



भारतीय सनदी लेखाकार संस्थान
(संसदीय अधिनियम द्वारा स्थापित)

THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA
(Set up by an Act of Parliament)

PR-413/21/DD/12/2022/DC/1745/2023

[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-413/21/DD/12/2022/DC/1745/2023]

In the matter of:

Shri Anurag Agarwal,
Karta, Anurag Agarwal (HUF)
22/44, Old Vijay Nagar Colony,
Agra- 282004.

..... Complainant

Versus

CA. Sanjay Mehra (M.No.075182)
Mehra Sanjay & Co. (FRN 006381C)
Chartered Accountants,
4, E-13/6, IInd Floor, Raman Tower,
Sanjay Place,
Agra – 282002.

..... Respondent

Members Present (in person): -

CA. Ranjeet Kumar Agarwal, Presiding Officer
Smt. Rani S. Nair, Government Nominee
Shri Arun Kumar, Government Nominee
CA. Sanjay Kumar Agarwal, Member
CA. Cotha S Srinivas, Member

Date of Hearing : 16th December 2024

Date of Order : 08th January 2025

- 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 dated 19th November 2024, the Disciplinary Committee was, inter-alia, of the opinion that **CA. Sanjay Mehra (M.No.075182), Agra** (hereinafter referred to as the '**Respondent**') is **GUILTY** of Professional Misconduct falling within the meaning of Item (7) of Part I of Second Schedule to the Chartered Accountants Act, 1949.
- 2 That pursuant to the said Findings, an action under Section 21B (3) of the Chartered Accountants (Amendment) Act, 2006 was contemplated against the Respondent and a communication was addressed to him thereby granting opportunity of being heard in person / through video conferencing and to make representation before the Committee on 16th December 2024.
- 3 The Committee noted that on the date of the hearing held on 16th December 2024, the Respondent was present in person. He relied upon his written representation dated 05th December 2024 on the Findings of the Committee. Further, in his verbal representation before it, the Respondent stated that he has duly disclosed the Related Party transaction in the Auditee Company Balance Sheet at all places except where the Auditee Company is a provider of finance as he was under a bona-fide belief that this case squarely falls under the exception of Para 4(c)(i) of AS-18, because Auditee Company is an NBFC registered with RBI and has provided the Loans under its normal course of business. He also stated that no loss was caused to the Company on account of his non-reporting. All loans of the Company were recovered in due time. Ninety percent of the loans advanced during the years 2018-2019 and 2019-2020 are already squared up. No loan account of the Company ever turned into NPA. He also informed the Committee that in his 33 years of professional career, he has not done any irregularity. His professional practice is his only source of income. The Respondent requested the Committee to treat this matter as a difference in professional judgement and not as a professional misconduct and take a lenient view for his bonafide interpretation in the instant case.
- 3.1 The Committee also noted that the Respondent in his Written Representation dated 5th December 2024 on the Findings of the Committee, inter-alia, stated as under: -



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- (a) The Balance Sheets of M/s Shivam Traders and Hire Purchase Pvt. Ltd. (hereinafter referred to as 'STHP') for the F.Y. 2018-2019 and 2019-2020, the entities to which loans were disbursed, even though they were acceptably related parties (a fact which was clearly disclosed in the Balance Sheets of the related parties and recipients of loans) were not disclosed as related parties due to the exception under paragraph 4(c)(i) of AS-18.
- (b) The Balance-Sheet of Shree Ganesh Buildtech India Private limited and Anant Buildcon Private Limited for FY 2018-2019 which were the related parties to whom STHP had provided finance, the Respondent being their statutory auditors had duly disclosed the name of STHP as related party while discharging his professional duties because AS-18 is applicable to related party which is recipient of finances and whose main business does not stand for providing finance, thus, accordingly the disclosure was made in the Balance Sheet who received finance from STHP.
- (c) The factum of para 3 and para 4 being mutually exclusive, as arrived upon by this Committee in paragraph 8.13 of the Findings, is neither supported by statute nor precedent. The entirety of the text of AS-18 fails to mention any such exclusivity between paras 3 and 4. Para 4 of AS-18 lays down exceptions in related party disclosures, which shall be applicable notwithstanding anything provided in para 3 of AS-18.
- (d) The Respondent has acted out of his professional judgement and interpreted the two paras in conjunction with each other and further requests the Council to review and clarify the same. Thus, in the professional judgment of the Respondent, it is maintained that related party disclosure was appropriately not made in keeping with the stipulations of para 4.
- (e) As per point 8.8 of the Findings of the Committee, the table of related parties attached is not a part of any of the Balance Sheets provided by the Respondent. The table is attached in a manner that indicates that the table is an extract of AS-18, Related Party Disclosures of a Balance Sheet. The Committee is requested to provide the source of the table and how it has been taken as a reference with respect to the findings of the Committee.

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- (f) The paragraph which has been quoted in paragraph 8.12 in Findings forms a part of the Master Directions – Reserve Bank of India (Non-Banking Financial Company– Scale Based Regulation) Directions 2023, and not the Directions of 2016. Thus, the Master Directions of 2023 cannot be retrospectively made applicable to the case which pertains to the F.Y. 2018-2019 and 2019-2020.
- (g) It was his honest interpretation that STHP which was the NBFC and the provider of finance for the related entities, does not fall within the ambit of disclosure under AS-18. However, he has been charged with lack of due diligence or grossly negligent in conduct of his professional duties by the Disciplinary Committee. However, with emphasis, the Respondent wishes to re-iterate that in the case of Council of the Institute of Chartered Accountants of India v. Somath Basu, AIR 2007 Cal 29 the Respondent auditor had failed to report several irregularities in the transactions relating to investments of the bank due to which he was held guilty of misconduct. The Hon'ble High Court of Calcutta, however, ruled in favour of the auditor and held as follows:

"61. Misconduct arises from ill-motive and mere acts of negligence, innocent mistake or errors of judgment do not constitute the misconduct. Even if there is any negligence in performance of duties or errors of judgment in discharging of such duties, the same cannot constitute misconduct unless ill-motive in the aforesaid acts are established.

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63. As we have already observed that failure to meet the expected standard of efficiency by a professional cannot be regarded as misconduct and"

Thus, the term "gross negligence" means some culpable default or some wilful blindness which does not merely arise from want of foresight or mistake of judgment.

- 4 The Committee considered the reasoning as contained in the Findings holding the Respondent Guilty of Professional Misconduct vis-à-vis written and verbal representation of the Respondent. On consideration of the representation of the

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Respondent, the Committee with respect to the contention of the Respondent as stated in Para 3.1(e) and Para 3.1(f) above, held that it has arrived at its Findings on the basis of the submissions and documents on record including the Financial Statements brought on record by the Complainant vide his rejoinder received on 4th May 2022 and his further submissions on the Prima Facie Opinion dated 29th June 2023. Further, the Non-Banking Financial Company – Non-Systemically Important Non-Deposit taking Company (Reserve Bank) Directions, 2016 dated 1st September 2016 vis-a-vis the requirements of Accounting Standard 18 – Related Party Disclosures, as applicable during the financial year(s) 2018-2019 and 2019-2020, have only been taken into view by the Committee while examining the conduct of the Respondent. As regard the other contentions of the Respondent, the Committee observed that the same were basically the reiteration of the earlier submissions of the Respondent made during the course of hearing which have been duly considered by the Committee.

