



भारतीय सनदी लेखाकार संस्थान  
(संसदीय अधिनियम द्वारा स्थापित)

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

PR/G/355/2022/DD/232/2022/DC/1724/2023

[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/G/355/2022/DD/232/2022/DC/1724/2023]

In the matter of:

**Shri Mukesh Kumar Soni,**  
**Registrar of Companies, Madhya Pradesh, Gwalior**  
**Ministry of Corporate Affairs,**  
Office of the Corporate Affairs,  
Office of the Registrar of Companies,  
Sanjay Complex, A Block, 3rd Floor,  
Jayendraganj,  
Gwalior – 474 009.

.....Complainant

**Versus**

**CA. Pawan Kumar Jain (M. No.433700),**  
**M/s. Pawan Jain & Co.,**  
139 Prima Trade Centre,  
14, Sikh Mohalla,  
Indore  
Madhya Pradesh– 452 001.

.....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 : 16<sup>th</sup> December 2024**

**Date of Order : 21<sup>st</sup> 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, the Disciplinary Committee was, inter-alia, of the opinion that **CA. Pawan Kumar Jain (M. No.433700), Indore** (hereinafter referred to as the 'Respondent') is **GUILTY** of



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Professional Misconduct falling within the meaning of Item (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 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 16<sup>th</sup> December 2024.
3. The Committee noted that on the date of the hearing held on 16<sup>th</sup> December 2024, the Respondent was present through Video Conferencing and made his verbal representation on the Findings of the Disciplinary Committee, inter-alia, reiterating his submissions dated 11<sup>th</sup> December 2024 and further requested for a lenient and compassionate view in this case.
4. The Committee also noted that the Respondent in his written representation dated 11<sup>th</sup> December 2024 on the Findings of the Committee, inter-alia, stated as under: -
  - (a) The errors in the financial statements, which he acknowledged during the Committee hearing, were entirely inadvertent and occurred without any malafide intent.
  - (b) These unintentional mistakes did not result in any default of public funds or liabilities.
  - (c) A review of the audited financial statements confirms that no borrowings from financial institutions or similar entities were recorded during the relevant audit period.
  - (d) These mistakes occurred during the initial years of Respondent's practice (the Respondent is a member of ICAI since 21st September 2016 and holding Certificate of Practice since 4<sup>th</sup> Jan 2017).
  - (e) Since then, he has made every effort to enhance his knowledge and improve his professional practices.
  - (f) The Respondent has fully cooperated throughout these proceedings and accepted the errors made, which were purely accidental and devoid of any malafide intention.
  - (g) The Respondent undertook to remain vigilant in the future and to discharge his professional responsibilities with the highest degree of diligence, adhering strictly to the auditing standards and Statutory requirements.
5. 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.
6. Keeping in view the facts and circumstances of the case, material on record including verbal and written representation on the Findings, the Committee in respect of the following charge(s) was of the following view:
  - (a) First Charge: The Committee viewed that the figures of debentures issued as provided in the Audit Report for the FY 2016-17 and 2017-18 are not corroborated with the figures stated in the Financial Statements of the Company audited by the Respondent. As per the provisions of Section 143 of the Companies Act 2013, the



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auditor should seek and obtain all the information and explanations which to the best of his knowledge and belief are necessary for the purpose of his audit, and if not the details and effect of such information on the financial statements must be mentioned. In the instant case, the Respondent copied the standard remark / comments from the previous year's audit reports and failed to verify the amount independently with the total value of Debentures as mentioned in the Register of Debentures. Thus, the Committee held that the Respondent was casual while carrying out the audit of the Company for the Financial Years 2016-17 and 2017-18.

- (b) Second Charge: The Committee viewed that contradictory information was stated by the Respondent in Annexure to the Auditor's report that the Company does not own any fixed assets despite the fact that the Company was having fixed assets on which depreciation has also been charged and the same was duly reflected in the financial statement audited by him. The said act of the Respondent clearly indicates that the Respondent adopted a casual approach while signing the audit report. Moreover, the Respondent in his written submissions as well as during the course of hearing on 18<sup>th</sup> June 2024 accepted his mistake.
- (c) Third Charge: The Complainant contended that since the debentures were not secured by the charge on immovable asset of the Company, the number of debentures so issued by the Company must be considered as deposits in terms of the requirement of provision of Acceptance of Deposit Rules 2014. The Committee noted that although the Respondent brought on record the copy of Certificate of Registration of mortgage according to which charge of Rs. 1000,00,00,000/- (One Thousand Crore) had been registered on the assets of the Company on 14<sup>th</sup> March 2012. However, as on 31<sup>st</sup> March 2017, the Company was having outstanding debenture of Rs.29.10 crores but the amount of total assets was only Rs.10.01 crore and thus, the total assets of the Company was not sufficient to cover the amount of outstanding debenture as on 31.03.2017. The Committee further noted that there was no asset charged/ mortgaged as security for the repayment of the debentures. However, Rs. 1000 crore charge was created at the time of issue of debentures though the Company's net-worth was only Rs 5 lakh at that time. Hence, in view of the requirement of Acceptance of Deposit Rules, 2014, the amount so collected, which was not fully secured, falls within the meaning of Deposits in terms of the requirements of Rule 2(c)(ix) of the Acceptance of Deposits Rules, 2014. Accordingly, the amount of debentures so outstanding as on 31.03.2017 should have been treated as deposits in terms of the requirement of Rule 2(c)(ix) which the Respondent as auditor failed to point out in his audit report. Moreover, the Respondent during the course of hearing held on 18<sup>th</sup> June 2024 accepted his mistake.

