



भारतीय सचदी लेखाकार संस्थान
(संसदीय अधिनियम द्वारा स्थापित)

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

PR/G/353/2022/DD/231/2022/DC/1746/2023

[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/353/2022/DD/231/2022/DC/1746/2023]

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
Madhya Pradesh – 474009.

.....Complainant

Versus

CA. Dinesh Patidar (M. No.421872),
Partner, M/s. Suresh S. Kimtee & Co,
Rameshwaram Krishi Upkaran,
Neemuch Road Manasa,
Distt. Neemuch
Manasa, Madhya Pradesh – 458110.

.....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 : 21st January 2025

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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. Dinesh Patidar (M. No.421872)**, **Manasa** (hereinafter referred to as the '**Respondent**') is **GUILTY** of Professional and Other Misconduct falling within the meaning of Item (7) of Part I of the Second Schedule and Item (2) of Part IV of the First 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 through Video Conferencing and made his verbal representation on the Findings of the Disciplinary Committee, inter-alia, reiterating his submissions dated 12th December 2024 and further requested for a lenient view in the case.
4. The Committee also noted that the Respondent in his written representation 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. These unintentional mistakes did not result in any default on public funds or liabilities.
 - (b) A review of the audited financial statements confirms that no borrowings from financial institutions or similar entities were recorded during the relevant audit period.
 - (c) Furthermore, these mistakes occurred during the initial years of his practice (The Respondent is a member of ICAI and holds Certificate of Practice since 13th February 2013).
 - (d) Since then, he has made every effort to enhance his knowledge and improve his professional practices.
 - (e) He fully cooperated throughout these proceedings and accepted the errors made, which were purely accidental and devoid of any malafide intention.
 - (f) He 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.
 - (g) He requested the Committee to consider his bonafide conduct and the fact that he was in the early years of his practice.

(Signature)

(Signature)



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5. The Committee considered the reasoning as contained in the Findings holding the Respondent Guilty of Professional and Other 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 matter reported under Paragraph 3 (vi) of the Audit Report for FY 2012-13 and Paragraph 7 of Audit Report for FY 2013-14 was contradictory to the figures stated in the audited financials of the Company for such years audited by him. Further, the Respondent at the time of hearing held in the case on 25th July 2024 accepted his mistake as the current assignment was done by him during the early days of his practice and at that time he was not professionally aware. Thus, it is viewed that the Respondent has himself accepted the fact of misstatement in his audit reports. The Committee also noted that as per the provisions of Section 227 of the Companies Act 1956, 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, and if not, 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. Thus, the Committee held that the Respondent was casual while carrying out the audit of the Company for F.Y. 2012-13 and 2013-14.
 - (b) Second Charge: The Committee viewed that the Respondent reported casually that the Company had issued debentures in the year 2012-13 in non-compliance of the provisions of Companies Act, 2013. The Committee noted that the Respondent, in spite of non-applicability of Companies Act 2013, gave his Audit Report dated 02-09-2014 on the financials of the Company for the F.Y. 2013-14 referring the provisions of Companies Act, 2013. The Respondent annexed a statement/additional reporting as required by Companies (Auditors' Report) Order, 2016 along with his Audit Report signed on 02-09-2014 for the F.Y.2013-14. Regarding this CARO, 2016 reporting, the Committee noted that it was notified by MCA vide notification dated 29-03-2016 and was made mandatory for the companies (which fulfilled certain conditions) from the F.Y. commencing on or after 01-04-2015 only. Thus, it is clear that on the day of this additional reporting under CARO, 2016 in his audit report for the F.Y.2013-14 i.e., on 02-09-2014 by the Respondent, the CARO, 2016 was not even in existence and it clearly indicates that the Respondent has issued such audit report dated 02-09-2014

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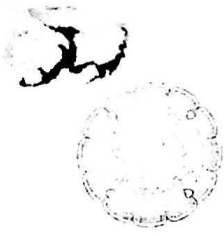
PR/G/353/2022/DD/231/2022/DC/1746/2023

on any subsequent date after the CARO, 2016 was notified. The Committee also noted that the Company did not submit/upload its audited financials for the F.Y.2013-14 to the Complainant Department / MCA in the year 2014 rather submitted/uploaded only in the year 2019 as evidenced from the examination of Company's account on MCA portal clearly indicating that the financial statements of the Company for F.Y.2013-14 have been signed by the Respondent in back date. The Committee also noted that no plausible explanation for the said anomaly had been provided by the Respondent in his defence. Thus, the Committee held that the alleged act of the Respondent is unbecoming of a Chartered Accountant.