5. Thus, keeping in view the facts and circumstances of the case, material on record including verbal and written representation of the Respondent on the Findings, the Committee is of the view that it is an admitted fact by the Respondent that Shree Ganesh Buildtech India Private Limited and Anant Buildcon Private Limited are the related parties of the alleged Company. The Respondent being the statutory Auditor of the alleged Company and both of these Companies i.e. Shree Ganesh Buildtech India Private Limited and Anant Buildcon Private Limited for the Financial Year 2018-2019 had shown the alleged Company as its related party in the Notes to Accounts of the said companies. However, the alleged Company reflected the name of only Anant Buildcon Pvt. Ltd. as a related party in its Notes to Accounts to Financial Statements for the financial year 2018-2019 without reflecting the complete nature of transactions carried out with it.

5.1 Further, the alleged Company did not reflect the name of aforesaid two Companies i.e. Shree Ganesh Buildtech India Private Limited and Anant Buildcon Private Limited as a related party in its Notes to Accounts to financial statements for the financial year 2019-2020. The Committee was of the view that paragraph 3 and 4 of the Accounting Standard - 18 are exclusive to each other. Once the related party relationship is established in view of the provisions of paragraph 3 of AS 18, the reporting enterprise has to give disclosure as per requirement of AS 18. Thus, the

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Committee was of the view that complete disclosure of related party transactions in Notes to Accounts as per AS 18 ought to have been there. In case there was a variance as being claimed by the Respondent, the same ought to have been reported by the Respondent in his audit report.

- 5.2 The Committee also noted that as per the requirements of SA 550 - Related parties, it is the duty of the auditor to see whether related party relationships and transactions have been appropriately identified, accounted for and disclosed in the financial statements in accordance with the framework. The Committee noted that in the Notes to Accounts to the Financial Statements of the alleged Company for the Financial Year 2018-2019 and 2019-2020, the following comment had been specifically provided:

"Note: Related Party relationships are as identified by the Company and relied upon by the Auditors."

Thus, it is clear that the Respondent has merely relied upon the management explanation and did not apply his judgment while reporting about the compliance of Accounting Standard-18 with respect to related party disclosures.

- 5.3 Thus, the Committee was of the view that due diligence has not been exercised by the Respondent while reporting on the compliance of Accounting Standard 18 with respect to related party disclosures in the Audit Report for the Financial Year 2018-2019 and 2019-2020.
- 5.4 Hence, professional misconduct on the part of the Respondent is clearly established as spelt out in the Committee's Findings dated 19th November 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 him in commensurate with his professional misconduct.
- 7 Thus, the Committee ordered that CA. Sanjay Mehra (M.No.075182), Agra be Reprimanded under Section 21B(3)(a) of the Chartered Accountants Act 1949.



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8. The Committee also noted that the Complainant had filed a Writ Petition bearing no. WP(C) 9311/2024 & CM APPL. 38134/2024 before the Honorable High Court of Delhi for expeditious disposal of the proceedings in the instant case in a time bound manner wherein the Honorable High Court of Delhi vide its Order dated 10th July 2024 disposed off the Writ Petition binding the Disciplinary Directorate and the Disciplinary Committee of the Institute of Chartered Accountants of India to adjudicate the proceedings within a period of six months from the date of the Order. Accordingly, in compliance of the same, the Disciplinary Committee has passed its Order reprimanding CA. Sanjay Mehra (M.No.075182), Agra under Section 21B(3)(a) of the Chartered Accountants Act 1949.

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

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शुभ चोखा/ANU GROVER
सहायक सचिव / Assistant Secretary
अनुशासनात्मक विभाग / Disciplinary Directorate
भारतीय चरितेखाकार संस्थान
The Institute of Chartered Accountants of India
जलियाँ: नया, दिल्ली 110002

CONFIDENTIAL

DISCIPLINARY COMMITTEE [BENCH – II (2024-2025)]
[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-413/21/DD/12/2022/DC/1745/2023

In the matter of:

**Shri Anurag Agarwal,
Karta, Anurag Agarwal (HUF)
22/44, Old Vijay Nagar Colony,
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.....Complainant

Versus

**CA. Sanjay Mehra (M.No.075182)
Mehra Sanjay & Co. (FRN 006381C)
Chartered Accountants,
4, E-13/6, IInd Floor, Raman Tower,
Sanjay Place,
Agra – 282002.**

.....Respondent

Members Present:

**Mrs. Rani S. Nair, IRS (Retd.), Presiding Officer and Government Nominee (through VC)
Shri Arun Kumar, IAS (Retd.), Government Nominee (in person)
CA. Cotha S Srinivas, Member (in person)**

DATE OF FINAL HEARING : 20th August 2024

DATE OF DECISION TAKEN : 18th September 2024

Parties Present: -

**Complainant: Shri Anurag Agarwal (Through VC)
Counsel for the Complainant: Mr. Ravi Kapoor, Advocate (Through VC)
Respondent: CA. Sanjay Mehra (M. No. 075182) (In person)
Counsel for the Respondent: Mr. Sukhmeet Lamba, Advocate (Through VC)**

BACKGROUND OF THE CASE:

1. The Complainant is one of the shareholders of M/s Shivam Traders and Hire Purchase Pvt. Ltd. ("STHP"). The Respondent was statutory auditor of STHP for FY 2018-19 to 2019-20. The Complainant alleged that the Respondent in collusion with Sh. Ravi Shankar who exercises effective control over the management of STHP had submitted fraudulent Balance Sheets and other reports thereby defrauding not only the shareholders and creditors of STHP but also the authorities such as Reserve Bank of India, Ministry of Corporate Affairs, etc.

CHARGES IN BRIEF:

2. The Committee noted the following allegations which were alleged by the Complainant against the Respondent together with the view of the Director(Discipline) on the same:

S.No.	Allegations in brief	View of Director (Discipline)
1.	Illegal Acceptance of Public Funds.	Held Not Guilty
2.	Violation of Norms of Leverage Ratio.	Held Not Guilty
3.	Non-Compliance with the provisions of Companies Act, 2013 and submission of fraudulent Audit Report as not reporting that disclosures as per Accounting Standard- 18 are not made.	Held Guilty
4.	Misappropriation of Funds.	Held Not Guilty
5.	Change in shareholding pattern without prior permission from RBI.	Held Not Guilty
6.	Fake Registered Office.	Held Not Guilty

THE RELEVANT ISSUES DISCUSSED IN THE PRIMA FACIE OPINION DATED 24th FEBRUARY 2023 FORMULATED BY THE DIRECTOR (DISCIPLINE) IN THE MATTER IN BRIEF, ARE GIVEN BELOW: - (in respect of allegation no.3 in which the Respondent had been held prima facie guilty)

3. In respect of allegation that the Company had not made disclosures as per Accounting Standard-18 on Related party transactions in its Notes to Accounts and the Respondent had not reported this non-compliance, it was observed that the Complainant had brought on record the following documents in support of his claims for non-disclosure of Related Party Transactions: -

- Copy of Balance Sheet of Anant Buildcon Private Limited
- Copy of Balance Sheet of Shree Ganesh Buildtech India Private Limited
- Copy of master data and shareholding of some other Companies

In this connection, it was seen that as per Accounting Standard-18 "Related Party Disclosures" following persons are regarded as related parties for which relevant disclosures were required to be made: -

"3. This Standard deals only with related party relationships described in (a) to (e) below:

(a) enterprises that directly, or indirectly through one or more intermediaries, control, or are controlled by, or are under common control with, the reporting enterprise (this includes holding companies, subsidiaries and fellow subsidiaries);

(b) associates and joint ventures of the reporting enterprise and the investing party or venturer in respect of which the reporting enterprise is an associate or a joint venture;

(c) individuals owning, directly or indirectly, an interest in the voting power of the reporting enterprise that gives them control or significant influence over the enterprise, and relatives of any such individual;

(d) key management personnel and relatives of such personnel; and

(e) enterprises over which any person described in (c) or (d) is able to exercise significant influence. This includes enterprises owned by directors or major shareholders of the reporting enterprise and enterprises that have a member of key management in common with the reporting enterprise."

