

भारतीय सनदी लेखाकार संस्थान

(संसदीय अधिनियम द्वारा स्थापित)

THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA

(Set up by an Act of Parliament)

PR-281/2013-DD/273/2013/DC/437/2016

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

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

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

[PR-281/2013-DD/273/2013/DC/437/2016]

**In the matter of:**

**Mr. Arun Dalmia,**

**Secretary, NATIONAL SPOT EXCHANGE LIMITED (NSE) Investor Forum,**

**Technocraft House,**

**A-25, MIDC Industrial Area,**

**Road No. 3, Opp. ESIC Hospital,**

**Andheri (East)**

**Mumbai-400093.**

.....Complainant

**Versus**

**CA. Shrawan Bhagwati Jalan (M. No. 102102) and**

**CA. Amit Kabra (M. No. 094533),**

**M/s S V Ghatalia & Associates (FRN 103162W),**

**14th Floor, The Ruby,**

**29, Senapati Bapat Marg,**

**Dadar (West)**

**Mumbai-400028.**

.....Respondent(s)

**Members Present:-**

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

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

**Shri Arun Kumar, IAS (Retd.), Government Nominee (through VC)**

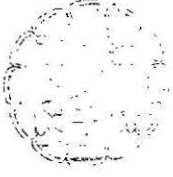
**CA. Sanjay Kumar Agarwal, Member (in person)**

**CA. Cotha S Srinivas, Member (in person)**

**Date of Hearing : 28<sup>th</sup> March 2024**

**Date of Order : 11<sup>th</sup> July 2024**

1. That vide Findings under Rule 18(17) of the Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007, the Disciplinary Committee was, inter-alia, of the opinion that **CA. Shrawan Bhagwati Jalan (M. No. 102102) and CA. Amit Kabra (M. No. 094533)** (hereinafter referred to as the '**Respondent(s)**') are **GUILTY** of Professional Misconduct falling within



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the meaning of Item (5), (6) and (7) of Part I of the Second Schedule to the Chartered Accountants Act, 1949.

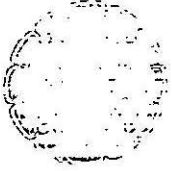
2. That pursuant to the said Findings, an action under Section 21B(3) of the Chartered Accountants (Amendment) Act, 2006 was contemplated against the Respondent(s) and a communication was addressed to them thereby granting opportunity of being heard in person / through video conferencing and to make representation before the Committee on 28<sup>th</sup> March 2024.

3. The Committee noted that on the date of the hearing held on 28<sup>th</sup> March 2024, the Respondent(s) were present in person and made their verbal representation on the Findings of the Disciplinary Committee, inter-alia, stating that, their professional reputation and professional work has suffered a lot as the case was going on since long time. The true and fair view of the financial statements of the Company for FY 2011-12 was not actually vitiated because of the Audit Opinion. The financial position of the Company was not affected by the alleged enhanced disclosures. The regulatory Show cause notices were never brought to their notice. On being asked in the meeting with the Management also, the Management gave a representation that they did not receive any regulatory communication to that effect. To that extent, they were victims of fraud or wrong information given to them by the management. They had no reason to doubt the credibility of the CEO or CFO at that point in time. There were no complaints from any of the purchasers. There was no financial loss.

3.1 The Committee also noted that the Respondent(s) in their written representation on the Findings of the Committee, inter-alia, stated as under:

a. In September 2013 i.e., 18 months after the end of the last year audited by the Respondent(s) and 15 months after the subject Audit report had been issued, the management of National Spot Exchange Limited(NSEL) itself identified issues pertaining to the subsequent year i.e. FY 2012-13, that led to the withdrawal of audit reports by the then statutory auditors of both National Spot Exchange Limited(NSEL) and Financial Technologies India Limited (FTIL) (i.e. the parent company of National Spot Exchange Limited), being M/s Mukesh P. Shah & Co, and Deloitte Haskins & Sells LLP respectively. As is clear from the audit report for the year ended 31<sup>st</sup> March 2014, which explains the circumstances leading up to the withdrawal of the audit reports of Financial Technologies India Limited (FTIL) and National Spot Exchange Limited (NSEL), none of the issues identified related to the financial year ended 31<sup>st</sup> March 2012. In respect of FY 2011-12, the auditor's report for Financial Technologies India Limited (FTIL) was not withdrawn.

b. The financial statements of FY 2012-13 (i.e. the year in respect of which financial irregularities were noticed by the Company, and accordingly the audit reports withdrawn) were audited by M/s Mukesh P. Shah & Co., who was earlier the internal auditor of NSEL and had issued a clean audit report. It was only when the Company issued letters in



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September 2013, regarding discrepancies in its financial statements for FY 2012-13, that CA. Mukesh P. Shah withdrew his report.

c. The Director(Discipline) in his Prima Facie Opinion and the Disciplinary Committee in its Findings have relied upon a media report which was published on 3<sup>rd</sup> October 2012. The said media report is dated 5 months after the Respondent CA. Amit Kabra signed the audit report (for FY 2011-12), and within the period audited by CA. Mukesh P. Shah i.e. in FY 2012-13. Despite the media reports being in the public domain within the period audited by CA. Mukesh P. Shah, he expressed no apprehension in his audit report in respect of the financial statements, internal controls, fraud reporting etc. Despite the stark difference in circumstances where CA. Mukesh P. Shah actually had the benefit of such media reports within the year which he audited, CA. Mukesh P. Shah has been exonerated for 12 of 15 charges, whereas the Respondent(s) have been held guilty on multiple charges.

d. The Respondent(s) had also explained that they carried out appropriate audit procedures subsequent to the year-end (at paragraph 1.1.5 of submission dated 8<sup>th</sup> February 2023), which have been completely ignored in arriving at the Findings.

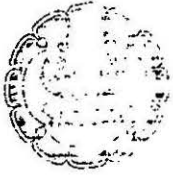
e. The Findings base the charge on completely new allegations which were neither raised in the Prima Facie Opinion nor during the course of the hearing. The Respondent(s) were not given an opportunity to explain their position in connection with the new allegations that the DC has used to hold them guilty.

f. As regard the Charge 1-'Impermissible activity as per Memorandum of Association', the Respondent(s) stated that procurement advances made to third parties as an agent for the client in the conduct of its procurement activities for clients (principals) was rightly debited to the respective client and shown as due from them. Simply renaming "Advance recoverable" to "contractually reimbursable expenses" does not mean that there was any difference in the substance of the transactions and their reporting. The Findings treat the report of CA. Mukesh P. Shah (for FY 2012-13) as different and an improvement to support his discharge and hold the Respondent(s) guilty (in respect of FY 2011-12) on the same matter, and that too, without affording any opportunity to the Respondent(s) to explain and demonstrate the similarity in both treatments.

g. The Respondent(s) demonstrated with specific timeline of events that the basis of withdrawal of Deloitte's audit report does not indicate that the financial statements for FY 2011-12 were misstated.

h. The Disciplinary Committee has arbitrarily ignored and overlooked Respondent(s) defense in Charge 2 of the Findings regarding alleged non-governance and relied on conjectures and surmises.

i. The Appellate Authority is currently not quorate and functional. There is no reason or basis not to defer the proceedings till such time that the Respondent(s) can avail their statutory remedies against any Order passed under Section 21B of the Chartered Accountants Act 1949 i.e. to seek the appellate remedy before the Appellate Authority.



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Such an approach would also be consistent with an Order passed by the Delhi High Court in similar circumstances. Thus, the Respondent(s) requested the Committee not to pass any Orders till the Appellate Authority is functional, as they will not have the ability to pursue their statutory right of appeal provided in the Chartered Accountants Act 1949.

4. The Committee considered the reasoning as contained in the Findings holding the Respondent(s) Guilty of Professional Misconduct vis-à-vis written and verbal representation of the Respondent(s). As regard the submission of the Respondent(s) regarding comparing the instant case with an earlier decided case in respect of the same entity for a different financial year, the Committee is of the view that comparing two distinct disciplinary cases as 'eye to eye', is not warranted as each case is decided on merits on the basis of documents and submissions on record. Further, the media reports are not the only evidence on the basis of which the Respondent(s) are held guilty by the Committee. After due consideration of all the facts, submissions and documents on record, the Committee arrived at its Findings holding the Respondent(s) guilty in respect of the charges alleged against them in Form 'I'.