6.1 Hence, professional misconduct on the part of the Respondent is clearly established as spelt out in the Committee's Findings dated 25<sup>th</sup> November 2024 which is to be read in consonance with the instant Order being passed in the case.

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7. 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.
8. Thus, the Committee ordered that CA. Pawan Kumar Jain (M.No.433700), Indore be Reprimanded and also a Fine of Rs. 50,000/- (Rupees Fifty Thousand only) be imposed upon him payable within a period of 60 days from the date of receipt of the Order.

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/-  
(SANJAY KUMAR AGARWAL)  
MEMBER

Sd/-  
(CA. COTHA S SRINIVAS)  
MEMBER

सही प्रतिलिपि होने के लिए प्रमाणित  
Certified to be true copy

सीए श्रुति वर्मा / CA. Shruti Garg  
सहायक निदेशक / Assistant Director  
अनुशासनात्मक निदेशालय / Disciplinary Directorate  
इंस्टिट्यूट ऑफ चार्टर्ड एकाउंटेंट्स ऑफ इंडिया  
The Institute of Chartered Accountants of India  
आइसीएआई भवन, विवला नगर शाखा, दिल्ली-110032  
ICAI Bhawan, Vasant Vihar, New Delhi-110032

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/G/355/2022/DD/232/2022/DC/1724/2023**

**In the matter of:**

**Shri Mukesh Kumar Soni,  
Registrar of Companies, Madhya Pradesh, Gwalior  
Ministry of Corporate Affairs,  
Office of the Corporate Affairs,  
Office of the Registrar of Companies,  
Sanjay Complex, A Block, 3rd Floor,  
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139 Prima Trade Centre,  
14, Sikh Mohalla,  
Indore  
Madhya Pradesh– 452 001.**

**.....Respondent**

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

**DATE OF FINAL HEARING : 25<sup>th</sup> July, 2024  
DATE OF DECISION TAKEN : 18<sup>th</sup> September, 2024**

**Parties Present: -**

**Authorized Representative of the Complainant Department: Ms. Sukriti, Company Prosecutor,  
Registrar of Companies, Madhya Pradesh, Gwalior (Through VC)  
Respondent: CA. Pawan Kumar Jain (M. No. 433700) (Through VC)**

**BACKGROUND OF THE CASE:**

1. It is stated by the Complainant Department that during investigation, it was observed that the Respondent was the auditor of M/s. Option One Industries Limited (hereinafter referred to as 'Company') for the Financial Years 2016-17 and 2017-18. The Complainant Department raised allegations in respect of audit conducted by the Respondent which have been referred to in para no.8.4.3 of the Investigation report.

**CHARGES IN BRIEF:**

- 2 The Respondent mentioned in his audit report for the Financial Years 2016-17 and 2017-18 that the Company has issued total debentures of Rs.3,52,51,000/- Out of which debenture of Rs.3,50,51,000/- were issued to M/s. Option One Trade and Mercantile Private Limited and rest of Rs.2,52,100/- were issued to others without doing any compliances. However, the Company has mentioned the value of debenture in the Balance Sheet for Financial Years 2016-17 and 2017-18 at Rs. 29,10,06,285/- and Rs 0.00 respectively. The auditor's report for the years 2016-17 and 2017-18 mentioned the same figure for the previous year and it does not speak of the legality of the debentures issued in the current year. Therefore, the Respondent has allegedly violated the provision of Section 143 of the Companies Act 2013. The Company has issued the debentures till 2014-15 and redeemed all the debentures in F.Y. 2017-18.
- 2.1 The Respondent has stated every year in the annexure to the auditor's reports (2012-13 to 2017-18) that the Company does not own any fixed assets, but the balance sheet reflects the fixed assets on which depreciation has been charged. The notes on accounts also give the mode of valuing assets.
- 2.2 The Respondent as auditor falsely stated that the Company has not accepted any deposits whereas the Company had issued secured debentures which were not secured by any immovable assets and accordingly, the same falls within the ambit of deposits. Therefore, it was alleged that the Company has collected Deposits in the grab of Secured Redeemable debentures.