- (c) Third Charge: The Committee upon perusal of the audit report for the financial year 2012-13 noted that the annexure as part of audit report was not found as the applicable Order 'The Companies (Auditor's Report) Order, 2003' (under which such additional reporting with respect to various matters including Fixed Assets was to be made as an annexures to the Audit Report) is noted to have been mentioned as not applicable on the company for the year 2012-13. In his audit report for the F.Y.2013-14, it is noted that the Respondent has mentioned that the Company does not own any fixed assets hence not applicable. The Committee viewed that contradictory information was stated by the Respondent in the 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. Moreover, the Respondent in his written submissions submitted at Prima Facie Opinion stage as well as during the course of hearing on 26th September 2024 accepted it to be a typing mistake. Thus, the Committee was of the view that the said act of the Respondent clearly indicates that the Respondent adopted a casual approach while issuing the audit report .
- (d) Fourth Charge: The Committee noted that the reporting of 'Deposit' as alleged was required to be made by the Respondent in his audit report under the applicable Central Government's Order 'The Companies (Auditor's Report) Order, 2003 and such Order is noted to have been mentioned in his Audit Report for the year 2012-13 as 'not applicable' on the company. The Committee noted that as per the copy of Certificate of Registration of mortgage, Charge of Rs. 1000,00,00,000/- (One Thousand Crore) had been registered on the assets of the Company on 14th March 2012. However, the amount of total immovable assets of the Company i.e. Rs.21.58 Lacs appears meagre to cover the amount of charge / outstanding debenture as on 31-03-2014 i.e., Rs.171.05 Crores. Hence, the amount of debentures so outstanding as on 31.03.2014 falls within the meaning of Deposits in terms of the requirements of Rule

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2(b)(x) of Companies (Acceptance of Deposit) Rules, 1975 and accordingly, should have been treated as deposits in terms of the requirement of which the Respondent as auditor failed to point out the same in his audit report. Accordingly, the Committee held that the Respondent was casual in his approach while carrying out the audit and due diligence was not exercised by him while conducting the Statutory Audit of the Company.

- 6.1 Hence, professional misconduct on the part of the Respondent is clearly established as spelt out in the Committee's Findings dated 25th November 2024 which is to be read in consonance with the instant Order being passed in the case.
7. Accordingly, the Committee was of the view that 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. Dinesh Patidar (M. No.421872), Manasa 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

सदर प्रमाणित है कि यह प्रमाणित
Certified to be true

[Handwritten Signature]

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/353/2022/DD/231/2022/DC/1746/2023

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
Madhya Pradesh– 474 009.

.....Complainant

Versus

CA. Dinesh Patidar (M. No.421872),
Partner, M/s. Suresh S. Kimtee & Co,
Rameshwaram Krishi Upkaran,
Neemuch Road Manasa,
Distt. Neemuch
Manasa, Madhya Pradesh– 458110.

.....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 (in Person)
CA. Cotha S Srinivas, Member (In Person)

DATE OF FINAL HEARING : 26th September 2024

Parties Present: -

Authorized Representative of the Complainant Department: Ms. Sukriti, Company Prosecutor,
Registrar of Companies, Madhya Pradesh, Gwalior (Through VC)
Respondent: CA. Dinesh Patidar (M. No.421872) (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 2012-13 and 2013-14. The Complainant raised allegations in respect of the audit conducted by the Respondent which have been referred to in para no. 8.4.3 of the Investigation report.

CHARGES IN BRIEF:

- 2.1 The Respondent mentioned in his audit report that the Company has issued total debentures of Rs. 3,52,51,000/-. Out of which debenture of Rs. 3,50,00,000/- issued to M/s. Option One Trade and Mercantile Private Limited and rest of Rs. 2,52,100/- to others without doing any compliances. However, the Company has mentioned the value of debenture in the Balance Sheet for Financial Years 2012-13 to 2015-16 at Rs. 61,61,60,039/-, Rs. 171,05,43,628, Rs. 62,51,000 and Rs. 62,51,000 respectively. The auditor's report for the financial years 2013-14, 2014-15 and 2015-16 mentioned the same figure for the previous year and it does not speak of the legality of the debentures issued in the current year. The Company had issued the debentures till 2014-15 and redeemed all the debentures in the F.Y. 2017-18.
- 2.2 The Respondent in his audit report dated 02-09-2014 for the year 2013-14 reported that the Company had issued debentures in the previous year (2012-13) without any compliances as required by Companies Act, 2013 not even realising that the Companies Act, 2013 was not in force during 2012-13.
- 2.3 The Respondent stated in the annexure to the Auditor's reports of the Company for the year ended 31-03-2013 and 31-03-2014 that the Company did not own any fixed assets, but the balance sheet reflected fixed assets on which depreciation was also charged. The Notes on Accounts also gave the mode of valuing assets.
- 2.4 The Respondent as auditor falsely stated in his audit report that the Company had not accepted any deposits whereas the Company issued secured debentures which were not secured by any immovable assets and accordingly, the same fell within the ambit of deposits. Therefore, it was alleged that the Company has collected Deposits in the garb of secured redeemable debentures.