As per **Para 4** of the Standard, the following are deemed not to be related parties:

"(a) two companies simply because they have a director in common, notwithstanding paragraph 3(d) or (e) above (unless the director is able to affect the policies of both companies in their mutual dealings);

(b) a single customer, supplier, franchiser, distributor, or general agent with whom an enterprise transacts a significant volume of business merely by virtue of the resulting economic dependence; and

(c) the parties listed below, in the course of their normal dealings with an enterprise by virtue only of those dealings (although they may circumscribe the freedom of action of the enterprise or participate in its decision-making process): (i) providers of finance;

(ii) trade unions;

(iii) public utilities;

(iv) government departments and government agencies including government sponsored bodies."

Accounting Standard- 18 has also defined Related Party, Related Party Transactions and the definition of Control and Substantial Interest, relevant paras of which are as under:

"**Para 10.1 Related party** - parties are considered to be related if at any time during the reporting period one party has the ability to control the other party or exercise significant influence over the other party in making financial and/or operating decisions.

Para 10.2 Related party transaction - a transfer of resources or obligations between related parties, regardless of whether or not a price is charged.

Para 10.3 Control - (a) ownership, directly or indirectly, of more than one half of the voting power of an enterprise, or

(b) control of the composition of the board of directors in the case of a company or of the composition of the corresponding governing body in case of any other enterprise, or

(c) a substantial interest in voting power and the power to direct, by statute or agreement, the financial and/or operating policies of the enterprise."

"**Para 12.** An enterprise is considered to have a substantial interest in another enterprise if that enterprise owns, directly or indirectly, 20 per cent or more interest in the voting power of the other enterprise. Similarly, an individual is considered to have a substantial interest in an enterprise, if that individual owns, directly or indirectly, 20 per cent or more interest in the voting power of the enterprise."

- 3.1 In view of the above, it was seen that two enterprises are related parties if they have a common director who can control the policies of both the enterprises in their mutual dealings. It is seen from the copy of Balance Sheet of Shree Ganesh Buildtech India Private Limited for the financial year 2018-19 submitted by the Complainant that STHP was shown as Related party in Notes to Accounts to financial statements of the said Company however STHP had not shown the said Company as related party in its Notes to Accounts to financial statements for the financial year 2018-19 and 2019-20 which prima facie indicates that the Respondent had not been diligent while discharging the attest function and while reporting on compliance of Accounting Standard-18 more so when the financial statements of both the aforesaid Companies have been audited by the Respondent himself.
- 3.2 Further, from the copy of master data and shareholding of some other Companies namely Adinath Shelters Private Limited, Aditya Ashiyana Private Limited, etc. as submitted by the Complainant, it is evident that STHP can control the policies of the said Companies and hence STHP and the said Companies are related parties, the disclosure of which is required under Notes to Accounts to financial statements. However, it was seen from Note 23 of Notes to Accounts forming part of Balance Sheet for the financial year 2018-19 of the subject Company, the names of these Companies are not appearing under related party disclosure. Similarly in Note 23 of Notes to Accounts forming part of Balance Sheet for the financial year 2019-20, the names of these Companies are not appearing under related party disclosure and hence the contention of Complainant that the Respondent has failed to report the same in his audit report seems to be justified and hence the Respondent is prima facie **Guilty** for the said allegation under Item (7) of Part I of the Second Schedule of Chartered Accountants Act, 1949.
- 3.3 The Director (Discipline) in his Prima Facie Opinion dated 24th February 2023 opined that the Respondent is Prima Facie **Guilty** of Professional Misconduct falling within the meaning of Item (7) of Part I of Second Schedule to the Chartered Accountants Act, 1949. The said Item of the Schedule to the Act, states as under:

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

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

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

- 3.4 The Prima Facie Opinion formed by the Director (Discipline) was considered by the Disciplinary Committee at its meeting held on 10th April 2023. The Committee on consideration of the same, concurred with the reasons given against the charges and thus, agreed with the Prima Facie opinion of the Director (Discipline) that the Respondent is **GUILTY** of Professional Misconduct falling within the meaning of Item (7) of Part I of the Second Schedule to the Chartered Accountants Act, 1949 and accordingly, decided to proceed further under Chapter V of the Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007.

DATE(S) OF WRITTEN SUBMISSIONS/PLEADINGS BY PARTIES: -

4. 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' filed by the Complainant	03.01.2022
2.	Date of Written Statement filed by the Respondent	26.03.2022
3.	Date of Rejoinder filed by the Complainant	04.05.2022
4.	Date of Prima facie Opinion formed by Director (Discipline)	24.02.2023
5.	Written Submissions filed by the Respondent after Prima Facie Opinion	01.06.2023, 18.07.2024, 05.08.2024, 28.08.2024 11.09.2024
6.	Written Submissions filed by the Complainant after Prima Facie Opinion	29.06.2023, 16.08.2024, 6.09.2024,

SUBMISSION OF THE RESPONDENT ON PRIMA FACIE OPINION: -

5. The Committee noted that the Respondent in his submissions dated 01st June 2023, 18th July 2024, 5th August 2024, 28th August 2024 and 11th September, 2024 in response to the Prima Facie Opinion, inter-alia, stated as under: -
- 5.1 The entities mentioned at C-56 to C-58(of the Prima Facie Opinion), are recipients of finance from Non- Banking Financing Company (NBFC registered with RBI) i.e. STHP (Auditee), whose primary objective is to provide finance. So far as the applicability of AS-18 is concerned, STHP provided loans in normal course of business to all the entities mentioned in C-56 to C-58 (of the Prima Facie Opinion). Therefore, provisions of AS-18 are not applicable to Auditee company and there is no question for the applicability of AS-18 in the present matter.
- 5.2 From the bare perusal of the Balance Sheet of M/s Shree Ganesh Buildtech India Private limited for FY 2018-19, it can be observed that the Respondent had disclosed the name of STHP as related party while discharging his professional duties because AS-18 is applicable to related party which is recipient of finances and whose main business does not stand for providing finance. Thus, accordingly the disclosure was made in the Balance Sheet of M/s Shree Ganesh Buildtech India Private limited for FY 2018-19, who received finance from STHP.
- 5.3 In the rejoinder, the Complainant has mentioned that the Respondent had made the related party disclosure in case of M/s Anant Buildcon Pvt Ltd in FY 2018-19 but not in 2019-20, in the Report of the Auditee. In this regard, it is clarified that the Auditee in F.Y. 2018-19 was not only the provider of finance but also the recipient of finance at many times. It is for this reason that, as a matter of abundant caution, the said disclosure was made. But in the subsequent year the Auditee had always remained the "provider of

finance" and therefore AS-18 did not apply for the FY 2019-20. Thus, even for these aforementioned companies, STHP did not fall within the scope of mandatory disclosure under AS-18, and the same situation applies to the aforementioned companies.