**THE RELEVANT ISSUES DISCUSSED IN THE PRIMA FACIE OPINION DATED 20<sup>th</sup> DECEMBER 2022 FORMULATED BY THE DIRECTOR (DISCIPLINE) IN THE MATTER IN BRIEF, ARE GIVEN BELOW:**

3. As regards the First allegation, on perusal of information and documents on record, it was noted that the Respondent in his audit report for Financial Years 2016-17 and 2017-18 in point no. 7 mentioned as under:

*"Auditor had found in the previous year that Company had issued total debenture of Rs. 3,52,51,000 out of which debenture of Rs. 3,50,00,000 issued to Option one Trade and Mercantile Private Limited and rest of Rs. 2,52,100 to others without doing any compliances."*

However, on perusal of Financial Statements of the Company for FYs 2016-17 and 2017-18 brought on record by the Respondent, it was noted that the value of debentures was of Rs. 29,10,06,285/- as on 31.03.2017 and Rs 0 00 as on 31 03 2018

- 3.1 From the above information, it was viewed that contradictory information was stated by the Respondent in the Financial Statements audited by him and the audit reports signed for the financial years 2016-17 and 2017-18. Moreover, the Respondent in his Written Statement admitted that the remarks / comments made by him with regard to the issuance of debentures in his audit report was copied from earlier year's report and the word "previous year" was to be replaced with that particular current period. Thus, it is viewed that the Respondent has himself accepted the fact of misstatement in his audit report.
- 3.2 It is further noted that as per the provisions of Section 143 of Companies Act 2013, the auditor should seek and obtain all the information and explanations which to the best of his knowledge and belief are necessary for the purpose of his audit, otherwise the details and the effect of such information on the financial statements must be mentioned. In the instant case, the Respondent had copied the standard remark / comments from the previous year's audit reports and failed to verify the amount independently with the total value of Debentures as mentioned in the Register of

Debentures. It was also noted that the amount of difference was material when compared with the size of the Balance Sheets and the same makes the entire financial statements misleading. Thus, the submissions of the Respondent claiming it to be as mere typo error, was not acceptable. Further, the Respondent also accepted that he in his audit report incorrectly mentioned the year of issuance of debenture as "Previous year" instead of "Particular period of issuance".

- 3.3 As regards the second allegation, on perusal of the audit report available on record for the financial years 2016-17 and 2017-18, it was noted that the Respondent mentioned the following: -

*"1) Fixed Assets: (a) The Company has maintained proper records showing full particulars, including quantitative details and situation of fixed assets- NA*

*(b) The Fixed Assets have been physically verified by the management in a phased manner, designed to cover all the items over a period of three years, which in our opinion, is reasonable having regard to the size of the Company and nature of its business. Pursuant to the program, a portion of the fixed assets has been physically verified by the management during the year and no material discrepancies between the book's records and the physical fixed assets have been noticed- NA*

*(c) The title deeds of immovable properties are held in the name of the Company- NA*

**The Company does not own any fixed assets hence the not applicable"**

- 3.4 From the above information, it was noted that the Respondent mentioned in his audit report that the Company does not have any fixed assets however, on perusal of Financial Statements as on 31.03.2017 and 31.03.2018, the amount of fixed assets of Rs. 4,95,939 and Rs. 3,81,308 respectively were appearing in the same. Hence, it was viewed that contradictory information was stated by the Respondent in his audit report in spite of the fact that the Company was having fixed assets and the same was duly reflected in the financial statement audited by him. The said act of the Respondent clearly indicates that the Respondent has adopted a casual approach while signing the audit report. Though the amount of fixed assets was not material yet keeping in view the repetitive nature of mistake, benefit cannot be granted to the Respondent in respect of above allegation. Moreover, the Respondent in his written statement has also accepted his mistake.

- 3.5 As regards the third allegation, on perusal of audit reports for the Financial Years 2016-17 and 2017-18, the Respondent has mentioned the following in point no. 5 of his audit report: -

*"The Company has not accepted any deposits from the public and hence the directives issued by the Reserve Bank of India and the provisions of Section 73 to 76 or any other relevant provisions of the Act and the Companies (Acceptance of Deposit) Rules 2015 with regard to the deposits accepted from the public are not applicable."*

It was observed that the Complainant contended that since the debentures were not secured by the charge on immovable asset of the Company, the amount of debentures issued by the Company must be considered as deposits in terms of the requirement of provision of Acceptance of Deposit Rules 2014.

- 3.6 In respect of above contention of the Complainant, on perusal of provision of Acceptance of Deposit Rules 2014 the following is noted: -

*"2 (c) "deposit" includes any receipt of money by way of deposit or loan or in any other form, by a Company, but does not include-*

*(ix) any amount raised by the issue of bonds or debentures secured by a first charge or a charge ranking pari passu with the first charge or any assets referred to in Schedule III of the Act excluding intangible assets of the Company or bonds or debentures compulsorily convertible into shares of the Company within five years."*