4.1 The Committee also noted that the Respondent(s) referred to a decision dated 14<sup>th</sup> March 2023 of the Hon'ble High Court of Delhi in **Vijaykant Jagannath Kulkarni V.S. Disciplinary Committee, The ICAI and Ors. (W.P. (C) 1887 of 2023)** as a basis of their request to defer the Committee's decision to pass Orders under Section 21B(3) of the Chartered Accountants Act 1949. The Committee referred to the following contents of the said Order: -

*"17. The Disciplinary Committee has at this stage passed an Order holding the Petitioner guilty of professional misconduct. However, the final decision as to what action needs to be taken against the Petitioner is yet to be determined by the Disciplinary Committee, Under Section 21B(5), the Disciplinary Committee is to afford a proper hearing to the Petitioner and only thereafter proceed to take action. Such an order under Section 21B (5) is clearly appealable to the Authority....."*

18..... in the unique facts and circumstances of this case, the following directions are issued: -

- i) The Petitioner shall appear before the Disciplinary Committee and make his submissions in respect of the action under Section 21B (5).
- ii) A final order passed by the Disciplinary Committee shall be communicated to the Petitioner.
- iii) The Petitioner would be entitled to approach the Appellate Authority under Section 22G both in respect of the Order dated 6th January, 2023 and the final Order to be passed by the Disciplinary Committee. For a period of eight weeks, the final Order that may be passed would not be given effect to in order to enable the Petitioner to approach the Appellate Authority under Section 22G. (emphasis provided)"



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4.2 Thus, the Committee noted that even the Hon'ble Delhi High Court has not estopped the Disciplinary Committee from continuing with its proceedings on the said ground in the case under consideration before it. Accordingly, the Committee was of the view that it is well within its right to consider the case of the Respondent(s) for award of punishment.

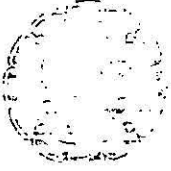
5. Keeping in view the facts and circumstances of the case, material on record including verbal and written representation on the Findings, the Committee with regard to the First Charge, on perusal of documents in support of the claim of the Respondent firm that subsequent to the Balance Sheet date, approximately 52% of total advances were recovered by National Spot Exchange Limited (NSEL) up to the date of signing financial statements, noted that these amounts were squared off from RTGS or cheque transfers.

5.1 This clearly shows that the amounts were not for procurements but were unsecured cash advances. The Committee further noted that nomenclature suggests that these amounts were given to clients earlier and are now being reclaimed by them. On comparing the bifurcation of loan and advances given by the Respondent(s), the Committee found that the value of amount recoverable from National Agricultural Cooperative Marketing Federation of India Ltd. (NAFED) was reduced. The Committee also noted the financials certified by CA. Mukesh P. Shah was having elaborated disclosure of the loans and advances such as the nomenclature of "recoverable from clients" to "contractually reimbursable expenses". Accordingly, the figures of previous year in the Balance Sheet as on 31<sup>st</sup> March 2012 were restructured as reported by CA. Mukesh P. Shah in his internal audit report as under:

*"The transactions need to be restructured in the books of accounts of the Company".*

5.2 Accordingly, the Committee concluded that these advances were not for procurement and disclosure in the financial statement was incorrect and was not in line with the Object Clause of the Memorandum of Association of the Company. The Committee further noted that the unsecured loans constituted more than 33% of the total size of Balance Sheet of NSEL which shows its materiality. Thus, it was the responsibility of the Respondent(s) to qualify the same in their audit report. (The misconduct on the part of the Respondent(s) has been dealt in detail in Para 28.2 of the Findings dated 7<sup>th</sup> February 2024 with respect to the first charge— page 24 to page 28 of the Findings)

5.3 The Committee with regard to second charge noted that the financial statements of National Spot Exchange Limited (NSEL) for financial year 2011-2012 was certified by the Respondent CA. Amit Kabra on 21<sup>st</sup> May 2012 and Department of Consumer Affairs (DCA) sought clarifications from National Spot Exchange Limited (NSEL) vide its letter dated 22<sup>nd</sup> February 2012 i.e. before the date of signing the financial statements. Thus, the Committee clearly inferred that signals of mis-governance and lack of transparency existed in the audit period of the Respondent(s). The Respondent(s), however, turned off their eyes and failed to report on the same.



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5.4 The Committee noted that in the said case, the overall objective of the audit has not been met as the purpose of the audit is to enhance the degree of confidence of intended users in the financial statements which is lacking in this matter. Further, the auditor gave a clean audit report on true and fair view of the financial statements. However, considering the facts of the case, the auditor should have modified his Opinion. (The misconduct on the part of the Respondent(s) has been dealt in detail in Para 29.3 of the Findings dated 7<sup>th</sup> February 2024 with respect to the second charge – page 30 to page 34 of the Findings)

5.5 Hence, professional misconduct on the part of the Respondent(s) is clearly established as spelt out in the Committee's Findings dated 7<sup>th</sup> February 2024 which is to be read in consonance with the instant Order being passed in the case.

6. Accordingly, the Committee was of the view that ends of justice will be met if punishment is given to the Respondent(s) in commensurate with their professional misconduct.

7. Thus, the Committee ordered that the name of Respondent(s) i.e., CA. Shrawan Bhagwati Jalan (M. No. 102102) and CA. Amit Kabra (M. No.094533) be removed from the Register of members for a period of 01(One) year which shall run concurrently with the punishment awarded in case no. PR/255/2013-DD/251/2013-DC/675/2017.

sd/-

(CA. RANJEET KUMAR AGARWAL)  
PRESIDING OFFICER

sd/-

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

sd/-

(SHRI ARUN KUMAR, IAS RETD.)  
GOVERNMENT NOMINEE

sd/-

(CA. SANJAY KUMAR AGARWAL)  
MEMBER

sd/-

(CA. COTHA S. SRINIVAS)  
MEMBER

प्रमाणित सत्य प्रतिलिपि / Certified True Copy

अंशु शोष / ANJU SHROVER

सहायक सचिव / Assistant Secretary

अनुशासन विभाग / Disciplinary Directorate

भारतीय सनदी लेखाकार संस्थान

The Institute of Chartered Accountants of India

Mr. Arun Dalmia -Vs- CA. Shrawan Bhagwati Jalan and CA. Amit Kabra (M. No. 094533)

ICAI Bhawan, Vishwas Nagar, Shohdri

**CONFIDENTIAL**

**DISCIPLINARY COMMITTEE [BENCH – II (2023-2024)]**

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

**Findings under Rule 18(17) of the Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007.**

**File No.: [PR-281/2013-DD/273/2013/DC/437/2016 and PPR/G/003/2020 clubbed]**

**In the matter of:**

**Mr. Arun Dalmia,  
Secretary, NSEL Investor Forum,  
Technocraft House,  
A-25, MIDC Industrial Area,  
Road No. 3, Opp. ESIC Hospital,  
Andheri (East)  
Mumbai-400 093**

**.....Complainant**

**Versus**

**CA. Shrawan Bhagwati Jalan (M. No. 102102) and  
CA. Amit Kabra (M. No. 094533),  
M/s S V Ghatalia & Associates (FRN 103162W),  
14th Floor, The Ruby,  
29, Senapati Bapat Marg,  
Dadar (West)  
Mumbai-400 028**

**.....Respondents**

**MEMBERS PRESENT: (In person)**

**CA Ranjeet Kumar Agarwal, Presiding Officer  
Mrs. Rani Nair, I.R.S. (Retd.), Government Nominee  
Mr. Arun Kumar, I.A.S. (Retd.), Government Nominee  
CA. Sanjay Kumar Agarwal, Member  
CA. Sridhar Muppala, Member**

**DATE OF FINAL HEARING: 25.07.2023**

**DATE OF DECISION TAKEN: 25.08.2023**

**Mr. Arun Dalmia, Secretary, NSEL, Mumbai vs CA Shrawan Bhagwati Jalan (M.No -102102) & CA  
Amit Kabra(M.No.-094533)**

**PARTIES PRESENT DURING THE FINAL HEARING**

**Complainant** : Not Present  
**Respondents** : CA Shrawan Bhagwati Jalan (Through VC)  
: CA Amit Kabra (Through VC)  
**Counsel for Respondents** : CA Ajay Bahl along with his assistant  
CA Ayush (Through VC)

**BACKGROUND OF THE CASE: -**

1. The brief background of the case is that the Complainant had filed complaint against M/s S.V. Ghatalia & Associates (hereinafter referred to as Respondents Firm), Mumbai who happened to be the auditor of National Spot Exchange Limited (hereinafter referred to as "NSEL/ Company") for the alleged period 2011-2012. Mr. Arun Dalmia, Secretary of NSEL Investors Forum has filed a complaint wherein it was alleged against the Respondents Firm on ground of professional misconduct/negligence in respect of reporting and failure to bring to notice the serious lapses in financial statements of NSEL for the period ending 31<sup>st</sup> March, 2012 which resulted in a fraud of Rs. 5500 crores to the investors. The Committee further observed that in response to the Disciplinary Directorate regarding disclosing the name of member answerable, both the Respondents (CA. Shrawan Bhagwati Jalan and CA. Amit Kabra) vide their declaration dated 04<sup>th</sup> December 2013 disclosed themselves as member answerable.