- 5.4 The basic issue which is required to be delved into is whether AS-18 is applicable on the Auditee or otherwise. Sadly, the issue which has actually been dealt with is whether the companies which were recipient of finance happened to be related parties or otherwise, which is wholly irrelevant to the matter at hand. Since the Company is an NBFC and a "provider of Finance" for the said companies, it did not fall within the ambit of AS-18 by virtue of the exceptions contained at Para 4 (c) (i) of AS-18. Thus, the disclosure of the alleged related parties was not done as a consistent practice was adopted in all past years. The said practice was also followed during the years that the Complainant's close relative (mother-Renu Agarwal) was a director in the alleged Company since past few decades up until 2018.
- 5.5 His audit involved the application of the principle of materiality and test checks as considered appropriate in accordance with the SAs and other relevant pronouncements in this regard. As part of his audit procedure, the Respondent carried out a review and walkthrough of the system and policies laid down by the Company with regards to its financial statements in accordance with the prevalent Regulations and Guidelines. During the course of audit, based on the audit plan, the Respondent also verified various documents provided by the company and other related supporting.
- 5.6 In the extant case, the Company being a closely held private limited company is a RBI Registered Non-Banking Finance Company having business of providing the Loans. The only source of income of the Company is through earning the Interest on the loans provided. The Company is providing the Loans under their normal course of business to the entities whether related or not even to the Complainant's family- owned companies also.
- 5.7 The Respondent brought on record a comprehensive list of borrowers, comprising particulars of both related and unrelated parties, of the Company as on 31.03.2019 and 31.03.2020, along with the rates of interest charged on the respective Loans extended duly certified by the Director of the Company. The only 2 loan Accounts who have been charged as 5% rate of interest are both unrelated parties, thus proving that in fact related parties have been charged higher rates of interest, and thus all transactions have been conducted at an arm's length.
- 5.8 The Respondent also attached Affidavits given by the Directors of the Company, stating on Oath, that providing of loans is the normal course of business for the company (NBFC), and the only source of income for the company is the interest earned therefrom.

SUBMISSION OF THE COMPLAINANT ON PRIMA FACIE OPINION: -

6. The Committee noted that the Complainant in his submissions dated 29.06.2023, 16.08.2024 and 06.09.2024, inter-alia, stated as under: -
- 6.1 The findings of the Director (Discipline) in respect of the allegations - the Respondent has been adjudged prima facie not Guilty are untenable and without any basis in either law

and/or facts of the case. The matter ought to be referred to the Board of Discipline for action against the Respondent, in accordance with law.

- 6.2 The Complainant is a Hindu Undivided Family (HUF) and is being managed by its Karta Mr. Anurag Agarwal. The Complainant is a shareholder of M/s Shivam Traders and Hire Purchase Pvt. Ltd. (hereinafter referred to as "STHP") a Non-Banking Financial Company.
- 6.3 Paragraph 10 of AS 18 states that a party is considered related if one party has the ability to control the other ability or exercise significant influence over the other party in making financial and/or operating decisions. Paragraph 3 of AS 18 relates to situations inter alia that one individual owning interest (directly or indirectly) in voting power of another enterprise that gives control or significant over enterprise and relatives of such individual.
- 6.4 There are two levels of disclosure mandated in Paragraph 21 and 23 of AS 18.
- (i) Paragraph 21 of AS 18 states that "Name of the related party and nature of the related party relationship where control exists should be disclosed irrespective of whether or not there have been transactions between the related parties". Paragraph 23 of AS 18 mandates disclosures of related party transactions such as finances loans etc.
- AS-18 clear states that:
- "21. Name of the related party and nature of the related party relationship where control exists should be disclosed irrespective of whether or not there have been transactions between the related parties.*
- 24. The following are examples of the related party transactions in respect of which disclosures may be made by a reporting enterprise:*
- (a) purchases or sales of goods (finished or unfinished);*
- (b) purchases or sales of fixed assets;*
- (c) rendering or receiving of services;*
- (d) agency arrangements;*
- (e) leasing or hire purchase arrangements;*
- (f) transfer of research and development;*
- (2) licence agreements;*
- (h) finance (including loans and equity contributions in cash or in kind);*
- (i) guarantees and collaterals; and*
- (j) management contracts including for deputation of employees."*

Thus, it is imperative to render the disclosures under AS-18 irrespective of provider or recipient of finance as alleged by the Respondent.

- 6.5 First, the Respondent is liable to disclose all the names of the related parties and nature of the related party relationship under Paragraph 21 of AS 18.
- 6.6 As such, the Respondent was liable to disclose all companies in which Ravi Shanker and his family members i.e. sons - Deependra Shanker and Himanshu Agarwal & wife -Smt. Usha Agarwal, are shareholders/directors and as such have the capacity to control financial and operational decisions. This requirement is independent of the existence of relation party transactions.

- 6.7 It is undisputed that Ravi Shanker and his family members i.e. sons - Deependra Shanker and Himanshu Agarwal & wife - Smt. Usha Agarwal control the enterprises.
- 6.8 There is no disclosure by the Respondent regarding the names of the related parties and nature of the related party relationship.
- 6.9 Paragraph 23 of AS 18 specifically sets out finance (loan) as an example of related party transaction.
- 6.10 The responsibility of the Respondent (and not the management of STHP) to take a considered view whether the relation party transactions does not require a disclosure in view of Paragraph 4(c)(i) of AS – 18. The management of the STHP cannot be permitted to decide upon applicability of Paragraph 4(c)(i) of AS – 18.
- 6.11 The Respondent has filed Ledgers to demonstrate that STHP is a provider of finance. However, the same ledgers also discloses that the same parties are also receivers of finance. Thus, there are both debit and credit entries in the Ledgers annexed by the Respondent. Thus, even if the argument of the Respondent is accepted, it is clear that related parties and related transactions were concealed.
- 6.12 It is the admitted case of the Respondent in its pleadings that the related party and related party transactions were omitted in the financial documents of the relevant period and were subsequently disclosed. Post the institution of the captioned Complaint, the Respondent has made partial disclosure of some of the related parties, which were deliberately omitted in the financial statements of STHP for the years 2018-19, 2019-20 and 2020-21.
- 6.13 The loans purportedly granted by STHP involve substantial amounts, occasionally exceeding 1 crore rupees. The Respondent has not provided any documentation or evidence regarding the policy and/or approvals governing these loan transactions, nor has the Respondent demonstrated that they were conducted in the ordinary course of business. The Respondent firm also did not account for the disparity in interest rates between related and unrelated parties, which ranges from 5% to a maximum of 13% as mentioned in the tabulation in accordance with the provisions of AS 18.
- 6.14 A bare perusal of the Financial Statements of the alleged Company for the financial years 2018-19, 2019-20, 2020-21 and 2021-22 reveals the number of related parties to whom loans have been advanced:

TABLE SHOWING NO. OF RELATED PARTIES TO WHOM LOANS HAVE BEEN ADVANCED (AS DISCLOSED BY THE RESPONDENT FIRM)			
2018-19	2019-20	2020-21	2021-22
N/A	N/A	N/A	15 entities/companies

The defence set up by the Respondent against the examples of non-disclosure given by the Complainant was that since STHP is a 'provider of finance' in the regular course of business and hence, Respondent has not disclosed the names of parties, namely,

- M/s Adinath Shelters Pvt. Ltd.
- M/s Aditya Ashiyana Pvt. Ltd.
- M/s Aradhana Dwellings Pvt. Ltd.
- M/s Bajrang Shelters Pvt. Ltd.