- 3.7 From the above information, it was noted that the issue of debentures must be secured by a charge or a charge ranking pari passu with the first charge or any assets referred to Schedule III of the Companies Act, 2013 excluding the intangible assets of the Company or bonds or debentures which are compulsorily convertible into shares within five years. In the instant case, although the Respondent brought on record the copy of Certificate of registration of mortgage and on perusal of the same, it is noted that the charge of Rs.10,000,000,000 (One Thousand Crore) has been registered on 14.03.2012. However, it is observed that though the charge of one thousand crore rupees was created on assets of the Company, yet the Company does not appear to have assets of Rupees one thousand crore. Moreover, as on 31.03.2017, the Company was having outstanding debenture of Rs.29.10 crores but the amount of total assets was only Rs.10.01 crore and the total amount of assets was not sufficient to cover the amount of outstanding debenture as on 31.03.2017.
- 3.8 In view of the above facts, it cannot be stated that the charge was not created on the debentures, however, it is noted that the assets of the Company was not sufficient to cover the amount of charge / outstanding of the debenture. Hence, in view of the above requirement of Acceptance of Deposit Rules, 2014, the amount so collected, which was not fully secured, falls within the meaning of Deposits in terms of the requirements of Rule 2(c)(ix) of the Acceptance of Deposits Rules, 2014. Accordingly, it appears that the amount of debentures outstanding as on 31.03.2017 should have been treated as deposits in terms of the requirements of Rule 2(c)(ix) which the Respondent as auditor failed to point out the same in his audit report. The Director (Discipline) in his Prima Facie Opinion dated 20<sup>th</sup> December 2022 opined that the Respondent was 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. 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:*

X                      X                      X                      X

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

- 3.9 The Prima Facie Opinion formed by the Director (Discipline) was considered by the Disciplinary Committee in its meeting held on 25<sup>th</sup> January 2023. The Committee on consideration of the same, concurred with the reasoning given in paragraphs 9.1 to 9.7 of the Prima Facie Opinion 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 tem (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 Department	04.04.2022
2	Date of Written Statement filed by the Respondent.	27.06.2022
3	Date of Rejoinder filed by the Complainant Department	NA
4	Date of Prima facie Opinion formed by Director (Discipline)	20.12.2022
5	Written Submissions filed by the Respondent after Prima Facie Opinion.	17.03.2023, 01.07.2024
6.	Written Submissions filed by the Complainant Department after Prima Facie Opinion.	30.07.2024

**SUBMISSION OF THE RESPONDENT ON PRIMA FACIE OPINION:**

5. The Committee noted that the Respondent in his submissions dated 17<sup>th</sup> March 2023 and 1<sup>st</sup> July 2024, in response to the Prima Facie Opinion, inter-alia, stated as under: -

5.1 Charge 1:

- a) The Complainant has misunderstood the point in the Audit Report which is about the issue of debentures of Rs.3,52,51,000/- in previous years 2012-13 and not about the outstanding balance in the balance sheet as at date i.e., 2016-17 and 2017-18. However, the Respondent as Auditor pointed out in his report that Debentures were issued of Rs. 3,52,51,000/- in previous year 2012-13 of which no compliance was done by the Company at the time of issue till 2016-17 and 2017-18 that is till the period of his Audit. Further, he clarified that in the balance sheet it is the outstanding balance of debentures which is Rs. 29,10,06,285/- in 2016-17 and Rs. 0/- in FY 2017-18. This balance is the opening balance of the last balance sheet less redemption and after going through the documents provided by the Company, he did not find any discrepancy in the redemption of debenture. The Respondent's reporting was specifically regarding the issue of debentures and its compliance and not for redemption or balance of debentures.
- b) Respondent being auditor issued his Audit report and balance sheet examining all the documents, books and records, Previous year audited balance sheet of Dinesh Patidar & Co. and obtained sufficient information's and explanations as required under Section 143 of the Companies Act, 2013 and reported about the non-compliance done by the Company while issuing debentures and thus fulfilled his responsibility as an Auditor.

5.2 Charge 2:

The Respondent accepted his mistake that in Audit Report it is written as NA whereas the balance sheet and financials show Annexures of Fixed Asset. As an Auditor he has also signed Balance Sheet, so he knew that the Company has Fixed Asset. But the amount of Fixed asset is not material as compared to the size of the balance sheet. Also, Respondent obtained the "Management Representation Letter" from the Company. Thus, he is not guilty of Professional Misconduct failing within the meaning of Item (7) of Part-I of the Second Schedule to the Chartered Accountants Act, 1949.

5.3 Charge 3:

- a) As mentioned in point No.7 of the Audit Report, the Company has issued secured debenture of Rs. 3,52,51,000/- in previous years (2012-13). Further, it was mentioned that out of Rs. 3,52,51,000/- debentures of Rs. 3,50,51,000/- were issued to Private Limited Company

Option Trade Mercantile Private Limited and remaining Rs. 2,00,000/- to others. Further in subsequent years (2013-14 and 2014-15) the debentures were issued in same proportion