It is noted that the statutory auditor of NSEL were as under:

Financial Year	Statutory Auditor
2011-12	M/s S V Ghatalia & Associates
2012-13	M/s Mukesh P. Shah & Co.

\* M/s Mukesh P. Shah & Co were the internal auditors of NSEL for FY 2011-12 and had become statutory auditor in FY 2012-13. It is noted that on 21<sup>st</sup> September 2013, M/s Mukesh P. Shah & Co withdrew their audit report for FY 2012-13.



**CHARGES IN BRIEF:-**

2. The Complainant vide his complaint dated 18<sup>th</sup> October, 2013 levied the following charges against the Respondents:

S.No.	Allegations	Prima Facie View of Director (Discipline)
1.	The Respondents firm failed to qualify their report by not bringing illegal funding activity and higher risk of credit defaults to the notice of the shareholders, despite the same being mentioned by Internal auditor CA. Mukesh P. Shah in his internal audit report.	Held Guilty
2.	The Respondents firm failed to report about incorrect utilisation of the initial margin money	Held Not Guilty
3.	The Respondents firm failed to mention non-governance and lack of transparency and competence in controlling the activities by the Company, illegal funding activity and higher risk of credit defaults.	Held Guilty

3. The Respondents at the stage of PFO wherein they were held Guilty had inter-alia submitted as under:

a. That the Complainant has raised issues which are not maintainable due to applicability of one or more of the following reasons:

- i. Outside the preview of the engagement.
- ii. Beyond the specific duties which auditors have to perform.
- iii. Based on hearsay and unsubstantiated reports.
- iv. Based on erroneous understanding of the role of statutory auditors.

- v. Clearly indicative of non-understanding of the technicalities and specific responsibilities of a Statutory Auditor relating to Accounting Standards and Auditing Standards.
  - vi. Based on wrong interpretation of the information and background of the issues involved.
  - vii. Aimed at eliciting more information by raising issues that are by themselves baseless and devoid of appropriate evidence.
  - viii. Stated without a detailed reading and understanding of the provisions contained in the Bye Laws of NSEL.
- b. All the allegations levelled against the Respondents by way of the complaint are based only on conjectures, surmises and newspapers reports. No evidence has been produced in support of these allegations except for reliance that has been placed on the financial statements and audit opinion itself to allege gross negligence.

3.1 Response to Allegation 1- Illegal Funding activity and higher risk of credit defaults

- a. The nature of responsibilities of an internal auditor and a statutory auditor who audits the financial statements of the Company under the Companies Act, 1956, are very different.
- b. The level of risk that a company or organisation takes is a business decision. Auditors cannot and are not expected to audit/review business decisions taken by management of the entity. Based on the actual transactions entered into by the Company, auditors are expected to perform procedures, on a sample basis, to provide reasonable assurance that the financial statements present true and fair view, based on proper recording of such transactions in the books of accounts.
- c. During the year ended March 31, 2012, NSEL had engaged itself as an agent in procurement activities on behalf of its principals. As part of this activity, NSEL had given unsecured advances and had earned procurement commission. The memorandum of association ("MOA") clause B sub-clause

3 & 18 of the Company allowed it to carry such activities. These advances were disclosed as "unsecured advances" in the financial statements.

- d. The Respondents firm has performed audit procedures to review such unsecured advances and had obtained third party direct balance confirmation for 100% of advances. The Respondents firm also verified that subsequent to the balance sheet date approximately 52% of such advances were recovered by NSEL up to the date of signing financial statements. The management of the Company had also made a disclosure in the notes to accounts no. 41 to the financial statements regarding such procurement activity.
- e. At March 31, 2012, NSEL's total assets were Rs 429.75 crores and total income were Rs 94.39 crores respectively. Against this, the assets relating to the procurement activities were Rs 136.20 crores as at March 31, 2012 and income from this activity was Rs 14.20 crores for the year then ended.
- f. Accordingly, NSEL's assets related to procurement activities were approximately 31.7% of total assets, and revenue from such procurement activities represented approximately 15% of total income. These do not represent/constitute 50% or more of the assets / total income as at / for the year ended March 31, 2012, and accordingly, NSEL was not required to be classified as "deemed NBFC". Accordingly, it did not require to apply for NBFC license. The above facts are based on the Respondents firm's understanding of transaction undertaken by NSEL during the year ended March 31, 2012.

### 3.2. Response to Allegation 3- Non-governance and lack of transparency

- a. The Complainant seems to have hashed together various parts of the show cause notice from FMC and "read between the lines" to establish his complaint. The allegation refers to non-governance and lack of transparency at NSEL; however, these allegations are extremely generic, and there is no evidence provided to support such allegations.
- b. The Respondents are aware from public sources that M/s Mukesh P Shah, the auditors of NSEL for the year ended March 31, 2013, and M/s Deloitte,

Haskins and Sells, the auditors of Financial Technologies Limited for the year ended March 31, 2013, have withdrawn their audit reports on the financial statements of NSEL and FTIL respectively, for the year ended March 31, 2013.

- c. It is difficult to comprehend as to how, solely based on this, the Complainant has reached a conclusion that NSEL statutory auditor was negligent or engaged in misconduct while performing the audit of the Financial Statements for the year ended March 31, 2012. Accordingly, the Respondents submit that the matters included in the allegation are extremely broad and general in nature, and lack specificity.
  - d. Notwithstanding the foregoing, the Respondents wish to state that the audit of the financial statements of NSEL for the year ended March 31, 2012 were performed in accordance with auditing standards issued by the ICAI, and the Respondents have stated so in their report.
  - e. Any other aspects of the allegations, including those related to mis-governance and lack of transparency, FTIL along with Directors having grossly failed in discharging their functions in a fair, judicious and honest manner, and NSEL perpetrating fraud on its platform and conspiring to cheat investors, as indicated and claimed by the Complainant are outside the Respondents' scope of work.
4. The Director (Discipline) had, in his Prima Facie Opinion dated 19<sup>th</sup> November 2015 with respect to **first allegation**, on perusal of object clause on Page 2 of the MOA of the Company noted that the said clause talks about the 'collateral management' which literally means something pledged as a security for repayment of a loan. As regards the quantum of security, vis-a-vis amount of funding is concerned, it is noted that as per collateral management the assets are backed by some security, however, in the instant case, the advances have been shown as "Unsecured Advances" in the financial statements for the year ended 31<sup>st</sup> March, 2012 which means that the assets were not at all secured. Thus, it can be said that the work of the management was not in line with the objects of the Company. Further, the Respondents, being the statutory auditor

of the Company, need to have been more cautious when the internal auditor M/s Mukesh P. Shah & Co. Chartered Accountants in their audit observation has mentioned that:

*"NSEL was taking higher risk of credit default as it does not hold any security or line. The activity entails funding of the transactions and provisions of NBFC the Company has not secured any such license as an NBFC for carrying out such activity and in order to avoid the application pertaining to NBFC, the transactions needs to be restructured in the books of accounts of the Company"*

Hence, the Respondents were required to qualify his audit report with respect to the above, but the same has not been done by them in the present case. **Accordingly, prima-facie, the Respondents are guilty of professional misconduct falling within the meaning of Causes (5), (6) and (7) of Part-I of Second Schedule to the Chartered Accountants Act, 1949.**

- 4.1 With respect to **third allegation**, the Respondents submitted that the fact that M/s Deloitte Haskins and Sells, statutory auditors of FTIL have withdrawn their audit report pertaining to F/Y 2012-13, subsequent to exposure of NSEL affairs seems to be the focal point on which this charge has been levelled against the Respondents. The Director (Discipline) noted that such a line of argument requires to be established through supporting papers/evidences and the very fact that the statutory auditors of FTIL and the subsidiary controlled by it i.e. NSEL have withdrawn the audit report for the year 2012-13 does cause a shadow of suspicion on the role of the Respondents. Thus, the matter requires to be looked into further for verifying the genuineness of the audit procedures adopted by the Respondents as referred to by them in their written submissions. **Thus, in respect of this charge the Respondents are prima-facie guilty of professional misconduct falling within the meaning of Item (7) of Part I of the Second Schedule to the Chartered Accountants Act, 1949.**

5. Accordingly, the Director (Discipline) in terms of Rule 9 of the Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007, held the Respondents **Prima-facie Guilty** of Professional Misconduct falling within the meaning of Items (5), (6) & (7) of Part I of the Second Schedule to the Chartered Accountants Act, 1949. The said Item to the Schedule to the Act, states as under:

**Items (5), (6) and (7) of Part I of Second Schedule:**

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

*(5): fails to disclose a material fact known to him which is not disclosed in a financial statement, but disclosure of which is necessary in making such financial statement where he is concerned with that financial statement in a professional capacity;*

*(6): fails to report a material misstatement known to him to appear in a financial statement with which he is concerned in a professional capacity;*

*(7): does not exercise due diligence, or is grossly negligent in the conduct of his professional duties*

**SUBMISSIONS OF THE RESPONDENTS ON PRIMA FACIE OPINION**

6. The gist of submissions dated 22<sup>nd</sup> March, 2016 made by Respondents in response to Prima Facie Opinion were as under:
- a. With respect to **first charge** it is submitted that in judging whether they had exercised reasonable care and skill as expected from an auditor, it will not be correct to proceed on matters which have transpired subsequent to their engagement as statutory auditors.
  - b. NSEL could also perform collateral management activities as per its object clause of MOA. It does not mean handling deliveries of commodities that includes collateral management activities.

