been made to him.
- 8.6 On combined perusal of contract of services and the details of professional fee charged by the Respondent, the Committee observed that the Respondent was involved in providing bookkeeping services to the subject Companies as he was also raising monthly bills on the Companies. This observation of the Committee also got strengthened when the Committee found that the annual professional fee for the services as contained in the contract of services for the period of April 2011 to March 2013 was Rs. 4 lakhs. Further, as per details of professional fee, the monthly bills for the total amount of Rs. 4 lakhs had been raised by the Respondent against the total professional services provided by him. The Committee observed that the amount paid to the Respondent for his services provided for FY 2013-14 and 2014-15 was in concurrence with the contracted annual amount as contained in the contract of services for the period of April 2011 to March 2013. This

shows that the said contract of services was subsisting for Financial Year 2014-15 also.

8.7 The Committee also examined various correspondences that took place between the Complainant and the Respondent regarding the alleged retention of documents and passwords of the subject Companies by the Respondent. The Committee observed that the Complainant vide email dated 19th May 2015 requested the Respondent to return certain documents of both Companies which were in his custody. The content of the said email is as under:

"Dear Mr. Monish Uppal,

Thank you for association with us from 1999 to till date.

Please refer to the meeting at your office on 5th May 2015 and further our conversation over phone, where we communicated that we will not be able to use your professional services for financial year 2015-2016.

As I came to know that, TDS return for the Q4 has not been filed for both the companies and nor it has informed to us by your office, request you to urgently provide the details of acknowledgement number and other details for TDS for previous quarters including TRACES password. We need to file the same urgently.

Also, request you to provide the resignation as auditor for Marut Techno Tools Pvt. Ltd. And Mega Self Lube Bearings Pvt. Ltd. for financial year 2014-2015 and provide NOC for the same to do its subsequent filing with ROC.

You are requested to return copies of all the original documents related to VAT/Service Tax/Income tax/ROC including user ID's and passwords in your possession for Mega Oiles Co., Mega SelfLube Bearings Pvt. Ltd., Marut Techno Tools Pvt. Ltd. and Marut Techno.

We again thank you for your services over the past period and wish good luck to you for your future endeavors.

Regards,

Anil Kumar Sahay"



8.8 The Committee observed that the above email dated 19th May 2015 was followed by three further emails dated 21st May 2015, 26th May 2015, and 27th May 2015 wherein the Complainant has repeatedly requested the Respondent to handover all documents and passwords of the subject Companies. However, in response to the above emails, the Respondent vide emails dated 20th May 2015 and 27th May 2015, had only asked for his professional fees but had nowhere denied the retention of the documents or passwords of the Companies with him. The Committee further observed that the 'Contract of Services' entered into between the Companies and the Respondent for providing various services by the Respondent clearly depicted that such services among others included conduct of both the Statutory Audit as well as Bookkeeping services concurrently by the Respondent. Such 'Contract of Services' had been entered into between the Companies and the Respondent for these services for Financial Year 2009-10 and for the period from April 2011 to March 2013. The Committee was of the view that the members are not permitted to write the books of accounts of their auditee clients.

8.9 From the above observations, the Committee was of the view that the Respondent has provided bookkeeping services to the subject Companies during the period when he was also acting as the Statutory Auditor of these Companies. In this context, the Committee observed that according to the 'Guidance Note on Independence of Auditors,' auditors are prohibited from undertaking the bookkeeping tasks of their clients. Moreover, in the absence of any responsive email from the Respondent explicitly denying possession of the Companies' documents and passwords, the Committee is inclined to believe that that the Respondent was retaining said documents and passwords causing unwarranted inconvenience to both the Complainant and the Companies. Accordingly, the Committee held the Respondent **Guilty** of Professional and Other Misconduct falling within the meaning Clause (1) of Part II of Second Schedule and Clause (2) of Part IV of the First Schedule to the Chartered Accountants Act, 1949.