- b) As per provisions of Applicability of Companies (Acceptance of Deposit Rules 2014) to debentures, secured debenture are excluded from definition of deposit under Companies Acceptance of Deposit Rules 2014. Therefore, unsecured debenture will constitute deposits under the Companies Acceptance of Deposit Rules 2014. But since any sum of money deposited by one Company shall be excluded from the definition of deposits, unsecured debenture issued by one Company to other Company shall be excluded from the definition of Deposits.
- c) The majority of debentures constituting to approx. 99% were issued to another Company. Considering the above-mentioned provisions, though the Company does not possess sufficient assets as mentioned by the Complainant, unsecured debenture does not constitute deposit under the Companies Acceptance of Deposit Rules 2014.
- 5.4 On retrieval of public documents of audited Company from ROC Portal, the Respondent observed that the Company has filed Audit report and balance sheet for the FY 2015-16 being audited by M/s Navin K Gupta & Co. (006263) whereas he was provided with the audited balance sheet of CA. Dinesh Patidar (M/s. Suresh Kimtee & Co.) which was examined by him. Also, he had NOC of CA. Dinesh Patidar. Further, the appointment of CA. Dinesh Patidar for a period of 3 Years from FY 2013-14 to FY 2015-16 is also mentioned in the Directors' report of the Company for the FY ended 31.03.2012. It is in the knowledge of Complainant Department also that CA. Dinesh Patidar was auditor of previous Financial Year 2015-16 as the Complainant Department has also issued notice to CA. Dinesh Patidar for the relevant FY, but the Complainant Department is raising issues on the basis of audited balance sheet of M/s Navin K Gupta which is being filed with the ROC and which was not in records anywhere till the date of his audit.
- 5.5 The Respondent enclosed documentary evidence retrieved from ROC portal regarding appointment of both M/s Suresh Kimtee and Co. and appointment/reappointment of M/s Navin K. Gupta & Co.

**SUBMISSION OF THE COMPLAINANT DEPARTMENT ON PRIMA FACIE OPINION:**

6. The Complainant Department vide letter dated 30<sup>th</sup> July 2024 provided the copy of the complete Investigation Report dated 23<sup>rd</sup> December 2020 with the stipulation that the copy of the investigation report shall only be shared with the persons against whom the complaint has been filed and the investigation report shall be kept secret and its confidentiality maintained.

**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 <sup>st</sup> Hearing	20.04.2023	Part heard and adjourned.
2.	2 <sup>nd</sup> Hearing	18.06.2024	Part heard and adjourned.
3.	3 <sup>rd</sup> Hearing	25.07.2024	Concluded and decision on the conduct of the Respondent reserved.
4.	---	18.09.2024	Decision on the conduct of the Respondent.

7.1 On the day of the first hearing held on 20<sup>th</sup> April 2023, the Committee noted that the Respondent was present through Video Conferencing Mode. The Committee noted that the Complainant was not present when the case was called for hearing. The Respondent was 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 case was part heard and adjourned.

7.2 On the day of the second hearing held on 18<sup>th</sup> June 2024, the Committee noted that the Authorized representative of the Complainant Department and the Respondent was present before it through video conferencing. Subsequent to the last hearing held on 20<sup>th</sup> April 2023, the case was listed for hearing today wherein the change in the composition of the Committee was duly intimated to the Authorized Representative of the Complainant Department and the Respondent who were present before the Committee. Thereafter, on being asked by the Committee, to substantiate their case, the authorized representative of the Complainant Department referred to the contents of the complaint made in Form 'I'. Subsequently, the Respondent presented his line of defense. The Committee posed certain questions to the authorized representative of the Complainant Department and the Respondent which were responded to by them. On consideration of the submissions and documents on record, the Committee adjourned the hearing in the case with the direction to the authorized representative of Complainant Department to provide the following within next 10 days with a copy to the Respondent to provide his comments thereon, if any: -

1. Response on the written submissions made by the Respondent on the Prima Facie Opinion.

The Committee also directed the Respondent to provide the following with a copy to the Complainant Department to provide their comments thereon, if any: -

1. Copy of complete audited Financial Statements (including all the Schedules and Cash flow statement) for the F.Y. 2016-17 and 2017-18.

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

7.3 On the day of the third hearing held on 25<sup>th</sup> July 2024, the Committee noted that Authorized representative of the Complainant Department and the Respondent was present before it through video conferencing. The Committee noted that the Respondent vide email dated 01<sup>st</sup> July 2024 submitted his response. However, no response had been received from the Complainant Department. Thereafter on being asked by the Committee, the authorized representative of the Complainant Department briefed the Committee about the charges alleged against the Respondent in Form I. The Committee posed certain questions to the authorized representative of the Complainant Department and the Respondent which were replied to by them. Thus, on consideration of the submissions and documents on record, the Committee directed the authorized representative of the Complainant Department to provide the following within a week with a copy to the Respondent to provide his comments thereon, if any: -

1. Copy of the complete Investigation report with respect to the subject Company namely M/s Option One Industries Limited based on which the complaint had been filed against the Respondent.
2. Response on the written submissions made by the Respondent on the Prima Facie Opinion.

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 18<sup>th</sup> September 2024, the Committee noted that the Complainant Department vide letter dated 30<sup>th</sup> July 2024 provided their response which was also shared with the Respondent vide email dated 13<sup>th</sup> August 2024
- 7.5 After detailed deliberations, and consideration of the facts of the case, various documents on record as well as oral and written submissions made by parties before it, the Committee passed its judgment in the captioned case.