*Ø*

- c. As per clause 18 of MOA, NSEL was allowed to perform activities as an agent.
- d. Procurement activity performed by NSEL was not in violation of object clause of MOA and it provided unsecured advance towards that activity.
- e. It cannot be construed that procurement activities undertaken by NSEL were collateral management services.
- f. Appropriate disclosures relating to unsecured advances were made by the Respondents in financial and notes to accounts.
- g. That the standard on reliance on the work of Internal auditor makes it clear that a statutory auditor is not expected to make any conclusions based on the internal auditor's report without having verified the issues from the view point of statutory auditor.
- h. The Respondents had performed sufficient and appropriate audit procedures to audit unsecured advances and procurement commission.
- i. With respect to **second charge**, it is submitted that they did not withdraw their audit report for the ended 31<sup>st</sup> March, 2012 because by the time this matter had become known in August 2013, successor auditors had already issued their report on 31<sup>st</sup> March 2013 which in effect rendered their audit report on 31<sup>st</sup> March 2012 financial statements stale.
- j. Their report is supersede by another auditor and hence they concluded that no one would be relying on their report
- k. NSEL had limited number of shareholders who were actively involved in affairs of the Company. The Financials were also not widely circulated.
- l. The management of NSEL did not withdraw the financials which means NSEL board continued to accord its approval for the year ended 31<sup>st</sup> March 2012.
- m. The use of "shadow of suspicion" in the PFO is insufficient to support a prima facie finding. Further there is nothing on record which reveals that withdrawal of FTIL had anything to do with Respondents' audit for the year ended 31<sup>st</sup> March 2012. That they had performed a number of audit procedures to complete their audit.

**BRIEF FACTS OF THE PROCEEDINGS:-**

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

S.No.	Date	Status of Hearing
1.	27.07.2016	Adjourned on the request of the Respondents
2.	28.11.2016	Adjourned due to paucity of time
3.	15.03.2017	Part heard & adjourned
4.	11.04.2017	Fixed & Heard
5.	30.05.2019	Adjourned on the request of the Respondents and in the absence of Complainant
6.	25.06.2019	Adjourned due to paucity of time
7.	09.08.2019	Adjourned on the request of the Complainant
8.	04.09.2019	Adjourned on the request of the Respondents
9.	06.01.2020	Adjourned on the request of the Respondents.
10.	25.11.2020	Meeting cancelled due to unavoidable circumstances
11.	02.09.2021	Adjourned on the request of both the parties
12.	19.09.2022	Respondent opted for de-novo hearing. Accordingly, after taking the oath, the matter was adjourned
13.	07.11.2022	Part heard & adjourned
14.	29.12.2022	Part heard & adjourned
15.	16.01.2023	Heard & Concluded
16.	25.01.2023	Judgement Reserved considered and decided to re-hear
17.	06.04.2023	Respondent opted for de-novo hearing. Accordingly, after taking the oath, the matter was adjourned
18.	11.07.2023	Adjourned on the request of the Respondents
19.	25.07.2023	Concluded and Judgement Reserved
20.	25.08.2023	Final decision taken on the case

8. On the day of **first hearing** held on 27<sup>th</sup> July, 2016, the Committee noted that the Respondents had sought an adjournment vide his mail dated 22<sup>nd</sup> July, 2016 on the grounds of pre-occupation. The Committee upon consideration of



the request, granted adjournment of hearing with the approval of Presiding Officer.

9. The Committee noted that the consideration of the case on the day of **second hearing** held on 28<sup>th</sup> November, 2016 was deferred due to paucity of time and the parties present were informed accordingly by the Presiding Officer.
10. On the day of **third hearing** held on 15<sup>th</sup> March 2017, the Committee noted that Mr. Ajay Dalmia, Complainant's representative and the Respondents along with their counsel CA A. P. Singh were present before the Committee. The Committee put both the Respondents on oath. Thereafter, the Committee enquired from the Respondents as to whether they were aware of the charges. On the same, the Respondents replied in the affirmative and pleaded Not Guilty to the charges levelled against them. The Counsel for Respondent thereafter drew the attention of the Committee towards Rules 18(7) read with Rule 18(9) of the Chartered Accountants (Procedure of Investigations and Professional and Other Misconduct and Conduct of Cases) Rule, 2007 wherein the procedure to be adopted by the Committee at the first hearing laid down. The Committee adjourned the matter for further hearing. The Complainant and Respondents were directed to appear before the Committee at the next date of hearing to expedite and conclude the case.
11. On the day of **fourth hearing** held on 11<sup>th</sup> April 2017, the Committee noted that Mr. Ajay Dalmia, Complainant's representative along with his counsel Mr. Chetan Yadav, Advocate and the Respondents along with their counsel CA A. P. Singh were present before the Committee. The Committee asked the Complainant to open up the charges against the Respondents. However it was noted that the counsel of the Complainant was raising additional allegations against the Respondents on the basis of forensic audit report issued by Grand Thornton. To this the Committee categorically stated that no cognizance would be taken of any allegation which is beyond the scope of the instant complaint. In

case he wished to raise additional allegations against the Respondents, he may proceed by way of filing a fresh complaint.

The Counsel for the Respondents also submitted that in case the Committee chooses to refer to the said forensic report, a copy may be provided beforehand to the Respondents for their perusal and preparing defense on the same.

Thereafter, the Counsel for Respondents made his submissions on the merit of the case. The hearing in the matter was concluded and the judgement was reserved.

The Committee could not take decision in the last meeting held on Jan, 2018 of that Council Year and hence the matter was fixed for hearing in next meetings.

12. On the day of **fifth hearing** held on 30<sup>th</sup> May, 2019, the Committee noted that the Respondents had sought an adjournment. The Committee further noted that the Complainant was not present. The Committee looking into the absence of both the parties, decided to adjourn the matter to the next date.
13. On the day of **sixth hearing** held on 25<sup>th</sup> June, 2019, the hearing was adjourned due to paucity of time.
14. On the day of **seventh hearing** held on 9<sup>th</sup> August, 2019, the Committee noted that the Counsel for the Complainant was present. He requested for adjournment of hearing due to his personal difficulty. On the same, the Committee decided to adjourn the hearing with information to the Respondents. With this, hearing in the matter was adjourned.
15. On the day of **eighth hearing**, held on 4<sup>th</sup> September, 2019, the Committee noted that the Respondents had sought an adjournment. The Committee looking into the absence of Respondents, decided to adjourn the matter to the next date.

16. On the day of **ninth hearing** held on 6<sup>th</sup> January, 2020, the Committee noted that the Respondents had sought an adjournment. The Committee looking into the absence of Respondents, decided to adjourn the matter to the next date.
17. On the day of **tenth hearing** held on 25<sup>th</sup> November, 2020, the Committee noted that the meeting was cancelled due to unavoidable circumstances.
18. On the day of **eleventh hearing** held on 2<sup>nd</sup> September, 2021, the Committee noted that the Complainant vide email dated 18<sup>th</sup> August, 2021 had sought an adjournment in the matter for 8 weeks. The Respondents also sought adjournment on the ground of unavailability of his counsel on date of hearing. The Committee looking into the same acceded to their request and granted the adjournment. The Office was directed to inform the parties accordingly.
19. On the day of **twelfth hearing** held on 19<sup>th</sup> September, 2022, the Committee noted that the Complainant was not present. However, the Respondents were present through Video Conferencing Mode through their Counsel CA. A.P. Singh. At the outset, the Committee enquired from the Respondents that since, the composition of the Committee had changed further from the previous hearing, hence, as to whether they wished to have a de-novo hearing. On the same, the Counsel of the Respondents opted for a de-novo hearing. The Committee acceded to the request of the Respondents and started a fresh hearing in the matter. The Respondents were administered on Oath. Thereafter, the Committee enquired from the Respondents as to whether they were aware of the charges. On the same, the Respondents replied in the affirmative and pleaded Not Guilty to the charges levelled against them. Thereafter, the Counsel of the Respondents sought adjournment in the matter. The Committee, looking into the fact, decided to adjourn the hearing to a future date. With this, the hearing in the matter was partly heard & adjourned.
20. On the day of **thirteenth hearing** held on 7<sup>th</sup> November, 2022, the Committee noted that the Respondents along with their Counsel CA. A.P Singh were present at ICAI Tower, BKC Mumbai. The Committee noted the Complainant

was not present despite the notice being duly served to him. Thereafter, the Respondent's Counsel submit that the said matter was concluded in the meeting held on 11<sup>th</sup> April 2017 and there is nothing in the rules that allow for the matter to be re-heard again. On the same, the Committee informed them that if they want/don't want to present their case before this Committee they are allowed and accordingly the matter will be decided. Further the Committee also informed them that since they have taken the option of de-novo in previous hearing they are required to present the case on merits. Thereafter, the Committee asked the Respondents to make his submissions. The Respondents/their Counsel had, inter-alia, submitted as under:

- a. That NSEL has no right under the ICAI's rules to file the complaint as it is not a legal entity/individual.
- b. He reiterated his earlier submissions made at the stage of PFO and in response to PFO.
- c. That the documents relied upon by the Director (Discipline) in making his opinion were not available in the public domain, hence they requested to provide the same as they have to counter those charges to defend their case.
- d. That M/s Deloitte Haskins & Sells withdrew its audit report in 2013 when the Respondents were not the auditor of NSEL.
- e. As per clause 18 of MOA of NSEL, working as agents is fully within the ambit and scope of the Company.
- f. That the reliance on Internal audit report is not to be considered as global benchmark. He further submitted that SA-315 and SA-330, issued by the Institute, were duly followed by the Respondents.
- g. That they had obtained and read the copies of Internal Audit Report. However, if an auditor has to rely on the work of the Internal Auditor then the auditor would be required to perform certain other checks regarding the quality of the work done by internal auditor. But if the auditor does not rely, then there is no requirement to rely on the experts.

The Committee posed certain questions to him to understand the issues involved and the role of the Respondents in the case. Thereafter, the Committee gave the directions to the Respondents to submit the following:

- a. Whether any Internal Audit Committee and/or Risk Management Committee was in existence/established by the Company? If yes, then whether any meetings were held.
- b. Attendance and Minutes of those meetings.
- c. As to why the Internal Audit Report was not considered by the Respondents as Statutory Auditor.

With the above directions, the Committee decided to adjourn the hearing to the next date.

21. On the day of **fourteenth hearing** held on 29<sup>th</sup> December, 2022, the Committee noted that the Respondent i.e. CA. Amit Kabra alongwith his Counsel CA. A P Singh were present through video conferencing mode. The Committee noted that the Complainant was not present. The Counsel for Respondents sought adjournment on the ground that other Respondent, i.e. CA. Shrawan Bhagwati Jalan, is not in India and his physical presence is necessary in the matter. Thereafter, the Committee looking into his request decided to adjourn the case to further date.
22. On the day of **fifteenth hearing** held on 16<sup>th</sup> January, 2023, the Committee noted that both the Respondents alongwith their Counsel CA. A P Singh were present through video conferencing mode. The Committee noted that the Complainant was not present. At the outset, the Counsel of the Respondents submitted that a case vide reference number PPR/G/003/2020, filed by EOW, had been merged with the instant case. He further submitted that the matter filed by EOW is sub-justice before the Court of law. He accordingly pleaded that the instant matter should also be kept in abeyance till the matter filed by EOW is decided by the Court of law. The Committee informed the Respondents that these are separate disciplinary proceedings that need not wait for EOW case and accordingly decided to proceed with the matter further in the instant case.

Thereafter, the Committee asked the Respondents to make his submissions. The Respondents in their submissions had inter-alia stated as under:

- a. That they had replied to the queries which were sought from them in the previous hearing.
- b. That the auditor will only examine whether there are material misstatements in the financial statements and whether the financial statements portray a true and fair view and will not act upon the business decision of the Company.
- c. That the work of an internal auditor is totally different in nature and it is more of a management function and that's why an internal auditor can't be the statutory auditor in the same Company.
- d. That there is no compulsion that the statutory auditor must rely on the work of the internal auditor.
- e. That as part of audit, they reviewed the internal audit reports and those observations which are relevant to the audit are being considered.
- f. That the Director (Discipline) erred in understanding the provisions of MOA of the Company. That in the previous hearing they had clearly shown the clauses of MOA which allows the Company to indulge in the particular activities.
- g. That they had performed relevant audit procedures and concluded that the Company will not fall under the category of NBFC at all.
- h. That Audit Procedures were followed as prescribed in the guidance note issued by ICAI. That CARO reporting was done properly by the Respondents and submissions of Respondents filed in 2014 were not properly considered by the Director (Discipline) while forming prima facie opinion
- i. That NSEL had provided them the copies of audit committee meetings and they had placed reliance on the said audit committee meetings. They also reviewed the minutes of board meetings and noted the approval of financial statements. ✕

The Committee posed certain questions to the Respondents to understand the issue involved and the role of the Respondents in the case. With the above, the Committee concluded the hearing by reserving its judgment.

23. On the day of **sixteenth hearing** held on 25<sup>th</sup> January, 2023, the Committee noted that the Respondents had changed their counsel and taken the services of Mr. Ajay Bahl, Advocate (along with his Assistant CA Ayush) and both Respondents and Counsels were present through video conference mode and appeared before it. The Committee noted that during the course of hearing the matter pending for hearing vide reference PR/255/13-DD/251/13-DC/675/17, the Counsel of the Respondents in that case had raised certain objections by stating that the charges framed by the Director (Discipline) were different from those alleged in the complaint by the Complainant. The Counsel for the Respondents also submitted that this case is similar to earlier one and both cases should be taken together for hearing for similarity of decision. The Committee acceded to the plea of the Counsel and decide to take matter together at later stage. Accordingly, the Committee decided to hear this matter again. The Committee also conveyed its decisions to the Respondents.
24. On the day of **seventeenth meeting** held on 6<sup>th</sup> April, 2023, the Committee noted that the Respondents along with their counsel Mr. Ajay Bahl, Advocate (along with his Assistant CA Ayush) were present through video conference mode. The Committee further noted that neither the Complainant was present, nor any intimation was received despite notice/email duly served upon him.
- 24.1 The Committee noted that the present matter was also listed earlier on various dates before different Committees. The Committee noted that the constitution of earlier Committees as under:

Council Year	Name of members of the Committee
2016-17	CA. Nilesh S. Vikamsey, Presiding Officer Mrs Bindu Agnihotri, Government Nominee Mr. Amit Chatterjee, Government Nominee CA. Naveen N.D. Gupta, Member CA. Mangesh Pandurang Kinare, Member

2017-18	CA. Nilesh S. Vikamsey, Presiding Officer Mrs Bindu Agnihotri, Government Nominee Mr. Amit Chatterjee, Government Nominee CA. G. Sekar, Member CA. Nihar Niranjan Jambusaria, Member
2018-19	CA. Naveen N.D. Gupta, Presiding Officer Mr. R. Sridharan, I.A.S. Retd., Government Nominee Mrs. Anita Kapur, Government Nominee CA. Shyam Lal Agarwal, Member CA. Sanjay Agarwal, Member
2019-20	CA. Atul Kumar Gupta (Presiding Officer) Mr. Rajeev Kher, I.A.S. (Retd.), Government Nominee CA. Amarjit Chopra, Government Nominee CA Rajendra Kumar P, Member CA. Chandrashekhar Vasant Chitale, Member
2020-21	CA. Atul Kumar Gupta (Presiding Officer) Mr. Rajeev Kher, I.A.S. (Retd.), Government Nominee CA. Amarjit Chopra, Government Nominee CA Rajendra Kumar P, Member CA Pramod Kumar Boob, Member
2021-22	CA (Dr.) Debashis Mitra, Presiding Officer Mr. Rajeev Kher, I.A.S. (Retd.), Government Nominee CA. Amarjit Chopra, Government Nominee CA Rajendra Kumar P, Member CA. Babu Abraham Kallivayalil, Member
2022-23	CA (Dr.) Debashis Mitra, Presiding Officer Mrs. Rani Nair, I.R.S. (Retd.), Government Nominee Mr. Arun Kumar, I.A.S. (Retd.), Government Nominee CA Rajendra Kumar P, Member CA Cotha S Srinivas, Member



- 24.2 Since the composition of the Committee had changed subsequent to the previous hearing, the Committee enquired from the Respondents, whether they wished to have a de-novo hearing which was accepted by the Respondents. On the same they opted for de-novo hearing.
- 24.3 The Committee acceded to the request of the Respondents and started a fresh hearing on the matter. Accordingly, the Respondents were administered on Oath. Thereafter, looking into the fact that this was the first hearing, the Committee decided to adjourn the hearing to a future date.
25. On the day of **eighteenth hearing** held on 11<sup>th</sup> July 2023, the Committee noted that the Respondents had sought adjournment vide email dated 5<sup>th</sup> July 2023 on ground that their Counsel was travelling abroad. The Committee noted that neither the Complainant was present nor any intimation was received despite notice/email duly served upon him. The Committee looking into the grounds of natural justice acceded to the adjournment request made by the Respondents, and accordingly, the case was adjourned. The Committee also directed to Office to inform the parties that no more extension shall be granted to the parties.
26. On the day of **final hearing** dated 25<sup>th</sup> July 2023 the Committee noted that the Respondents along with their counsel, CA. Ajay Behl (along with his Assistant CA Ayush) were present through Video Conferencing and appeared before it. The Committee further noted that neither the Complainant was present, nor any intimation was received despite notice/email duly served upon him.
- 26.1 The Committee informed the Respondents that since the present case was listed on 18 occasions in the past however because of various reasons it could not be completed. The Committee informed that in the de-novo proceedings now they will be given full chance to make their submissions. The Respondents make their detailed submissions charge wise.