THE RELEVANT ISSUES DISCUSSED IN THE PRIMA FACIE OPINION DATED 06th JANUARY 2023 FORMULATED BY THE DIRECTOR (DISCIPLINE) IN THE MATTER IN BRIEF, ARE GIVEN BELOW:

- 3 As regard the First allegation, on perusal of information and documents on record, it was noted that the Respondent in its audit report for the F.Y. 2012-13 and 2013-14 in point no. 3(vi) and point - 7 mentioned as under:

Point No.3(vi) of Audit Report of 2012-13

"3(vi) Auditor found during the year Companies 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."

Point No.7 of Audit Report of 2013-14

"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 as per the Companies Act 2013 and the Income Tax Act 1961."

However, on perusal of Financial Statements of the Company for FYs 2012-13 and 2013-14 (downloaded from MCA portal), it was noted that the value of debentures was of Rs. 61,61,60,039/- as on 31.03.2013 and Rs. 171,05,43,628 as on 31.03.2014.

- 3.1 From the above information on record, it was noted that contradictory information was stated in Respondent's Audit Reports for the financial years 2012-13 and 2013-14 vis-à-vis in the audited financials of the Company for such years audited by him. In this regard, 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 for the financial years 2012-13 and 2013-14 was the typing error. Thus, the Respondent himself accepted the fact of misstatement in his audit reports. It is further noted that as per the provisions of Section 227 of Companies Act, 1956, that 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 has mentioned the contradictory information and failed to verify the amount independently with the total value of Debentures as mentioned in the Balance sheet of the Company. It is also noted that the amount of such difference was material when compared with the size of the Balance Sheets and hence, makes the entire financial statements misleading. Thus, the submissions of the Respondent claiming it to be as mere typo error, is not acceptable.
- 3.2 As regards the Second allegation, it was noted that as alleged, the Respondent in point no. 7 of his audit report for the F.Y. 2013-14 mentioned the following:

"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 Option one Trade and Mercantile Private Limited and rest of Rs. 252100 to others without doing any compliances as per the Companies Act 2013 and the Income Tax Act 1961."

- 3.3 In this regard, it was noted that the Companies Act, 2013 was notified in the Official Gazette on 30th August 2013 and hence, it is clear that at the time of issuing debentures by the company during the period 2012-13, the Companies Act, 2013 was not even in existence. However, from the perusal of Audit Report of the Company for the year 2012-13, it is noted that though the non-compliance was referred by the Respondent but not in terms of Companies Act, 2013. Hence, it is viewed that the Respondent while reporting in his Audit Report on the financials of the Company for the year 2013-14 has not exercised due diligence and therefore reported casually that the Company had issued debentures in the year 2012-13 in non-compliance of the provisions of Companies Act, 2013.
- 3.4 Not only in 2012-13 rather in the F.Y. 2013-14 too, the provisions of the Companies Act, 2013 were not applicable as only some of the provisions of the Companies Act, 2013 were implemented by a notification published on 12th September, 2013 while the remaining Sections were notified on 26th March, 2014 only and later on MCA vide its General Circular 08/2014 had clarified that the provisions of the Companies Act, 2013 would be applicable from the Financial year Commencing from 01-04-2014. While in the extant case the Respondent in spite of above-mentioned clarification of MCA, is noted to have been given his Audit Report dated 02-09-2014 on the financials of the Company for the F.Y. 2013-14 referring the provisions of Companies Act, 2013. In furtherance, it is very surprising to note that the Respondent along with his Audit Report signed on 02-09-2014 for the F.Y. 2013-14 has annexed a statement/additional reporting as required by Companies (Auditors' Report) Order, 2016. Regarding this CARO, 2016 reporting, it is noted that it was notified by MCA vide notification dated 29-03-2016 and was made mandatory for the companies (which fulfilled certain conditions) from the F.Y. commencing on or after 01-04-2015 only. Thus, it is clear that on the day of this additional reporting under CARO, 2016 in his audit report for the F.Y. 2013-14 i.e., on 02-09-2014 by the Respondent, the CARO, 2016 was not even in existence and it clearly indicates that the Respondent has issued such audit report dated 02-09-2014 on any subsequent date after the CARO, 2016 was notified. This view is further strengthened by the fact that the Company did not submit/upload its audited financials for the F.Y. 2013-14 to the Complainant

Department / MCA in the year 2014 rather submitted/uploaded only in the year 2019 as evidenced from the examination of Company' account on MCA portal clearly indicating that the financial statements of the Company for F.Y.2013-14 have been signed by the Respondent in back date. This act of the Respondent is highly unbecoming of a Chartered Accountant.