**FINDINGS OF THE COMMITTEE:**

- 8 At the outset, the Committee noted that the Respondent was the statutory auditor of the Company for the Financial Years 2016-17 and 2017-18.
- 8.1 The Committee noted that with regard to the **first charge**, the Complainant alleged that the Respondent has mentioned in his audit report for the Financial Years 2016-17 and 2017-18 that the Company has issued the debentures of Rs. 3,52,51,000/- however, the Company has mentioned the value of debenture of Rs. 29,10,06,285/- and Rs 0.00 in the balance sheet for Financial Years 2016-17 and 2017-18 respectively.
- 8.2 The Respondent in his defence stated that he, as Auditor, pointed out in his report that Debentures were issued of Rs. 3,52,51,000/- in previous year 2012-13 of which no compliance was done by the Company at the time of issue till 2016-17 and 2017-18 that is till the period of his Audit. He also pointed out that the Company has filed Audit report and balance sheet for the FY 2015-16 being audited by M/s Navin K Gupta & Co. (006263) whereas he was provided with the audited balance sheet of CA. Dinesh Patidar (M/s. Suresh Kimtee & Co.) which was examined by him. He also brought on record certified copy of the resolution passed in the Annual General Meeting held on 30<sup>th</sup> September 2013 for the appointment of M/s. Suresh S Kimtee & Co. as the Statutory auditor of the Company for 3 years i.e. FY 2013-14 to 2015-16 to prove his stand.
- 8.3 In this regard, on perusal of the records on MCA portal, the Committee observed that Form ADT 1 alongwith certified copy of the resolution passed in the Annual General Meeting held on 30<sup>th</sup> September 2014 for the appointment of M/s. Gupta Navin K. & Co. as the Statutory auditor of the Company had been filed on 1<sup>st</sup> January 2016. Further, Form ADT 3 alongwith resignation letter dated 25<sup>th</sup> August 2017 of M/s. Gupta Navin K. & Co. as the Statutory auditor of the Company had been filed on 12<sup>th</sup> September 2017. Also, Form ADT 1 alongwith the consent letter of the Respondent dated 28<sup>th</sup> September 2016 for his appointment as the Statutory auditor of the Company for the period 1<sup>st</sup> April 2016 to 31<sup>st</sup> March 2019 had been filed on 5<sup>th</sup> April 2019. The Committee also noted that the Respondent signed the Audit Report of the Company for the FY 2016-17 on 5<sup>th</sup> September 2017. Although the Respondent in his submissions stated that he was provided with the audited Balance Sheet of CA. Dinesh Patidar (M/s. Suresh Kimtee & Co.) and he had NOC of CA. Dinesh Patidar, he did not bring the same on record. Thus, the Committee was of the view that the contention of the Respondent was unsubstantiated.
- 8.4 The Committee further on perusal of the Investigation Report dated 23<sup>rd</sup> December 2020 in respect of the alleged Company brought on record by the Complainant Department noted that the same provided as under: -

Year	Debentures Issued	Maturity Paid	Balance	Interest Paid
2012-13	Rs.61,64,70,374/-	Rs.3,10,335/-	Rs.61,61,60,039/-	Rs.55,30,837/-
2013-14	Rs.112,92,09,734/-	Rs.3,51,36,480/-	Rs.171,05,43,628/-	Rs.4,74,22,154/-
2014-15	Rs.32,15,54,532/-	Rs.25,08,49,569/-	Rs.178,12,48,590/-	Rs.3,46,80,254/-

2015-16	Rs 0/-	Rs 69,98,04,258/-	Rs 108,14,44,352/-	Rs 4,91,90,699/-
2016-17	Rs 0/-	Rs 79,04,38,067/-	Rs 29,10,06,285/-	Rs 5,13,53,637/-
2017-18	Rs.0/-	Rs.29,10,06,285/-	Rs.0/-	Rs.2,07,93,759/-
Total	Rs.206,72,34,641/-	Rs 206,72,34,641/-	Rs.0/-	Rs.20,89,71,340/-

- 8.5 The Committee noted that it is also the case of the Respondent that the comment in his Audit report referred to the Debentures of Rs 3,52,51,000/- issued in previous year 2012-13. However, on perusal of the details of debentures issued as provided in the aforesaid table, the Committee was of the view that the figures of debentures issued as provided in the Audit Report for the FY 2016-17 and 2017-18 are not corroborated. Moreover, the Respondent in his Written Statement submitted at Prima Facie Opinion stage admitted that the remarks / comments made by him with regard to the issuance of debentures in his audit report was copied from earlier year's report and the word "previous year" was to be replaced with that particular current period. Further, the Respondent at the time of hearing held in the case on 18<sup>th</sup> June 2024 accepted that he mistakenly wrote "previous year" instead it should have been "previous years". Thus, it is viewed that the Respondent has himself accepted the fact of misstatement in his audit report.
- 8.6 Thus, the Committee viewed that the following observation in his Audit Report for the financial years 2016-17 and 2017-18 was contradictory to the figures stated in the Financial Statements of the Company audited by him:

*"7. Auditor had found in the Previous year that companies had issued total debenture of Rs.35251000/- out of which debenture of Rs.35000000 issued to Optionone Trade and Mercantile Private Limited and rest of Rs.252100 to others without doing any compliances."*