26.2 The Respondents/ their Authorized representative during the hearing, inter-alia, submitted as under:

- a. With regard to **first charge** Respondents/his Counsel submitted that the Memorandum of Association of the Company allowed it to carry out the procurement activities and as a part of which the Company has given unsecured advances which were shown as unsecured advances in the financial statements.
- b. That they had verified the third party direct confirmations and approximately 52% of such advances was recovered by NSEL upto the date of signing of financial statements for the financial year 2011-2012 i.e. 21<sup>st</sup> May 2012.
- c. With regard to **second charge** the Respondents/their Authorised Representative submitted that CA Mukesh P. Shah have withdrawn his audit report for the next financial year 2012-2013.
- d. That there is no evidence produced till date to establish that there was a deficiency in the Respondent's work. Therefore just on the basis that the reports have been withdrawn, inferring that it must have been something to do with their audit is pure conjecture.

26.3 The Committee further posed certain questions to the Respondents to understand the issue involved and the role of the Respondents in the case. After consideration of the same, the Committee directed that the Respondents to submit following in the next 15 days:

- a. Synopsis of the case
- b. Legible copy of Pg 117 of the Respondents documents.
- c. Any circular of RBI where they defined financial assets and financial liabilities
- d. Copy of any Notification wherein the RBI defines income(s) to be classified for the purpose of NBFC – to establish that the income certified by the Respondents is not covered by NBFC.

26.4 After detailed deliberations, and on consideration of facts of the case, various documents on record as well as oral submissions of Respondents before it, the Committee decided to conclude the hearing by reserving its judgement.

27. Thereafter, this matter was placed in meeting held on 25<sup>th</sup> August 2023 for consideration of the facts and arriving at a decision by the Committee. The Committee noted that pursuant to its directions given on 25<sup>th</sup> July, 2023, the Respondents have submitted as under:

- a. With respect to **first charge**, it is submitted that as contended at the hearing, the allegation itself is prima-facie devoid of any basis. In effect, the PFO suo-moto re-characterizes the business of 'procurement activities' as 'collateral management'; and then alleges that the lack of security as a basis of alleging prima facie guilt on the Respondents.
- b. 'Procurement activities' is not the same as 'collateral management' and there is no basis for any such re-characterization, as sought to have been done in the PFO. It is reiterated that the nature of business was 'procurement activities' and not 'collateral management'
- c. The fact that 'collateral management' is one of the objectives in the MOA does not mean that the Company cannot undertake other activities that are not 'collateral management'.
- d. The conduct of the said activity undertaken by the Company has been disclosed appropriately as a 'Procurement Activity' in the financial statements with multiple references, and there is no allegation in the PFO that such references are incorrect.
- e. The Respondents also obtained management representation as regards the nature of activities as being 'procurement activities'.
- f. The Respondents obtained direct balance confirmation in respect of 100% of such advances.
- g. The Respondents also verified that subsequent to the balance sheet date, approximately 52% of such advances had been recovered by NSEL up to the date of signing financial statements.

- h. The same internal auditor became the statutory auditor in FY 2012-13, in which the procurement activities continued. The same auditor made no adverse comments in the auditor's report on the very same circumstances during the year of his audit. This clearly indicates that the internal auditor did not find any merit in their own observations for FY 2011-12
- i. The initial complaint had alleged that the Company could not undertake the said procurement activities without obtaining a Non-Banking Financial Company ("NBFC") license. The Respondents in their response dated 13<sup>th</sup> January 2014 to the Director (Discipline) clarified that the Company was not required to obtain the said NBFC license under the Reserve Bank of India ("RBI") guidelines because the said activities did not constitute more than 50% of the total income and assets. The Respondents has also given the reference of press release dated 8<sup>th</sup> April 1999 (1998-99/1269).
- j. With respect to **second charge**, it is submitted that the withdrawal of the report of FTIL for financial year 2012-13 by Deloitte citing non- reliance on financial statements for FY 2012-13 was based on a letter by the Company on 20<sup>th</sup> September 2013 to their auditors. Based on its investigation, it cannot conclude whether its books and records presented for the year ended 31<sup>st</sup> March 2013, were true and fair. It is thus clear that even after an internal investigation, even 18 (eighteen) months after the end of the financial year 31<sup>st</sup> March 2012, issues were identified for the year ended 31<sup>st</sup> March 2013, and not for year ended 31<sup>st</sup> March 2012. It is obvious therefore that there is not a shred of evidence to even remotely suggest that the withdrawal of the report for the FY 2012-13 i.e., the year after the Respondents' audit, has its genesis or linkage with the FY 2011-12 and none has been adduced in the PFO.
- k. A mere statement of further investigation or shadow of suspicion does not in any way satisfy the burden of proof of 'professional misconduct'.
- l. That this entire allegation is clearly premised on a 'hindsight bias', which is impermissible in law. Such an approach does not reflect an assessment of the work done by the Respondents against the facts and circumstances

which existed as at the dates on which the audit report of the Company was issued. The Respondents also draws attention to Para A26 of SA 200.

- m. That the judgment on the work of the auditor should be evaluated based on the circumstances that, to his knowledge and belief, existed at the time of conducting the audit. The Securities Appellate Tribunal ("SAT") in the case of *Price Waterhouse & Co. & Ors. v/s the Securities & Exchange Board of India (Appeal Nos. 6-7-190-191 of 2018)*, (the "PWC Case") has dealt with the issue of 'hindsight bias' and has made the observation that *The duty of the Tribunal is to endeavour and ascertain what was the problem presented to the auditor and what was the knowledge available to them at the time of audit. He need not possess the highest expert skill; it is enough if he exercises the ordinary skill of an ordinary competent man exercising his particular art.*

On perusal of the oral submissions vis-a-vis submitted documents it was noted by the Committee that the Respondents not only failed to exercise due diligence while auditing but also failed in obtaining sufficient information for expressing an opinion. Accordingly, keeping in view the facts and circumstances of the case, the material on record and the submissions of the parties, the Committee passed its judgment.

## **FINDINGS OF THE COMMITTEE**

### **28. Charge 1**

The Committee noted that the **first charge** against the Respondents is that the Respondents firm failed to qualify their report by not bringing illegal funding activity and higher risk of credit defaults to the notice of the shareholders, despite the same being mentioned by Internal auditor CA. Mukesh P. Shah in his internal audit report for financial year 2011-12.

#### **28.1 Submissions of the Respondents**

The crux of the submissions of the Respondents with respect to the said charge is as under:

∞

- a. That the standard on reliance on the work of Internal auditor makes it clear that a statutory auditor is not expected to make any conclusions based on the internal auditor's report without having verified the issues from the view point of statutory auditor.
- b. That the Memorandum of Association of the Company allowed it to carry out the procurement activities and as a part of which the Company has given unsecured advances which were shown as unsecured advances in the financial statements.
- c. That they had verified the third party direct confirmations and approximately 52% of such advances was recovered by NSEL upto the date of signing of financial statements for the financial year 2011-2012 i.e. 21<sup>st</sup> May 2012.
- d. The same internal auditor became the statutory auditor in FY 2012-13, in which the procurement activities continued. The same auditor made no adverse comments in the auditor's report on the very same circumstances during the year of his audit. This clearly indicates that the internal auditor did not find any merit in their own observations for FY 2011-12.
- e. That NSEL's assets related to procurement activities were approximately 31.7% of total assets, and revenue from such procurement activities represented approximately 15% of total income. These do not represent/constitute 50% or more of the assets / total income as at / for the year ended March 31, 2012, and accordingly, NSEL was not required to be classified as "deemed NBFC".
- f. Since Income and Assets related to procurement activities do not represent/constitute 50% or more of the assets / total income as at / for the year ended March 31, 2012, and accordingly, NSEL was not required to be classified as "deemed NBFC".