- 3.5 As regard the third allegation, on perusal of the audit report for the financial year 2012-13, it is noted that the alleged annexure as part of audit report was not found as the applicable order 'The Companies (Auditor's Report) Order, 2003' (under which such additional reporting with respect to various matters including Fixed Assets was to be made as an annexures to the Audit Report) is noted to have been mentioned as not applicable on the company for the year 2012-13. However, in his audit report for the F.Y.2013-14, it is noted that the Respondent has 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 books 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"*

- 3.6 From the above information, it is noted that the Respondent has mentioned in his audit report that the Company does not have any fixed assets however, on perusal of Financial Statements as on 31.03.2013 and 31.03.2014, the amount of fixed assets of Rs. 25,021 and Rs. 19,98,190 respectively have been noted to be appeared there. Hence, it is 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 casual approach while signing the audit report. In this regard though the Respondent in his written statement has contended for reporting 'NA' against the heading Fixed Assets, as typing error but it is noted that not only typing 'NA' in his reporting rather the Respondent at the end of such reporting para 'Fixed Assets' clearly mentions "**The Company does not own any fixed assets hence the not applicable**". Thus, this contention of the Respondent cannot be accepted and seeing his casual approach while auditing the accounts of the Company, benefit cannot be granted to the Respondent in respect of this allegation.

- 3.7 As regards the fourth allegation, on perusal of audit reports of the Company for the F.Y.2012-13 and 2013-14 audited by the Respondent, it was noted that the reporting of 'Deposit' as alleged was required to be made by the Respondent in his audit report under the applicable Central Government's Order 'The Companies (Auditor's Report) Order,2003 and such Order is noted to have been mentioned in his Audit Report for the year 2012-13 as 'not applicable' on the company. However, in his audit report for the F.Y.2013-14, it was noted that the Respondent reported with regard to 'Deposits' as below:

" 5.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."

- 3.8 From the perusal of the Balance Sheet of the Company for the year 2013-14, it was noted that there were debentures of Rs.61.61 Crores as on 31-03-2013 and it appears that during the year 2013-14 another debentures of Rs.109.44 Crores were issued by the Company and hence, the balance as on 31-03-2014 is showing as Rs.171.05 Crores under the heading 'Long Term Borrowings' sub-heading 'Bond/Debentures'.
- 3.9 In this regard, as per Section 58A (2) of Companies Act, 1956, the issue of debentures to be eligible for exemption from the definition of 'Deposits' must be secured by mortgage of any **immovable property** of the company and further the amount of such bonds/debentures should not exceed the market value of such immovable property. From the perusal of the Balance Sheet of the Company for the year 2013-14, it was noted that there were debentures of Rs.61.61 Crores as on 31-03-2013 and it appears that during the year 2013-14 another debentures of Rs.109.44 Crores were issued by the Company and hence, the balance as on 31-03-2014 is showing as Rs.171.05 Crores under the heading 'Long Term Borrowings' sub-heading 'Bond/Debentures'. However, it was not known as to whether the debentures were secured on the immovable property.
- 3.10 In this regard, it was noted that the Respondent though in his defence had not provided any evidenece to show that such issue of debentures during the year 2013-14 (which has been noted to be a matreial amount being 65% of the Total Liabilities of the Company) was secured by immovable property however, at one place in his Written Statement to this Directorate he is noted to have mentioned the following:

"It is submitted that the company has pass the special resolution in their extra-ordinary general meeting which was held as on 14.03.2012 and the resolution passed by the members of the company it was clearly mentioned that the company has issued the Non-convertible Debenture by secured and mortgage movable and immovable property of the company."

From the above submission it was noted that beside the charge over immovable property as required by the above mentioned provision of Companies (Acceptance of Deposit) Rules, 1975, the Respondent mentioned about the charge over movable property too which indicates that the issue of such debentures during the year 2013-14 was out of the purview of exemption provided to be covered under the definition of 'Deposit' and hence, appears that the issue of debentures was indirectly a Deposit.