- 8.7 In this regard, the Committee also noted that as per the provisions of Section 143 of Companies Act 2013, the auditor should seek and obtain all the information and explanations which to the best of his knowledge and belief are necessary for the purpose of his audit, otherwise the details and the effect of such information on the financial statements must be mentioned. In the instant case, the Respondent copied the standard remark / comments from the previous year's audit reports and failed to verify the amount independently with the total value of Debentures as mentioned in the Register of Debentures. In view of the above, the Committee held that the Respondent was casual while carrying out the audit of the Company and thus, held him **Guilty** of Professional Misconduct falling within the meaning of Item (7) of Part I of the Second Schedule to the Chartered Accountants Act 1949 in respect of the first charge.
- 8.8 With regard to the **Second charge** that the Respondent stated every year in the annexure to the auditor's report that the Company does not own any fixed assets, but the balance sheet gives the fixed assets on which depreciation has been charged, even the notes on accounts give the mode of valuing assets, the Committee noted that the Respondent in "Annexure A" to his Audit Report as referred to in paragraph 1 under the heading 'Report on Other Legal & Regulatory Requirement' of his report of even date to the financial statements of the Company for the year ended March 31, 2017 and March 31, 2018 reported as under:

*"Fixed Assets:*

*The Company has maintained proper records showing full particulars, including quantitative details and situation of fixed assets - NA*

*The Fixed Assets have been physically verified by the management in a phased manner, designed to cover all the items over a period of three years, which in our opinion, is reasonable having regard to the size of the company and nature of its*

*business. Pursuant to the program, a portion of the fixed asset has been physically verified by the management during the year and no material discrepancies between the books records and the physical fixed assets have been noticed- NA  
The title deeds of immovable properties are held in the name of the company- NA  
The Company does not own any fixed assets hence the not applicable."  
(emphasis provided)*

- 8.9 However, on perusal of audited Financial Statements as on 31.03.2017 and 31.03.2018, the Committee noted that following figures were appearing with respect to fixed assets:

Particulars	As on 31/03/2017	As on 31/03/2018
II. ASSETS		
Non-Current Assets		
A) Fixed Assets	739,300	495,939
(i) Gross Block	243,361	114,631
(ii) Depreciation	495,939	381,308
(iii) Net Block		

Hence, the Committee viewed that contradictory information was stated by the Respondent in annexure to the Auditor's report that the Company does not own any fixed assets despite the fact that the Company was having fixed assets on which depreciation has also been charged and the same was duly reflected in the financial statement audited by him. The said act of the Respondent clearly indicates that the Respondent adopted a casual approach while signing the audit report. Moreover, the Respondent in his written submissions as well as during the course of hearing on 18<sup>th</sup> June 2024 accepted his mistake. 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 in respect of the second charge.

- 8.10 As regard the **third charge** that the Respondent had falsely stated that the Company has not accepted any deposits whereas the Company had issued secured debentures which were not secured by any immovable assets, and due to the same, the amount so collected in the garb of Secured Redeemable debentures falls within the ambit of deposits, the Complainant contended that since the debentures were not secured by the charge on immovable asset of the Company, the number of debentures so issued by the Company must be considered as deposits in terms of the requirement of provision of Acceptance of Deposit Rules 2014.
- 8.11 In this regard, the Committee on perusal of audit reports for the Financial Years 2016-17 and 2017-18 noted that the Respondent has mentioned the following in point no. 5 of his audit report: -

*"The Company has not accepted any deposits from the public and hence the directives issued by the Reserve Bank of India and the provisions of Section 73 to 76 or any other relevant provisions of the Act and the Companies (Acceptance of Deposit) Rules 2015 with regard to the deposits accepted from the public are not applicable."*

- 8.12 Further, the Committee on perusal of the Investigation Report dated 23<sup>rd</sup> December 2020 brought on record by the Complainant Department noted that the same provided as hereunder: -

*"It has been observed that just 8 days after incorporation i.e. on 14.03.2012 the Company has filed a Form 10 and Form 23 for 'creation of charge to secure the debentures for an amount of Rs. 1,000,00,00,000/-'.  
As discussed in the findings the scrutiny of Form 10 indicates the following points.*

- The explanatory statement annexed to the notice convening the EGM merely states that the Company is going to take up certain Mega Projects and for the purpose of part-financing the same the Company is proposing to issue Secured Non-Convertible Debentures and to that end proposed to charge/ mortgage all immovable and movable properties of the Company.
- The Form-10 does not give the details of the property mortgaged/charged and merely states "as per Schedule III". Though the form does not have a Schedule, but the Debenture Trust deed contained Schedule III wherein it has been mentioned that "All the present and future assets wherever situated of the Company". Therefore, no specific property is mortgaged/charged.
- There is no property mortgaged or charged to secure the debentures. Therefore, the debentures were totally unsecured. Merely by filing a Form 10 the debentures do not become secured.