## **28.2 Findings of the Committee on Charge 1**

28.2.1 The Committee noted the defense of the Respondents and observed that the Respondents in their audit report has given the bifurcation of Loans & Advances which are as follows:

Particulars	Amount (in Rs.) as at 31.03.2011
<b>Capital Advances(A)</b> Secured, considered good	24,22,595.00
<b>Loans &amp; Advances to Related Parties(B)</b> Unsecured, considered good	55,00,00,000.00
<b>Advances Recoverable in Cash or Kind(C)</b> Unsecured, Considered Good Provision for doubtful advances	1,48,07,88,043.19 (4,04,82,894.00) 1,44,03,05,149.19
<b>Other Loans &amp; Advances(D)</b> Prepaid Expenses Loan to employees Advance Tax	1,94,13,801.40 5,89,300.00 -
	2,00,03,101.40
<b>Total (A+B+C+D)</b>	<b>2,01,27,30,845.59</b>

28.2.2 The Committee further noted that the Respondents have further given the bifurcation of advances recoverable in cash or kind (unsecured, considered good) for the year ended 31<sup>st</sup> March 2012

Particulars	Amount (rounded off to nearest Rs.)	Remarks
Recoverable from client	1,36,15,56,211.00	
Advances paid to domestic suppliers for service	89,990.00	
Advance Foreign Travel	60,393.00	Travel Ticket to Chicago for Mr. Sinha dated 30.09.11
Advances to Staff	5,68,550.00	
Imprest Account	2,71,000.00	
Project expenses recoverable from NAFED	11,82,41,900.00	Covered in separate working done for NAFED
	<b>1,48,07,88,043.00</b>	

28.2.3 The Committee noted that Respondents in their written statement has mentioned that the amount of Rs. 1,36,15,56,211/- shown as "unsecured, considered good" relates to procurement of goods for which reference is also given in Note 41 of Notes to accounts to financial statements of the NSEL for financial year 2011-12.

28.2.4 The Committee observed that though the Respondents have provided the third party confirmations for the same amount and also confirms that 52% of the total advances were recovered upto the date of signing the financial statements, however, it is seen that the nomenclature used in bifurcation of advances recoverable in cash or kind is "**Recoverable from clients**" (refer para 28.2.2 above) which clearly depicts that the transaction is not a type of procurement transaction (which is allowed as per Memorandum of Association of NSEL).

28.2.5 The Committee on perusal of documents in support of the claim of the Respondents firm that it has also verified that subsequent to the balance sheet date approximately 52% of such advances were recovered by NSEL up to the date of signing financial statements noted that these amounts were squared off from RTGS or cheque transfers. This clearly shows that the amounts were not for procurements but were unsecured cash advances. The Committee further noted that nomenclature suggests that these amounts were given to clients earlier and now being reclaimed by them. In other words, these are reimbursable amounts.

28.2.6 The Committee also noted that that one more table for bifurcation of loan and advances is given by the Respondents. On comparing it is found that the value of amount recoverable from NAFED was reduced.

28.2.7 The Committee regarding the submission of the Respondents, that CA. Mukesh P Shah become the auditor of NSEL for FY 2012-13 and he has not made any adverse comment on the very same circumstances in his report, noted that CA. Mukesh P. Shah in his internal audit report mentioned that *the transactions needs to be restructured in the books of accounts of the Company.* The



Committee noted that in the financials (FY 2012-13) certified by CA. Mukesh P Shah the Company (with respect to F.Y. 2011-12) divided the unsecured loans into two parts as under:

**Figures of 31.03.2012 in the financials of FY 2012-13**

Amount (in Rs.)

**13. Loans and Advances**

Particulars	Non- Current	Current
<b>Capital Advances(A)</b>		
Unsecured, considered good	24,22,595.00	
<b>Security Deposits (B)</b>		
Unsecured, considered good	81,11,443.00	
<b>Loans &amp; Advances to Related Parties(C)</b>		
Unsecured, considered good		55,00,00,000.00
<b>Advances Recoverable in Cash or Kind (D)</b>		
Unsecured, Considered Good	1,45,086.00	9,89,932.00
<b>Other Loans &amp; Advances(E)</b>		
Prepaid Expenses	18,28,384.00	1,94,13,895.00
Loan to employees	3,97,782.00	5,89,300
Advance Tax	2,60,46,766.00	
Balances with Statutory/ Govt. Auth.	46,801.00	
	2,83,19,733.00	2,00,03,195.00
<b>Total (A+B+C+D+E)</b>	<b>3,89,98,857.00</b>	<b>57,09,93,128.00</b>

**14. Other Assets**

Particulars	Non- Current	Current
Non-Current Bank Balances (Refer Note 17)(A)	5,69,95,141.00	
Interest Accrued on Fixe deposits (B)	32,67,258.00	33,92,526.00
<b>Other Contractually reimbursable expenses (C)</b>		
Unsecured, considered good		1,43,93,15,217.00
Doubtful		4,04,82,894.00
Provision for doubtful advances		(4,04,82,894.00)
<b>Total (A+B+C)</b>	<b>6,02,62,399.00</b>	<b>1,44,27,07,743.00</b>

28.2.8 The Committee hence noted that financials certified by CA. Mukesh P. Shah was having elaborated disclosure of the loans and advances such as the nomenclature of "recoverable from clients" to "contractually reimbursable expenses". Accordingly, the Committee found that figures of previous year in the Balance Sheet as on 31<sup>st</sup> March 2012 were restructured as reported by the CA. Mukesh P Shah in his internal audit report that "**.....the transactions needs to be restructured in the books of accounts of the Company.**"(refer para 4 above).

28.2.9 Accordingly, the Committee concluded that these advances were not for procurement and disclosure in the financial statements was incorrect and was not in lines with the object clause of Memorandum of Association of the Company.

28.2.10 The Committee further noted that the unsecured loans constitute more than 33% of the total size of Balance Sheet of NSEL which shows its materiality. Thus it is the responsibility of the Respondents to qualify the same in their audit report. The Committee noted that the Respondents not only were grossly negligent in their duties but also failed to qualify their report despite being aware of material fact and material misstatement in the financial statements. The Committee accordingly holds the **Respondents guilty of professional misconduct falling within the meaning of Items (5), (6) and (7) of Part-I of Second Schedule to the Chartered Accountants Act, 1949.**

## 29 Charge 2

The Committee noted that the **second charge** against the Respondents is that the Respondents firm failed to mention non-governance and lack of transparency and competence in controlling the activities by the Company, illegal funding activity and higher risk of credit defaults.

## 29.2 Submissions of the Respondents

The crux of the submissions of the Respondents with respect to the said charge is as under:

- a. That solely on the basis that M/s Mukesh P. Shah, the auditors of NSEL for FY 2012-13 and M/s Deloitte, auditors of FTIL for FY 2012-13 had withdrawn their audit reports, the Complainant has reached on the conclusion that NSEL statutory auditors were negligent while performing the audit for FY 2011-12. Admittedly, any cause of non-governance or lack of transparency in the activities of the Company would normally be attributable to the management of NSEL.
- b. There is nothing on record which reveals that withdrawal of audit report had anything to do with Respondents' audit for the year ended 31<sup>st</sup> March 2012. Further the management of NSEL did not withdraw the financials which means NSEL board continued to accord its approval for the year ended 31<sup>st</sup> March 2012.
- c. That this entire allegation is clearly premised on a 'hindsight bias', which is impermissible in law.
- d. The Respondents have claimed that their audit procedure involved:
  - i) Reading and review of board minutes, internal audit report, etc.
  - ii) Discussions with key management employees including MD & CEO & CFO
  - iii) Confirmations of balances as regards various account balances.
  - iv) Review of utilization of margin balances on a sample basis.
  - v) Direct confirmation of specific transactions by a member, on the exchange.
  - vi) Obtaining management representations, including a representation that financial statements are free from material misstatements due to fraud.

### **29.3 Findings of the Committee on Charge 2**

29.3.1 The Committee with respect to present charge observed that NSEL is the subsidiary of Financial Technologies India limited (FTIL). The Committee further noted that FTIL has control over entities namely MCX (26% stake) and NSEL (99.99% stake) and NSEL is having control over IBMA with 60.88% stake.

29.3.2 The Committee further noted that DCA in exercise of powers conferred to it under section 27 of the FCRA vide notification no. S. O. 906(E) dated 5<sup>th</sup> June, 2007 had exempted all forward contracts of one day duration for the sale and purchase of commodities traded on the NSEL, from operation of the provisions of the said Act subject to the following conditions, namely:-

- a. No short sale by members of the Exchange shall be allowed;
- b. All outstanding positions of the trade at the end of the day shall result in delivery;
- c. The National Spot Exchange Ltd shall organize spot trading subject to regulation by the authorities regulating spot trade in the areas where such trading takes place;
- d. All information or returns relating to the trade as and when asked for shall be provided to the Central Government or its designated agency;
- e. The Central Government reserves the right to impose additional conditions from time to time as it may deem necessary and
- f. In case of exigencies, the exemption will be withdrawn without assigning any reason in public interest.