- 3.11 It was further noted that the amount of total immovable assets of the Company i.e. Rs.21.58 Lacs apprent on the face of the balance sheet of the Company as on 31-03-2014 appears meagre to cover the amount of charge / outstanding debenture as on 31-03-2014 i.e., Rs.171.05 Crores. Hence, even if it is assumed that the debentures were secured by mortgage over immovable property only as required by the above mentioned Acceptance of Deposit Rules, 1975, even then the value of total immovable assets of the Company is not sufficient to cover the total amount of Debentures. Hence, it appears that the amount of debentures so outstanding as on 31.03.2014 falls within the meaning of Deposits in terms of the requirments of Rule 2(b)(x) of Companies (Acceptance of Deposit) Rules, 1975 and accordingly, should have been treated as deposits in terms of the requirment of which the Respondent as auditor failed to point out the same in his audit report.
- 3.12 Therefore, in any case as discussed in above paras coupled with the fact that the Respondent had failed to put forth any evidence to show that the debentures were fully secured to be eligible to be covered under the exemption of Deposits, it was viewed that the Respondent without exercising due diligence while auditing issue of debentures in the company during the year 2013-14 (which

was noted to be a material amount of the balance sheet), had stated in his audit report that the Company had not accepted any deposit.

- 3.13 Accordingly, the Director (Discipline) in his Prima Facie Opinion dated 06th January 2023 opined that the Respondent is Prima Facie Guilty of Professional and Other Misconduct falling within the meaning of Item (2) of Part IV of the First Schedule and 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 (2) of Part IV of the First Schedule: -

"A member of the Institute, whether in practice or not, shall be deemed to be guilty of other misconduct, if he-

X X X X X

(2) in the opinion of the Council, brings disrepute to the profession or the Institute as a result of his action whether or not related to his professional work."

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 X

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

- 3.14 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 and Other Misconduct falling within the meaning of Item (2) of Part - IV of the First Schedule to the Chartered Accountants Act, 1949 and accordingly, decided to proceed further under Chapter V of the Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007.

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.	04.04.2022
2.	Date of Written Statement filed by the Respondent.	23.06.2022
3.	Date of Rejoinder filed by the Complainant.	NA
4.	Date of Prima facie Opinion formed by Director (Discipline).	06.01.2023
5.	Written Submissions filed by the Respondent after Prima Facie Opinion.	24.07.2024
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 24th July 2024, in response to the Prima Facie Opinion, inter-alia, submitted as under: -

- 1 Copy of complete audited Financial Statements (including all the Schedules and Cash flow statement) for the F Y 2012-13 and 2013-14

SUBMISSION OF THE COMPLAINANT DEPARTMENT ON PRIMA FACIE OPINION:

- 6 The Complainant Department vide letter dated 30th July 2024 provided the copy of the complete Investigation Report dated 23rd 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
a)	1 st Hearing	09.06.2023	Adjourned at the request of the Respondent.
b)	2 nd Hearing	22.06.2023	Part heard and adjourned.
c)	3 rd Hearing	18.06.2024	Part heard and adjourned.
d)	4 th Hearing	25.07.2024	Part heard and adjourned.
e)	5 th Hearing	20.08.2024	Adjourned at the request of the Complainant Department.
f)	6 th Hearing	26.09.2024	Hearing Concluded and decision taken on the conduct of the Respondent

- 7.1 On the day of the hearing held on 09th June 2023, the Committee noted that the Respondent vide email dated 08th June 2023 sought adjournment on grounds of sudden and untimely demise of his relative in Udaipur (Rajasthan). The Committee further noted that neither the Complainant was present, nor any intimation was received from his side, despite the fact that the notice/ email was duly served upon him. Thereafter, looking into the adjournment request of the Respondent and in the absence of the Complainant, the Committee decided to adjourn the hearing.
- 7.2 On the day of the hearing held on 22nd June 2023, the Committee noted that the Respondent was present through video conferencing. The Committee noted that neither the Complainant was present, nor any intimation was received despite notice/email duly served upon him. 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. The Committee looking into grounds of natural justice decided to give the final opportunity to the Complainant to present his representations, if any. Thereafter, the Committee decided to adjourn the hearing to a future date. With this, the hearing in the case was part heard and adjourned.
- 7.3 On the day of the hearing held on 18th June 2024, the Committee noted that Authorized representative of the Complainant Department was present before it through video conferencing. However, the Respondent was not present when the case was taken up for hearing by the Committee. The Committee further noted that at the time of last hearing held in the case on 22nd June 2023, the Respondent was present, was administered on Oath and he pleaded not guilty in respect of the charges alleged against him. However, the hearing in the case was adjourned on account of non-representation from the Complainant Department. Subsequent thereto, 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 who was 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'. On consideration of the documents and submissions on record, the Committee adjourned the hearing in the case with the direction to the office to send communication to the Respondent to provide the following within next 10 days 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. 2012-13 and 2013-14.
2. Response on the Prima Facie Opinion.