8.10 As regards the second charge as outlined in Para 2.2 above, the Respondent had allegedly raised the professional bill for Rs. 2 lakhs, in respect of services which were already a part of the contract made with him. At the outset, the Committee observed that initially, the Complainant had stated that the Respondent was demanding Rs. 2 lakhs for his services, which was over and above the contracted amount. However, on consideration of various submissions and material on record, the Committee observed that the actual demand made by the Respondent in respect of the alleged additional services was Rs. 2,12,500/- and the dispute was regarding this amount only. This observation of the Committee got further strengthened by the copy of reply to three show cause notices dated 12th September 2018 given by the Complainant to the Respondent. The Committee also observed that these replies referred to the show cause notices dated 07th August 2018 sent by the Respondent to the Companies for the recovery of total amount of Rs. 2,12,500/-.

8.11 In this context, the Committee examined the email dated 20th May 2015 sent by the Respondent to the Complainant. The Committee noted that the Respondent has sent a list of additional work and the professional fee for such additional work and requested the Complainant to make the total payment of Rs. 2,12,500/- to him in respect of these services. The Committee thoroughly examined the said list of additional services provided by the Respondent and observed that many services, as detailed in the said list of services, relate to certification, filing of return, ROC filing etc. On comparison of the said list of services with the contract of services signed by the Respondent, the Committee observed that most of the services listed as a part of additional services were already covered in the contract of services. The Committee also observed that the professional fee for the annual contract amount agreed upon by both parties was Rs. 4,00,000/- for the period from April 2011 to March 2013 and which was subsisting in subsequent periods as already mentioned above.

8.12 In light of the above observations, the Committee opined that the said demand of Rs. 2,12,500/- was over and above the contract of services

entered into by the Respondent with the subject Companies. The Committee was of the view that such an act of the Respondent demanding an additional amount was not justified causing undue hardships to the Companies. Accordingly, the Committee held the Respondent **Guilty** of Other Misconduct falling within the meaning Clause (2) of Part IV of the First Schedule to the Chartered Accountants Act, 1949.

8.13 The Committee deliberated on the fourth charge as outlined in Para 2.4 above, that the Respondent not performing the professional services and audit work without any information and also not resigning from the post of the Statutory Auditor of the Companies. The Committee examined the monthly details of the bills raised by the Respondent vis-à-vis payments made by M/s Mega Self Lube Bearings Private Limited against those bills for financial year 2014-15. The Committee observed from the invoices raised by the Respondent on M/s Marut Techno Tools Private Limited vis-à-vis submissions available in this regard that the Respondent had received the payments for his professional services including audit services for the Financial Year 2014-15. The Committee observed that even though the audit fee for the Financial Year 2014-15 in respect of the subject Companies was paid to the Respondent, yet audit was not done by him. The Committee was of the view that this situation created disputes between the Companies and the Respondent, and the Companies then filed an application to the Regional Director, Northern Region, Ministry of Corporate Affairs for removal of the Respondent as the Statutory Auditor of the Companies. The Committee observed that the Regional Director, Northern Region, Ministry of Corporate Affairs, in his order dated 20th June 2018 stated as under:

"Considering the application of the Applicant, reply filed by Respondent, arguments and counter arguments made by the A/R for the Applicant as well as Respondent, I am also of the view that there is a total deadlock between the Applicant Company and the Respondent, Statutory Auditor. The matter is pending before various Forums since 2015 but no amicable settlement arrived or proposed or seems likely to be settled. In this scenario, the

sufferers are the Company and its shareholders. Both the Applicant and Respondent are making allegations and counter allegations against each other, and the Audit of the Company is pending for the last three consecutive financial years resulting in violation of Section 164(2) r/w 167(1) of the Act. Moreover, due to pending dispute, Applicant is not able to file any audited Annual Accounts on the MCA portal or any other authorities, resulting in no stakeholder being able to assess the financial position of the Applicant. The Applicant has also contended about loss of confidence on the Auditor reasons for which are substantiated. Hence, to end the dead lock between Applicant and Respondent, I hereby allow the application of the Applicant. Now, therefore, in exercise of powers conferred on me under sub-section (1) of section 140 of the Companies Act, 2013 read with Government of India, Ministry of Corporate Affairs Notification No. S.O. 4090 (E) dated 19.12.2016, I hereby accord my approval under Section 140(1) of the Companies Act, 2013 for removal of M/s Monish Uppal & Associates, Chartered Accountants, Delhi as Auditors of the Applicant Company appointed at the Annual General Meeting of the Company held on 30.09.2014."