29.3.3 The Committee further noted that DCA had issued a notification dated 6<sup>th</sup> February 2012 substituting the words 'its designated agency in condition (d) mentioned above by the words 'Forward Markets Commission, Mumbai', which implies that all information or returns relating to the trade as and when asked for shall be provided by these commodity spot exchanges to the Central Government or the FMC. The FMC had accordingly called for trade data from

the Spot Exchanges including NSEL in prescribed reporting formats. The FMC also noted that after analysing the trade data received from NSEL, the FMC identified the following issues relating to contracts traded on NSEL and sought clarifications from NSEL on 22<sup>nd</sup> February 2012.

- a. As per the trade data submitted by NSEL, it was observed that 55 contracts offered for trade on NSEL were with settlement periods exceeding 11 days and all such contracts traded on NSEL were in violation of provisions of FCRA.
- b. The condition of 'no short sale by members of the exchange shall be allowed' was not being met by NSEL

29.3.4 The FMC, on examination of the clarification submitted by NSEL on 29<sup>th</sup> February, 2012, vide its letter dated 10<sup>th</sup> April 2012 informed the DCA that the NSEL was not fulfilling the conditions (a) & (b) stipulated under notification dated 5<sup>th</sup> June, 2007 and requested the DCA to take necessary action regarding the above violations. The DCA vide its letter dated 27<sup>th</sup> April 2012 directed NSEL to explain as to why action should not be initiated against them for violation of the conditions of the notification dated 5<sup>th</sup> June 2007.

29.3.5 In response to the above, NSEL submitted a reply vide their letter dated 29<sup>th</sup> May 2012 and after that DCA vide its letter dated 31<sup>st</sup> May, 2012, sought comments of the FMC on the NSEL letter dated 29<sup>th</sup> May, 2012.

29.3.6 The FMC vide its letter dated 2<sup>nd</sup> August, 2012 forwarded comments to the DCA, on the following issues:-

- a. Short Sale by members of the Exchange: From the reply submitted by NSEL vide its letter dated 29<sup>th</sup> May, 2012, it appeared that NSEL does not insist upon ownership of goods before allowing its members to place the sale order. The FMC was of the view that all these sale transactions which are not backed by the ownership of goods are in violation of the condition of "no short sale by the members of the Exchange shall be allowed".

- b. Contracts in which settlement period goes beyond 11 days period: In view of the definition of forward contract under FCRA, the FMC was of the view that all the contracts traded on NSEL which provide settlement schedule for a period exceeding 11 days are Non- Transferable Specific Delivery (NTSD) contracts. Thus even if the gazette notification does not specify the delivery period, the NSEL has to settle the delivery for all open position within a period of 11 days as the NSEL was allowed to only trade in one day forward contracts and was obliged to ensure delivery and settlement within 11 days

29.3.7 The Committee further noted that the FMC vide its letter dated 16<sup>th</sup> September, 2013 called for the Agenda, notes and Minutes of the meetings of the Board of Directors of NSEL. On perusal of the minutes of the meetings received on 17<sup>th</sup> September, 2013 reveal that such trades which provided for delivery and settlement beyond 11 days were first allowed in September 2009 which was ratified by the Board of Directors of NSEL on 16 November, 2009. The Board Minutes dated 19<sup>th</sup> December 2009 ratified trading of T+25 contracts. Subsequently, a number of such contracts were introduced on the NSEL.

29.3.8 It has also come to the knowledge of the FMC from the report of the forensic auditor that a large volume of NSEL exchange trades were carried out with paired back to back contracts. The contracts were taken by the same parties at a pre- determined price and always registering a profit on the long term positions. Thus, there existed a financing business where a fixed rate of return was guaranteed on investing in certain products on NSEL. This is in contravention to the representation made by NSEL to the FMC on 4<sup>th</sup> July, 2012 regarding assured return scheme offered at NSEL. The NSEL vide its letter dated 24<sup>th</sup> July, 2012 clarified that NSEL does not guarantee assured returns and reiterated the same in its letter dated 17<sup>th</sup> November, 2012. At NSEL, such paired transactions grow in size year after year.

29.3.9 The Committee noted that an article "NSEL product under lens over short selling Charge" was published in the Economic Times on 3<sup>rd</sup> October, 2012. In the article, it was stated that DCA had issued a show cause notice to NSEL and

is probing into alleged discrepancies in contract position at NSEL, NSEL issued a clarification in October, 2012 addressed to its members and published the same on its website wherein NSEL stated that it had responded to DCA's Letter dated 27 April, 2013, seeking its comments on short selling and settlement of contracts resulting into delivery beyond 11 days period. NSEL stated that it had submitted its reply to the Ministry and that it was in full compliance with the provisions of FCRA read with the Gazette Notification dated 5 June, 2007. With such wide publicity given to the matter and NSEL's above clarification, the Board of NSEL is bound to be aware of the issue and its seriousness.

29.3.10 The Committee noted that the documents brought on record by the Respondents, in defence, includes memorandum of association of NSEL, articles of association, bifurcation of unsecured loans and advances, third party confirmations, financial statements for FY 2011-12, RBI circular, Show cause notice from department of economic affairs, minutes of the meeting dated 20<sup>th</sup> May, 2012 and bank statements.

29.3.11 The Committee noted that the financial statements of NSEL for financial year 2011-2012 was certified by the Respondents on 21<sup>st</sup> May 2012 and DCA has sought clarifications from NSEL vide its letter dated 22<sup>nd</sup> February 2012 i.e. before the date of signing the financial statements. Thus, it clearly infers that signals of mis-governance and lack of transparency was existed in the audit period of Respondents. The Respondents however turned off their eyes and failed to report on the same. The act of the Respondents clearly shows lack of diligence adopted by them in conduct of their professional duties.

29.3.12 The Committee further noted that the auditor Mukesh P. Shah has withdrawn their report for financial year 2012-2013 subsequent to exposure of NSEL affairs indicating that the affairs of the NSEL was not in line with the requirements of the Act and the Respondents has not discharge their duties due diligently.

29.3.13 **The Committee accordingly holds the Respondents guilty of professional misconduct falling within the meaning of Item (7) of Part-I of Second Schedule to the Chartered Accountants Act, 1949.**

30 Considering the submissions and deliberation held, the Committee is of the view that the requirements of Paragraph 11 of SA-200 "Overall Objectives of the Independent Auditor", states as follows:

*"11. In conducting an audit of financial statements, the overall objectives of the auditor are:*

*(a) To obtain reasonable assurance about whether the financial statements as a whole are free from material misstatement, whether due to fraud or error, thereby enabling the auditor to express an opinion on whether the financial statements are prepared, in all material respects, in accordance with an applicable financial reporting framework; and*

*(b) To report on the financial statements, and communicate as required by the SAs, in accordance with the auditor's findings."*

In view of above mentioned requirements, it was noted that in the said case, overall objective of the audit has not been met as the purpose of the audit is to enhance the degree of confidence of intended users in the financial statements which is lacking in this matter. Further, the auditor has given clean audit report on true and fair view of the financial statements. However, considering the facts of case, the auditor should modify his opinion. Accordingly, the Committee noted that the Respondents were grossly negligent in conduct of their duties as well as failed to report material fact in his report and therefore holds the Respondents Guilty of professional misconduct falling within the meaning of Items (5), (6) & (7) of Part I of Second Schedule to the Chartered Accountants Act, 1949. *AK*



**CONCLUSION**

31 In view of the above observations, considering the submissions of the Respondents and documents on record, the Committee held the Respondents **GUILTY** of Professional Misconduct falling within the meaning of Items (5), (6) & (7) of Part I of the Second Schedule to the Chartered Accountants Act, 1949.

Sd/-

**(CA. RANJEET KUMAR AGARWAL)**

**PRESIDING OFFICER**

Sd/-

**(MRS. RANI NAIR, I.R.S. RETD.)**

**GOVERNMENT NOMINEE**

Sd/-

**(MR. ARUN KUMAR, I.A.S., RETD.)**

**GOVERNMENT NOMINEE**

Sd/-

**(CA. SANJAY KUMAR AGARWAL)**

**MEMBER**

Sd/-

**(CA. SRIDHAR MUPPALA)**

**MEMBER**

**DATE: 07<sup>th</sup> February, 2024**

**PLACE: New Delhi**

सही प्रतिलिपि होने के लिए प्रमाणित  
Certified to be true copy

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