The Respondent has nowhere denied the entire list of other related companies brought on record by the Complainant.

- 6.15 As per the limited information available with the Complainant, the Respondent has not only made false assertions in respect to STHP being 'provider of finance' but also has deliberately manipulated the records of STHP which has been tabulated below:

RELATED PARTY TRANSACTIONS IN STHP IN THE FY 2018-19 NOT DISCLOSED BY THE RESPONDENT									
S. No.	Company Name	Name	Designation	STHP being Provider of Finance			STHP being Receiver of Finance		
				Date	Amount	Cheque No.	Date	Amount	Cheque No.
1.	Adinath Shelters Pvt. Ltd.	Meena Kumari	Director	17.05.2018	4,30,000	825564	Data Not Available	Data Not Available	Data Not Available
2.	Aditya Ashiyana Pvt. Ltd.	Deependra Shanker Agarwal	Son of Mr. Ravi Shanker is a Director	07.05.2018	80,00,000	825561	31.03.2018 reconciled on 02.04.2018	80,00,000	381542
3.	Aradhana Dwellings Pvt. Ltd.	Himanshu Agarwal	Son of Mr. Ravi Shanker is a Director	18.05.2018	80,00,000	825573	31.03.2018 reconciled on 02.04.2018	80,00,000	721727
							17.07.2018	50,00,000	721732
4.	Bajrang Shelters Pvt. Ltd.	Meena Kumari	Director	Data Not Available	3,35,000	Online Transfer	09.07.2018	6,50,000	722374
				Data Not Available	4,000	Online Transfer	09.07.2018	10,00,000	722375
							16.07.2018	8,45,000	381461
							17.07.2018	7,53,000	381462

The aforesaid table clearly demonstrates that STHP was not only the 'provider of finance' but also the 'recipient of finance' from M/s Aditya Ashiyana Pvt. Ltd., M/s Aradhana Dwellings Pvt. Ltd. and M/s Bajrang Shelters Pvt. Ltd. which have deliberately not been disclosed by the Respondent, in order to fabricate the books of accounts and file false information and report with respect to leverage ratio and net owned funds as required by the Reserve Bank of India.

- 6.16 In case of M/s Anant Buildcon Private Limited and Shree M/s Ganesh Buildtech India Private Limited – Balance Sheet for FY 2018-19 indicates that "STHP" is disclosed as related party.
- 6.17 It is evident that the shareholders and management – who have signed the Financial Statements are members of Sh. Ravi Shanker's branch of the family.
- 6.18 M/s Anant Buildcon Private Limited is detailed as a related party in the Balance Sheet of STHP for the year 2018-19 but not in Balance sheet for the year 2019-20. Whereas M/s

Shree Ganesh Buidtech India Private Limited is not detailed as related party in either of the Balance Sheets, despite the fact that STHP was both a recipient and provider of finance to M/s Shree Ganesh Buildtech India Private Limited in the FY 2018-19.

- 6.19 The Respondent has colluded with the management of STHP and companies under the ownership, control and management of Sh. Ravi Shanker and his family by manipulating the books of various other companies thereby trying to justify the illegal diversion of monies including that of the Complainant. As per the limited information available with the Complainant, the list of related companies and transactions deliberately concealed by the Respondent is enclosed.
- 6.20 STHP continues to illegally forge and fabricate documents to avoid its huge sums of liabilities which is evident from the bare perusal of the loans and advances mentioned in the Balance Sheets for the years ending 2018-19, 2019-20, 2020-21 and 2021-22 of STHP. The tabulated form of which is given below:

LOANS GIVEN BY STHP (AMOUNT IN CRORES)					
Type of Loan	18-19	19-20	20-21	21-22	Figure of 20-21 as per Balance Sheet of 21-22
Short-Term	33.72	67.99	<u>53.28</u>	10.92	<u>15.95</u>
Long-Term	NIL	NIL	NIL	42.78	<u>37.32</u>
LOANS RECEIVED BY STHP (AMOUNT IN CRORES)					
Short-Term	29.66	0.28	0.30	0.16	N/A
Long-Term	NIL	63.22	50.04	49.67	N/A

The preparation, audit, approval and attestation of forged, fabricated and ante-dated Financial Statements and Audit Report of STHP is evident from bare perusal of the figures of the short-term loans advanced in the FY 2020-21 from INR 53.28 Crores to INR 15.95 Crores as in FY 2021-22. The drastic decrease of INR 37.32 Crores in the short-term loans in FY 2021-22 is now being disclosed as long-term loans which were NIL in the FY 2020-21.

- 6.21 The apparent reason for non-disclosure of the related party transaction in respect of the amount given under the head of loans and advance to entities owned/controlled/managed by Mr. Ravi Shanker and his family members is that such amounts would reduce/offset the Net Owned Fund of STHP – with result that the net owned funds becoming negative and far below than the mandated requirement of RBI – which would be a violation of the condition for grant of license of NBFC granted to STHP by RBI and would result in its revocation.
- 6.22 The underlying motivation of the aforesaid modus operandi of STHP/Sh. Ravi Shanker/Respondent is that STHP can continue to operate as an NBFC without having to invest the required capital for the purpose of maintenance of net owned funds in order to deceive and defraud not only the shareholders of the Company but also the statutory regulators such as RBI, MCA, ROC, etc.

BRIEF FACTS OF THE PROCEEDINGS:-

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

S. No.	Particulars	Date(s) of meeting	Status
1.	1 st Hearing	09.06.2023	Part heard and adjourned.
2.	2 nd Hearing	25.07.2024	Part heard and adjourned.
3.	3 rd Hearing	20.08.2024	Concluded and Judgment Reserved.
4.	---	18.09.2024	Judgment Delivered.

- 7.1 On the day of the first hearing held on 9th June 2023, the Respondent and his counsel Mr. Sukhmeet Lamba, Advocate, were physically present at the ITO office, ICAI Bhawan, New Delhi. The Committee further noted that the Complainant and his Counsel Mrs. Aishwarya Doneria were present through video conferencing mode from their respective places. Both the parties were administered on Oath. Thereafter, the Committee enquired from the Respondent as to whether he was aware of the charges. On the same, the Respondent replied in the affirmative and pleaded Not Guilty to the charges levelled against him. Thereafter, looking into the fact that this was the first hearing, the Committee decided to adjourn the hearing to a future date. With this, the hearing in the matter was part heard and adjourned.
- 7.2 On the day of the second hearing held on 25th July 2024, the Committee noted that the Complainant and the Respondent along with their respective Counsel(s) were present before it. The Committee further noted that subsequent to the last hearing held in the case on 09th June 2023, there had been a change in the composition of the Committee which was duly intimated to the parties to the case who were present before the Committee.
- 7.2.1 On being asked by the Committee to substantiate their case, the Counsel for the Complainant referred to the contents of Complaint made in Form 'I' against the Respondent. The Committee asked the Counsel for the Complainant to restrict his arguments to the only charge wherein the Respondent was held prima facie guilty by the Director (Discipline) and the same had been accepted by the Committee. Accordingly, the Counsel for the Complainant made his further submissions in the case.
- 7.2.2 Subsequently, the Respondent presented his line of defence, inter-alia, reiterating that the Company under question was carrying NBFC business and no disclosure requirement was required as per Accounting Standard in the instant matter.
- 7.2.3 On consideration of the submissions and documents on record, the Committee posed certain questions to the Complainant and the Respondent which were responded to by them.
- 7.2.4 Thus, on consideration of the submissions and documents on record, the Committee directed the Complainant and the Respondent to provide the following within next 2 weeks with a copy to the other party to the case to provide their comments thereon, if any:

- (i) Written Submissions in support of their arguments with respect to the issue of AS-18-Related Party transactions.