8.14 In this context, the Committee took note of the Respondent's arguments that during the course of preliminary examination of the books of accounts and records for the Financial Year 2014-15 of the subject Companies, he noticed several irregularities and informed those irregularities to the Complainant. But as per the Respondent, the Complainant asked him to cover up those irregularities in the financial statements of the Companies and once the Respondent refused to accommodate such illegal demands, the Complainant devised the entire mechanism to remove him as the Statutory Auditor of the Companies.

8.15 The Committee was of the view that in this case, even if the Respondent found certain irregularities, he was duty bound to complete the audit and report those irregularities in his audit report by adequate qualifications as per

the provisions of relevant Standards on Auditing. The Committee also observed that in case, the qualification of the opinion was inadequate to communicate the gravity of the situation, the Respondent had the option to either resign or to disclaim his audit opinion. In this context, the Committee referred to and put reliance on Para 13 of Standard on Auditing, (SA) 705 – 'Modifications to the Opinion in the Independent Auditor's Report' which prescribes as under:

"13. If the auditor is unable to obtain sufficient appropriate audit evidence, the auditor shall determine the implications as follows:

(a) If the auditor concludes that the possible effects on the financial statements of undetected misstatements, if any, could be material but not pervasive, the auditor shall qualify the opinion; or

(b) If the auditor concludes that the possible effects on the financial statements of undetected misstatements, if any, could be both material and pervasive so that a qualification of the opinion would be inadequate to communicate the gravity of the situation, the auditor shall: (Ref: Para A13-A14)

(i) Resign from the audit, where practicable and not prohibited by law or regulation; or

(ii) If resignation from the audit before issuing the auditor's report is not practicable or possible, disclaim an opinion on the financial statements."

8.16 The Committee further observed that as per contract of services signed by the Respondent, it was the Respondent only who was responsible for finalization of books of accounts of the subject Companies. Therefore, the Committee was inclined to believe that there was no merit in the above submissions of the Respondent. The Committee in this context, also observed the guidelines delineated in the Code of Ethics 2009 which states as under:

"It is important to remember that every client has an inherent right to choose his accountant; also that he may, subject to compliance with

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the statutory requirements in the case of limited Companies, make a change whenever he chooses, whether or not the reasons which had impelled him to do so are good and valid. The change normally occurs where there has been a change of venue of business and a local accountant is preferred or where the partner who has been dealing with the clients affairs retires or dies; or where temperaments clash or the client has some good reasons to feel dissatisfied. In such cases, the retiring auditor should always accept the situation with good grace."

8.17 On an overall consideration of various submissions and material on record, the Committee was of the view that the said conduct which caused undue hardships to the subject Companies, was not expected from the Respondent being the professional Chartered Accountant. Accordingly, the Committee held the Respondent **Guilty** of Other Misconduct falling within the meaning Clause (2) of Part IV of the First Schedule to the Chartered Accountants Act, 1949.

9. Conclusion:

In view of the findings stated in above paras, vis-à-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 & 2.3	Para 8.2 to 8.9	Guilty – Clause (1) of Part II of Second Schedule and Clause (2) of Part IV of the First Schedule.
Para 2.2	Para 8.10 to 8.12	Guilty – Clause (2) of Part IV of the First Schedule.
Para 2.4	Para 8.13 to 8.17	Guilty – Clause (2) of Part IV of the First Schedule.

10. In view of the above observations, considering the oral and written submissions of the parties and material on record, the Committee held the Respondent **GUILTY** of Professional and Other Misconduct falling within the meaning of Clause (1) of Part II of Second Schedule and Clause (2) of Part IV of the First 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: 05/02/2024
PLACE: New Delhi

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


नीलम पुंडीर / Neelam Pundir
वरिष्ठ कार्यकारी अधिकारी / Sr. Executive Officer
अनुरासनात्मक निदेशालय / Disciplinary Directorate
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