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

- 7.4 On the day of the hearing held on 25th July 2024, the Committee noted that the Authorized representative of the Complainant Department and the Respondent was present before it through video conferencing. The Committee further noted that at the time of last hearing held in the case on 18th June 2024, it had directed the Respondent to provide the following within next 10 days 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. 2012-13 and 2013-14.
2. Response on the Prima Facie Opinion.

The Committee noted that the Respondent vide email dated 24th July 2024 submitted the copy of audited Financial Statements of the Company for the F.Y. 2012-13 and 2013-14. 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. Subsequently, the Respondent presented his line of defence and accepted his mistake with respect to the charge(s) alleged. 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. Year-wise details of issue and redemption of debentures (both in number and amount).

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

- 7.5 On the day of hearing held on 20th August 2024, the Committee noted that the Complainant Shri Mukesh Kumar Soni, Registrar of Companies, Madhya Pradesh, Gwalior vide email dated 20th August 2024 sought adjournment from the hearing in the case due to non-availability of her Counsel Ms. Sukriti, Company Prosecutor, in the present case as she was travelling to Indore for another Court case and due to weak Internet connectivity in the Court area, she was unable to attend the instant hearing. The Committee, therefore, keeping in view the principle of natural justice, acceded to the request of the Complainant Department for adjournment. Accordingly, the hearing in the case was adjourned at the request of the Complainant Department.

- 7.6 On the day of hearing held on 26th September 2024, the Committee noted that the Authorized representative of the Complainant Department and the Respondent was present before it through video conferencing. The Committee further noted that at the time of hearing held in the case on

25th July 2024, it had 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. Year-wise details of issue and redemption of debentures (both in number and amount).

The Committee noted that the Complainant vide email/letter dated 30th July 2024 submitted the copy of the complete Investigation report which had been shared with the Respondent vide email dated 13th August 2024. However, no written response of the Respondent on the same was received. Thereafter on being asked by the Committee, the Respondent made his submissions with respect to the complete Investigation report submitted by the Complainant Department. He also accepted his mistake with respect to the third charge(s) relating to Fixed Assets alleged against him. 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 hearing in the case was concluded. 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.

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 2012-13 and 2013-14.
- 8.1 The Committee noted that with regard to the **First charge**, the Complainant alleged that the Respondent mentioned in his audit report for FY 2012-13 and 2013-14 that the Company had issued total debentures of Rs.3,52,51,000/-. Out of which debentures of Rs.3,50,00,000/- were issued to M/s. Option One Trade and Mercantile Private Limited and rest of Rs.2,52,100/- to others without doing any compliances. However, the Company has mentioned the value of debenture in the Balance Sheet for Financial Years 2012-13 and 2013-14 at Rs. 61,61,60,039/- and Rs. 171,05,43,628/- respectively.
- 8.2 The Committee on perusal of the Investigation Report dated 23rd December 2020 in respect of the alleged Company brought on record by the Complainant Department noted that the same provided as under: -

Financial 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.69,98,04,238/-	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 5,18,51,637/-
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/-

- 8.3 The Committee viewed that the following observation in the Respondent's audit report for the Financial Years 2012-13 and 2013-14 was contradictory to the figures stated in the audited financials of the Company for such years audited by him:

Point No.3(vi) of Audit Report of 2012-13

"3(vi) Auditor found during the year Companies 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."

Point No.7 of Audit Report of 2013-14

"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 Option one Trade and Mercantile Private Limited and rest of Rs. 252100 to others without doing any compliances as per the Companies Act 2013 and the Income Tax Act 1961."

- 8.4 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 for the financial years 2012-13 and 2013-14 was the typing error. Further, the Respondent at the time of hearing held in the case on 25th July 2024 accepted his mistake as the current assignment was done by him during the early days of his practice and at that time he was not professionally aware. Thus, it is viewed that the Respondent has himself accepted the fact of misstatement in his audit reports.
- 8.5 In this regard, the Committee also noted that as per the provisions of Section 227 of the Companies Act 1956, 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.
- 8.6 The Committee noted that with regard to **Second charge**, the Respondent in his Audit Report for the F.Y.2013-14 stated that the Company in previous year i.e., in 2012-13 had issued debentures without any compliances as required by Companies Act 2013 while the Companies Act 2013 was not in force in the year 2012-13. The Committee noted the following from the abstract of the Auditor's Report for FY 2013-14 which is given under:

"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

Optionare Trade and Mercantile Private Limited and rest of Rs. 252100 to others without doing any compliances as per the Companies Act 2013 and the Income Tax Act 1961."