With the above, the hearing in the case was part heard and adjourned.

- 7.3 On the day of the third hearing held on 20th August 2024, the Committee noted that the Complainant and the Respondent along with their respective Counsel(s) were present before it. The Committee further noted that the Respondent vide email dated 05th August 2024 and the Complainant vide email dated 16th August 2024 submitted their response. Thereafter, the Counsel for the Complainant and the Respondent made their respective submissions before the Committee.
- 7.3.1 On consideration of the submissions and documents on record, the Committee posed certain questions to the Complainant and the Respondent which were responded by them.
- 7.3.2 Thus, on consideration of the submissions and documents on record, the Committee directed the Respondent to provide the following within the next 10 days with a copy to the other party to the case to provide his comments thereon, if any: -
 - (i) Details of loans given by the alleged companies to related and unrelated parties during the Financial Year 2018-19 and 2019-20.
 - (ii) Details of the rate of interest charged and other terms and conditions (as per the loan agreement) on which the loans were given by the alleged companies to the related and unrelated parties.

With the above, the hearing in the case was concluded. However, the decision on the conduct of the Respondent was kept reserved by the Committee.

- 7.4 Thereafter, at its meeting held on 18th September 2024, the Committee noted that the Respondent vide email dated 28th August 2024 had made his submissions on which the Complainant vide email dated 06th September 2024 filed his counter submissions.

Thus, the Committee based on the facts, documents and oral and written submissions on record, passed its judgment in the captioned matter.

FINDINGS OF THE COMMITTEE: -

- 8.1 At the outset, the Committee noted that the Complainant during hearing had made submissions on those charges also for which the Respondent had been held not guilty at the Prima Facie stage itself. In this regard, the Committee held that since the Committee had already arrived at its decision in respect of the said charges as pointed out in Para 2 read with Para 3.4 above and there is no provision under the Chartered Accountants Act 1949 and the Rules framed thereunder to review/revise the decision arrived at by the Disciplinary Committee, the said submissions of the Complainant are not taken into view by the Committee while examining the conduct of the Respondent.
- 8.2 Thereafter, the Committee noted that with respect to the charge that the Company has not made disclosures as per Accounting Standard -18 on related party transactions in its

Notes to Accounts to financial statements for the year ending 31st March 2019 and 31st March 2020 respectively, the Complainant primarily brought on record the following documents in support of his claims for non-disclosure of Related Party Transactions: -

- (a) Copy of Balance Sheet of Anant Buildcon Private Limited,
- (b) Copy of Balance Sheet of Shree Ganesh Buildtech India Private Limited
- (c) Copy of master data and shareholding of some other Companies.
- (d) list of related parties.

- 8.3 The Committee noted that the Respondent in his defence stated that the Company has made relevant disclosures in accordance with Accounting Standard-18 regarding its related party transactions. Further, since the Company is an NBFC and a "provider of Finance" to the said companies i.e. Anant Buildcon Private Limited and Shree Ganesh Buildtech India Private Limited, it did not fall within the ambit of Accounting Standard-18 by virtue of the exceptions contained at Para 4 (c) (i) of Accounting Standard-18. Thus, the disclosure of the alleged related parties was not done as a consistent practice was adopted in all past years.
- 8.4 In this regard, the Committee noted that as per Accounting Standard -18 "Related Party Disclosures" following persons are regarded as related parties for which relevant disclosures are required to be made: -

Para 3. This Standard deals only with related party relationships described in (a) to (e) below:

- (a) enterprises that directly, or indirectly through one or more intermediaries, control, or are controlled by, or are under common control with, the reporting enterprise (this includes holding companies, subsidiaries and fellow subsidiaries);*
- (b) associates and joint ventures of the reporting enterprise and the investing party or venturer in respect of which the reporting enterprise is an associate or a joint venture;*
- (c) individuals owning, directly or indirectly, an interest in the voting power of the reporting enterprise that gives them control or significant influence over the enterprise, and relatives of any such individual;*
- (d) key management personnel and relatives of such personnel; and*
- (e) enterprises over which any person described in (c) or (d) is able to exercise significant influence. This includes enterprises owned by directors or major shareholders of the reporting enterprise and enterprises that have a member of key management in common with the reporting enterprise.*

Further, as per Para 4 of Accounting Standard 18, the following are deemed not to be related parties:

- (a) two companies simply because they have a director in common, notwithstanding para 3(d) or (e) above (unless the director is able to affect the policies of both companies in their mutual dealings);*
- (b) a single customer, supplier, franchiser, distributor, or general agent with whom an enterprise transacts a significant volume of business merely by virtue of the resulting economic dependence; and*

(c) the parties listed below, in the course of their normal dealings with an enterprise by virtue only of those dealings (although they may circumscribe the freedom of action of the enterprise or participate in its decision-making process): (i) providers of finance;
(ii) trade unions;
(iii) public utilities;
(iv) government departments and government agencies including government sponsored bodies.

- 8.5 The Committee noted that it is an admitted fact by the Respondent that Shree Ganesh Buildtech India Private Limited and Anant Buildcon Private Limited are the related parties of the alleged Company.
- 8.6 The Committee on perusal of the copy of Balance Sheet of Anant Buildcon Private Limited and Shree Ganesh Buildtech India Private Limited for the financial year 2018-19 noted that the alleged Company is shown as Related party in Notes to Accounts to financial statements of the said Companies as stated hereunder:

(a) Anant Buildcon Private Limited

Note 20: Being part of Notes on Accounts
Related party disclosures, as required in terms of Accounting Standard (AS) 18 are given below:

C) Associate Companies owned by Directors or Major Shareholders:
i. **Shivam Traders & Hire Purchases Pvt. Ltd.** (emphasis provided)

Note: Related party relationships are as identified by the Company and relied upon by the Auditors.

Notes Annexed to and forming part of the Balance Sheet

(b) Shree Ganesh Buildtech India Private Limited :

Note 20: Being part of Notes on Accounts
Related party disclosures, as required in terms of Accounting Standard (AS) 18 are given below:

C) Associate Body Corporate

i. **M/s Shivam Traders & Hire Purchases Pvt. Ltd.** (emphasis provided)

Note: Related party relationships are as identified by the Company and relied upon by the Auditors.

Transactions carried out with related parties referred to above in ordinary course of business.