**Since, the Company had no assets on that date, the Company could not have charged/mortgaged any assets. This implies that no assets were charged. On the day the Company created a charge of Rs.1,000,00,00,000/- its only net worth was the subscribed and paid-up capital of Rs. 5,00,000. It has created a charge of Rs. 1000 crore which is in violation of sections 125, 128, 129 and 130 of the Companies Act, 1956. (emphasis supplied)"**

8.13 The Committee further noted that the Investigation Report also provided as under:

"Reference is also drawn from the Companies (Acceptance of Deposits) Rules, 1975 which defines deposits under Rule 2 (b) to mean any deposit of money with, and includes any amount borrowed by, a Company, but does not include any amount raised by the issue of bonds or debentures secured by the mortgage of any immovable property of the Company provided that the amount of such bonds or debentures does not exceed the market value of such immovable property. Therefore, any debenture which is not secured by the mortgage of some immovable property is a deposit. Since the debentures issued by OOIL are not secured by the mortgage of any immovable property they are deposits. The Rules further provide that the terms on which a Company can invite and accept deposits.

These include the following: -

- It has net owned funds of Rs. 1 crore.
- The period of deposit must be between 6 to 36 months.
- The rate of interest cannot exceed 12.5% per annum.
- Brokerage can be paid to the extent of 1-2% of the deposits.

It is evident from the forms and schemes given with the Trust Deed that OOIL has not complied with any of the said Rules. Thus, OOIL has contravened the provisions of section 58A of the Companies Act, 1956 read with the Companies (Acceptance of Deposits) Rules, 1975."

Further, SEBI passed its final Order on 28.03.2018 wherein it concluded that: -

- "OOIL has issued 1,01,85,201 debentures for an amount of Rs.101,85,20,129/- from 01.04.2012 to 19.06.2014. Therefore, OOIL and OTMPL came out with an offer of NCDs.
- OOIL has Issued NCDs to at least 35,286 persons during 2012-13 and 2013-14. Therefore, the offer of NCDs was a public issue within the meaning of first proviso to section 67(3) of the Companies Act, 1956. OOIL has therefore contravened the provisions of sections 56(1), 56(3), 2(36) read with sections 60,

73(1), 73(2), 73(3) and 117C of the Companies Act, 1956 and various provisions of SEBI (Issue and Listing of Debt Securities) Regulations, 2008

• SEBI has further held that the issuance of debentures has been made by OOIL and OTMPL in a peculiar way where the debentures of OOIL are issued by OOIL and OTMPL together. OTMPL has issued debentures of OOIL. SEBI has observed that it does not stand to reason how such an issuance is legally possible, but the fact of the matter is the same has been done in violation of the deemed public issue norms.

Hence, OOIL has collected deposits by issuing unsecured debentures. OTMPL has collected the funds for the debentures issued by OOIL and has acted as a facilitator.

There was no asset charged/ mortgaged as security for the repayment of the debentures. The Company had in fact no physical assets but filed e-form 10 SRN B34308908 dated 14.03.2012 on the MCA portal (attached as Annexure-33) blanket mentioning "all present and future assets". The Debentures issued by OOIL are in fact unsecured and unsecured debentures are treated as "deposits" since they are not exempted from the definition of "deposits" given in the Deposit Rules."

8.14 The Committee on perusal of provision of Acceptance of Deposit Rules 2014 noted as under: -

"2 (c) "deposit" includes any receipt of money by way of deposit or loan or in any other form, by a Company, but does not include-

.....  
(ix) any amount raised by the issue of bonds or debentures secured by a first charge or a charge ranking pari passu with the first charge or any assets referred to in Schedule III of the Act excluding intangible assets of the Company or bonds or debentures compulsorily convertible into shares of the Company within five years;"

Thus, the issue of debentures must be secured by a charge or a charge ranking pari passu with the first charge or any assets referred to Schedule III of the Companies Act, 2013 excluding the intangible assets of the Company or bonds or debentures which are compulsorily convertible into shares within five years.

8.15 The Committee noted that although the Respondent brought on record the copy of certificate of registration of mortgage according to which charge of Rs. 10,000,000,000/- (One Thousand Crore) had been registered on the assets of the Company on 14<sup>th</sup> March 2012. However, as on 31<sup>st</sup> March 2017, the Company was having outstanding debenture of Rs.29.10 crores but the amount of total assets was only Rs.10.01 crore and thus, the total assets of the Company was not sufficient to cover the amount of outstanding debenture as on 31.03.2017. The Committee further noted that there was no asset charged/ mortgaged as security for the repayment of the debentures. However, Rs. 1000 crore charge was created at the time of issue of debentures though Company's net-worth was only Rs 5 lakh at that time.

8.16 Hence, in view of the above requirement of Acceptance of Deposit Rules, 2014, the amount so collected, which was not fully secured, falls within the meaning of Deposits in terms of the requirements of Rule 2(c)(ix) of the Acceptance of Deposits Rules, 2014. Accordingly, the amount of debentures so outstanding as on 31.03.2017 should have been treated as deposits in terms of the requirement of Rule 2(c)(ix) which the Respondent as auditor failed to point out in his audit report.

8.17 Moreover, the Respondent during the course of hearing held on 18<sup>th</sup> June 2024 accepted his mistake. Hence, the Committee held the Respondent Guilty of Professional Misconduct falling