- 8.7 The Committee noted that the Companies Act, 2013 was notified in the Official Gazette on 30th August 2013 and hence, it is clear that at the time of issuing debentures by the company during the period 2012-13, the Companies Act, 2013 was not even in existence. However, from the perusal of Audit Report of the Company for the year 2012-13, it is noted that though the non-compliance was referred by the Respondent but not in terms of Companies Act, 2013. Hence, the Committee viewed that the Respondent reported casually that the Company had issued debentures in the year 2012-13 in non-compliance of the provisions of Companies Act, 2013.
- 8.8 The Committee also noted that not only in 2012-13 rather in the F.Y. 2013-14 too, the provisions of the Companies Act, 2013 were not applicable as only some of the provisions of the Companies Act, 2013 were implemented by a notification published on 12th September, 2013 while the remaining Sections were notified on 26th March, 2014 only and later on MCA vide its General Circular 08/2014 had clarified that the provisions of the Companies Act, 2013 would be applicable from the Financial year commencing from 01-04-2014. The Committee noted that the Respondent, inspite of above-mentioned clarification of MCA, gave his Audit Report dated 02-09-2014 on the financials of the Company for the F.Y. 2013-14 referring the provisions of Companies Act, 2013. The Respondent along with his Audit Report signed on 02-09-2014 for the F.Y. 2013-14 annexed a statement/additional reporting as required by Companies (Auditors' Report) Order, 2016. Regarding this CARO, 2016 reporting, the Committee noted that it was notified by MCA vide notification dated 29-03-2016 and was made mandatory for the companies (which fulfilled certain conditions) from the F.Y. commencing on or after 01-04-2015 only. Thus, it is clear that on the day of this additional reporting under CARO, 2016 in his audit report for the F.Y. 2013-14 i.e., on 02-09-2014 by the Respondent, the CARO, 2016 was not even in existence and it clearly indicates that the Respondent has issued such audit report dated 02-09-2014 on any subsequent date after the CARO, 2016 was notified. The Committee also noted that the Company did not submit/upload its audited financials for the F.Y. 2013-14 to the Complainant Department / MCA in the year 2014 rather submitted/uploaded only in the year 2019 as evidenced from the examination of Company's account on MCA portal clearly indicating that the financial statements of the Company for F.Y. 2013-14 have been signed by the Respondent in back date. The Committee also noted that no plausible explanation for the said anomaly had been provided by the Respondent in his defence. Thus, the Committee held that the alleged act of the Respondent is unbecoming of a Chartered Accountant. Accordingly, the Committee held the Respondent **Guilty** of Professional and Other Misconduct falling within the meaning of Item (7) of Part I of the Second Schedule and Item (2) of Part IV of the First Schedule to the Chartered Accountants Act 1949 in respect of this charge.
- 8.9 The Committee noted that as regard the **third charge**, it was stated that the Respondent had reported in the Financial Year 2012-13 and 2013-14 in the annexure to the auditor's report that the Company does not own any fixed assets, however, in the Balance Sheet, the figures relating to fixed Assets were appearing on which depreciation has also been charged.
- 8.10 Also, even in the Notes to Accounts annexed to the Financial Statement for the FY 2013-14 the following was stated:
- "Accounting Policies
Fixed Assets
Fixed Assets are stated at cost, the cost of assets include its purchase price and expenditure which are directly incurred for bringing out of the assets into working condition. The CENVAT credit availed has been reduced from cost and no depreciation has been charged on the same.

Depreciation

Depreciation on fixed assets has been provided as per rates prescribed in Schedule XIV of the Companies Act, 1956 on straight-line method on pro rata basis. The CENVAT credit availed has been reduced from cost and no depreciation has been charged on the same."

- 8.11 The Committee upon perusal of the audit report for the financial year 2012-13 noted that the annexure as part of audit report was not found as the applicable Order 'The Companies (Auditor's Report) Order, 2003' (under which such additional reporting w.r.t. various matters including Fixed Assets was to be made as an annexures to the Audit Report) is noted to have been mentioned as not applicable on the company for the year 2012-13. However, in his audit report for the F.Y.2013-14, it is noted that the Respondent has 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 books 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"
(emphasis added)*

- 8.12 However, on perusal of audited Financial Statements as on 31.03.2013 and 31.03.2014, the Committee noted that the following figures appeared with respect to fixed assets:

Particulars	As on 31/03/2013	As on 31/03/2014
II. ASSETS		
Non-Current Assets		
A) Fixed Assets	29,000	21,58,151
(i) Gross Block	3,979	1,59,961
(ii) Depreciation	25,021	19,98,190
(iii) Net Block		

Hence, the Committee viewed that contradictory information was stated by the Respondent in the 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. Moreover, the Respondent in his written submissions submitted at Prima Facie Opinion stage as well as during the course of hearing on 26th September 2024 accepted it to be a typing mistake. Thus, the Committee was of the view that the said act of the Respondent clearly indicates that the Respondent adopted a casual approach while issuing the audit report. 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 third charge.