Nature of Transaction	Individual with Control	Relatives of Key Managerial Personnel	Associate Companies owned by Director/major shareholders	TOTAL
1) Loans Received	NIL	NIL	2,933,000	2,933,000
2) Loans Refunded	NIL	NIL	1,420,000	1,420,000
3) Director Remuneration	NIL	NIL	NIL	NIL
4) Payment of Interest	NIL	NIL	103,234	103,234
TOTAL	NIL	NIL	4,456,234	4,456,234

Nature of Transaction	Individual with Control	Relatives of Key Managerial Personnel	Associate Companies owned by Director/major shareholders	TOTAL
1) Loans Received	NIL	NIL	3,802,000	3,802,000
2) Loans Refunded	NIL	NIL	605,000	605,000
3) Interest Paid	NIL	NIL	862,713	862,713
TOTAL	NIL	NIL	5,269,713	5,269,713

- 8.7 However, the alleged Company reflected the name of only Anant Buildcon Pvt. Ltd. as a related party in its Notes to Accounts to financial statements for the financial year 2018-19 without reflecting the complete nature of transactions carried out with it as stated hereunder:

"Note 23: Being part of Notes on Accounts

Related Party disclosures, as required in terms of Accounting Standard (AS) 18 are given below:

(c) Associate Body Corporate

- i. Anant Buildcon Pvt. Ltd.
- ii. Madhusudan Motors Pvt. Ltd.
- iii. Madhusudan Vehicles Pvt. Ltd.
- iv. Mukund Sales Pvt. Ltd.
- v. Shanker City Planner Pvt. Ltd.
- vi. Shyamak Builders Pvt. Ltd.
- vii. Dwarika Infrabuildtech Pvt. Ltd.

Note: Related Party relationships are as identified by the Company and relied upon by the Auditors.

Transactions carried out with related parties referred to above in ordinary course of business:

Nature of Transaction	Individual with Control	Relatives of Key Managerial Personnel	Associate Companies owned by Director/major shareholders	TOTAL
1) Loans Received	48,110,004	118,579,012	577,036,000	743,725,016
2) Loans Refunded	31,953,000	147,221,206	640,269,966	819,444,172
3) Payment of Interest				
	3,429,771	16,862,919	37,877,713	58,170,403
TOTAL	83,492,775	282,663,137	1,255,183,679	1,621,339,591

- 8.8 Further, the alleged Company did not reflect the name of aforesaid two Companies i.e. Shree Ganesh Buildtech India Private Limited and Anant Buildcon Private Limited as a related party in its Notes to Accounts to financial statements for the financial year 2019-20 as stated hereunder:

"Note 23: Being part of Notes on Accounts

Related party disclosures, as required in terms of Accounting Standard (AS) 18 are given below:

C) Associates Body Corporate

- i. Dwarika Infrabuildtech Pvt. Ltd.
- ii. Madhusudan Motors Pvt. Ltd.
- iii. Madhusudan Vehicles Pvt. Ltd.
- iv. Mukund Sales Pvt. Ltd.
- v. Jatin Builders Pvt. Ltd.
- vi. Shyamak Builders Pvt. Ltd.
- vii. —

"Note: Related party relationship are as identified by the Company and relied upon by Auditors:

Transactions carried out with related parties related to above in ordinary course of business:

S.No.	Name	Relation	Loan Received	Loan Refunded	Interest Paid	Salary
1	Meena Kumari	Director	4,160,000.00	25,778,736.00	987,363.00	0.00
2	Ravi Shankar	Director	9,439,230.00	22,581,000.00	0.00	600,000.00
3	Usha Agarwal	Wife of Director	13,080,000.00	3,593,026.00	220,264.00	0.00
4	Anju Agarwal	Daughter in law of Director	0.00	401,497.00	214,973.00	0.00
5	Anurag Agarwal	Grandson of Director	0.00	49,365.00	93,646.00	0.00
6	Anurag Agarwal HUF	Karta is Grandson of Director	0.00	3,320,939.00	99,391.00	0.00
7	Mudit Shankar Agarwal	Grandson of Director	6,970,000.00	657,583.00	475,832.00	0.00
8	Deependra Shanker Agarwal	Son of Director	21,715,000.00	45,156,435.00	1,554,352.00	0.00
9	Deependra Shanker Agarwal HUF	Karta is Son of Director	150,000.00	334,812.00	28,119.00	0.00

10	Harsha Prasari Daya Shanker	Karta is Director	0.00	180,481.00	301,811.00	0.00
11	Himanshu Agarwal HUF	Karta is Granson of Director	0.00	156,010.00	160,096.00	0.00
12	Mudit Shankar Agarwal HUF	Karta is Son of Director	0.00	226,837.00	518,366.00	0.00
13	Nidhi Agarwal	Grand Daughter in Law of Director	0.00	29,890.00	238,904.00	0.00
14	Pansari Agarwal	Daughter in law of Director	4,510,000.00	303,716.00	297,160.00	0.00
15	Rachi Agarwal	Grand Daughter in law of Director	0.00	130,657.00	206,571.00	0.00
16	Rachi Agarwal HUF	Karta is GrandSon of Director	0.00	21,126.00	101,261.00	0.00
17	Rajeev Aggarwal & Sons	Karta is Son of Director	0.00	1,640,000.00	0.00	0.00
18	Rajeev Gupta	Son of Director	16,220,000.00	19,595,401.00	754,013.00	0.00
19	Rama Shanker Agarwal	Son of Director	100,000.00	918,446.00	84,456.00	0.00
20	Rama Shanker & Sons	Karta is Son of Director	0.00	2,792,764.00	137,643.00	0.00
21	Madhusudan Automobiles	Director is partner	65,753,581.00	10,200,367.00	4,503,671.00	0.00
22	Ravi Shanker & Sons	Karta is Director	0.00	325,876.00	58,758.00	0.00
23	Shruti Agarwal	Grand Daughter in Law of	2,140,000.00	67,525.00	175,245.00	0.00

		Director				
24	Renu Agarwal	Daughter in Law of Director	0.00	20,501.00	205,011.00	0.00
25	Vasudha Agarwal	Daughter in Law of Director	32,000,000.00	21,913,449.00	774,492.00	0.00
26	Rachit Agarwal	Grandson of Director	0.00	100,821.00	8,214.00	0.00
27	Radha Krishna Builders	Director of Partner	18,960,000.00	22,505,484.00	6,184,842.00	0.00
28	Dwarka Infrabuilttech Pvt. Ltd.	Associate Body Corporate	964,883.00	6,616,000.00	0.00	0.00
29	Madhusudan Motors Pvt Ltd.	Associate Body Corporate	167,844,853.00	36,914,832.00	13,708,322.00	0.00
30	Madhusudan Vehicles Pvt Ltd.	Associate Body Corporate	203,624,335.00	27,634,261.00	14,032,605.00	0.00
31	Mukund Sales Pvt Ltd	Associate Body Corporate	159,000.00	1,142,809.00	828,089.00	0.00
32	Jatin Builders Pvt. Ltd	Associate Body Corporate	4,940,000.00	1,475,000.00	0.00	0.00
33	Shyamak Builders Pvt ltd	Associate Body Corporate	0.00	75,000.00	0.00	0.00
34	Shree Balaji Ashiyana Pvt. Ltd	Associate Body Corporate	10,500,000.00	11,333,627.00	63,965.00	0.00
	Total		583,330,882.00	268,594,273.00	47,117,435.00	600,000.00

8.9 The Committee also noted that the Respondent was not only the statutory Auditor of the alleged Company but both of these Companies i.e. Shree Ganesh Buildtech India Private Limited and Anant Buildcon Private Limited for the Financial Year 2018-19 which had shown the alleged Company as its related party.