- 8.13 As regards the **fourth charge**, the Committee noted that the reporting of 'Deposit' as alleged was required to be made by the Respondent in his audit report under the applicable Central Government's Order 'The Companies (Auditor's Report) Order,2003 and such Order is noted to have been mentioned in his Audit Report for the year 2012-13 as 'not applicable' on the company.

However, in his audit report for F.Y.2013-14, it is noted that the Respondent has reported with regard to 'Deposits' as below

"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."

8.14 Further, the Committee on perusal of the Investigation Report dated 23rd 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)"

8.15 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."

- 8.16 The Committee on perusal of provisions of Deposits under relevant Companies Act, 1956 noted as under: -

"Section 58A (2) of Companies Act, 1956

"No company shall invite, or allow any other person to invite or cause to be invited on its behalf, any deposit unless -

(a) such deposit is invited or is caused to be invited in accordance with the rules made under sub-section (1)"

Further, the relevant Rules as mentioned in Section 58A above i.e Companies (Acceptance of Deposit) Rules, 1975 provides as below:

"2(b) deposit" means any deposit of money with, and includes any amount borrowed by, a company, but does not include-.....

"(x) any amount raised by the issue of bonds or debentures secured by the mortgage of any immovable property of the company or with an option to convert them into shares in the company provided that in the case of such bonds or debentures secured by the mortgage of any immovable property the amount of such bonds or debentures shall not exceed the market value of such immovable property";

From the above provision, it is noted that the issue of debentures to be eligible for exemption from the definition of 'Deposits' must be secured by mortgage of any immovable property of the Company and further the amount of such bonds/debentures should not exceed the market value of such immovable property..

8.17 The Committee noted that as per the copy of Certificate of Registration of mortgage, Charge of Rs. 10,000,000,000/- (One Thousand Crore) had been registered on the assets of the Company on 14th March 2012. However, the amount of total immovable assets of the Company i.e. Rs.21.58 Lacs apparent on the face of the Balance Sheet of the Company as on 31-03-2014 appears meagre to cover the amount of charge / outstanding debenture as on 31-03-2014 i.e., Rs.171.05 Crores.

8.18 Hence, the amount of debentures so outstanding as on 31.03.2014 falls within the meaning of Deposits in terms of the requirements of Rule 2(b)(x) of Companies (Acceptance of Deposit) Rules, 1975 and accordingly, should have been treated as deposits in terms of the requirement of which the Respondent as auditor failed to point out the same in his audit report.

8.19 Accordingly, the Committee held that the Respondent was casual in his approach while carrying out the audit and due diligence was not exercised by him while conducting the Statutory Audit of the Company. Thus, 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 fourth charge.

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 2.1 as given above	Paras 8.1 to 8.5 as given above	GUILTY - Item (7) of Part I of the Second Schedule
Para 2.2 as given above	Paras 8.6 to 8.8 as given above	GUILTY - Item (7) of Part I of the Second Schedule and Item (2) of Part IV of the First Schedule
Para 2.3 as given above	Paras 8.9 to 8.12 as given above	GUILTY - Item (7) of Part I of the Second Schedule
Para 2.4 as given above	Paras 8.13 to 8.19 as given above	GUILTY - Item (7) of Part I of the Second Schedule

ORDER.

- 10 In view of the above observations, considering the oral and written submissions of the parties and material on record, the Committee held the Respondent GUILTY of Professional and Other Misconduct falling within the meaning of Item (7) of Part-I of the Second Schedule and Item (2) of Part IV of the First Schedule to the Chartered Accountants Act, 1949.

sd/-
(CA. RANJEET KUMAR AGARWAL)
PRESIDING OFFICER

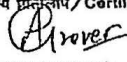
sd/-
(MRS. RANI S. NAIR, I.R.S. RETD.)
GOVERNMENT NOMINEE

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

sd/-
(CA. COTHA S SRINIVAS)
MEMBER

DATE : 25th NOVEMBER, 2024
PLACE: NEW DELHI

प्रमाणित सत्य प्रतिलिपि / Certified True Copy


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अनुशासनान्तरिक्ष विभाग/ Disciplinary Directorate
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