- 8.10 Further, from the copy of master data and shareholding of some other Companies namely Adinath Shelters Private Limited, Aditya Ashiyana Private Limited, etc. as submitted by the Complainant, it is evident that the alleged Company (STHP) can control the policies of the said Companies and hence the alleged Company (STHP) and the said Companies are related parties, the disclosure of which is required under Notes to Accounts to financial statements. However, it is seen from Note 23 of Notes to Accounts forming part of Balance Sheet for the financial year 2018-19 and 2019-20 of the subject Company, the names of these Companies are not appearing under related party disclosures.
- 8.11 However, as per the Respondent, since the Company is an NBFC and a "provider of Finance" for the said companies, it did not fall within the ambit of Accounting Standard-18 by virtue of the exceptions contained at Para 4 (c) (i) of Accounting Standard-18.
- 8.12 In this regard, the Committee took into view the Non-Banking Financial Company – Non-Systemically Important Non-Deposit taking Company (Reserve Bank) Directions, 2016 dated 1st September 2016 which under Chapter IV – Prudential Regulations of Section II – Prudential Issues provides as under:

"9. Accounting standards

NBFCs that are required to implement Indian Accounting Standards (Ind AS) as per the Companies (Indian Accounting Standards) Rules, 2015 shall prepare their financial statements in accordance with Ind AS notified by the Government of India and shall comply with the regulatory guidance specified in Annex XX of these Directions. Disclosure requirements for notes to accounts specified in these directions shall continue to apply. Other NBFCs shall comply with the requirements of notified Accounting Standards (AS) insofar as they are not inconsistent with any of these directions."

- 8.13 The Committee was of the view that para 3 and 4 of the Accounting Standard - 18 are exclusive to each other. Once the related party relationship is established in view of the provisions of para 3 of the Accounting Standard -18, the reporting enterprise has to follow the following disclosure requirement of Accounting Standard -18:

"21. Name of a related party and nature of a related party relationship where control exists should be disclosed irrespective of whether or not they have been transactions between the related parties."

"23. If there have been transactions between related parties during the existence of a related party relationship, the reporting enterprise should disclose the following: -

- i. name of the transacting related party,***
- ii. description of the relationship between the parties,***
- iii. description of the nature of the transactions,***
- iv. Volume of the transactions, either as an amount or as an appropriate proportion;***
- v. any other elements of the related party transactions necessary for an understanding of the financial statements;***

- vi. *the amounts or appropriate proportions of outstanding items pertaining to related parties at the balance sheet date and provisions for doubtful debts due from such parties at that date; and*
- vii. *amounts written off or written back in the period in respect of debts due from or to related parties."*

8.14 Further para 24 of Accounting Standard 18 – Related Party Disclosures also provides as under:

"24. The following are examples of the related party transactions in respect of which disclosures may be made by a reporting enterprise:
(a) purchases or sales of goods (finished or unfinished);
(b) purchases or sales of fixed assets;
(c) rendering or receiving of services;
(d) agency arrangements;
(e) leasing or hire purchase arrangements;
(f) transfer of research and development;
(g) licence agreements;
(h) finance (including loans and equity contributions in cash or in kind);
(i) guarantees and collaterals; and
(j) management contracts including for deputation of employees."

8.15 Thus, the Committee was of the view that complete disclosure of related party transactions in Notes to Accounts as per Accounting Standard-18 ought to have been there. In case there was a variance as being claimed by the Respondent, the same ought to have been reported by the Respondent in his audit report.

8.16 The Committee also noted that as per the requirements of SA 550, Related parties, the following is required:

"Responsibilities of the Auditor

3. Because related parties are not independent of each other, many financial reporting frameworks establish specific accounting and disclosure requirements for related party relationships, transactions and balances to enable users of the financial statements to understand their nature and actual or potential effects on the financial statements. Where the applicable financial reporting framework establishes such requirements, the auditor has a responsibility to perform audit procedures to identify, assess and respond to the risks of material misstatement arising from the entity's failure to appropriately account for or disclose related party relationships, transactions or balances in accordance with the requirements of the framework.

4. Even if the applicable financial reporting framework establishes minimal or no related party requirements, the auditor nevertheless needs to obtain an understanding of the entity's related party relationships and transactions sufficient to be able to conclude whether the financial statements, insofar as they are affected by those relationships and transactions: (Ref: Para. A1)

(a) Achieve a true and fair presentation (for fair presentation frameworks); or (Ref: Para. A2)

(b) Are not misleading (for compliance frameworks). (Ref: Para. A3)

5. In addition, an understanding of the entity's related party relationships and transactions is relevant to the auditor's evaluation of whether one or more fraud risk factors are present as required by SA 2404 because fraud may be more easily committed through related parties.

*13. The auditor shall inquire of management regarding:

(a) The identity of the entity's related parties, including changes from the prior period; (Ref: Para. A11-A14)

(b) The nature of the relationships between the entity and these related parties; and

(c) Whether the entity entered into any transactions with these related parties during the period and, if so, the type and purpose of the transactions."

- 8.17 From the above-mentioned requirements, it is clear that it is the duty of the auditor to see whether related party relationships and transactions have been appropriately identified, accounted for and disclosed in the financial statements in accordance with the framework. The Committee noted that in the Notes to Accounts to the Financial Statements of the alleged Company for the Financial Year 2018-19 and 2019-20, the following comment had been specifically provided:

"Note: Related Party relationships are as identified by the Company and relied upon by the Auditors."

Thus, it is clear that the Respondent has merely relied upon the management explanation and did not apply his judgment while reporting about the compliance of Accounting Standard-18 with respect to related party disclosures.

- 8.18 In view of the above, the Committee was of the view that due diligence has not been exercised by the Respondent while reporting on the compliance of Accounting Standard 18 with respect to related party disclosures in the Audit Report for the Financial Year 2018-19 and 2019-20. Accordingly, the Committee held the Respondent **GUILTY of Professional Misconduct** falling within the meaning of Item (7) of Part I of the Second Schedule to the Chartered Accountants Act, 1949.

- 8.19 The Committee also noted that the Complainant had filed a Writ Petition bearing no. WP(C) 9311/2021 & CM APPL. 38134/2024 before the Honorable High Court of Delhi for expeditious disposal of the proceedings in the instant case in a time bound manner wherein the Honorable High Court of Delhi vide its Order dated 10th July 2024 disposed off the Writ Petition binding the Disciplinary Directorate and the Disciplinary Committee of the Institute of Chartered Accountants of India to adjudicate the proceedings within a period of six months from the date of the Order.

CONCLUSION:

9. 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 as given above. (specified at S.no. 3 of the said para)	Paras 8.1 to 8.18 as given above.	GUILTY - Item (7) of Part I of the Second 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 Misconduct falling within the meaning of Item (7) of Part-I of the Second Schedule to the Chartered Accountants Act, 1949.

sd/-
(MRS. RANI S. NAIR, I.R.S. RETD.)
PRESIDING OFFICER AND GOVERNMENT NOMINEE

sd/-
(MR. ARUN KUMAR, I.A.S., RETD.)
GOVERNMENT NOMINEE

sd/-
(CA. COTHA S SRINIVAS)
MEMBER

DATE: 19th November, 2024
PLACE: NEW DELHI

प्रमाणित सत्य प्रतिलिपि / Certified True Copy

Anju Grover

अंजू ग्रोवर / ANJU GROVER
सहायक सचिव / Assistant Secretary
अनुशासनात्मक विभाग / Disciplinary Directorate
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