



भारतीय सनदी लेखाकार संस्थान

(संसदीय अधिनियम द्वारा स्थापित)

THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA

(Set up by an Act of Parliament)

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

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

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

[PR/G/285/22/DD/200/2022/DC/1778/2023]

In the matter of:

**The Registrar of Companies, NCT of Delhi & Haryana,
Through Smt. Kamna Sharma,
Deputy Registrar of Companies,
Ministry of Corporate Affairs,
4th Floor, IFCI Tower, 61, Nehru Place,
New Delhi – 110 019**

...Complainant

Versus

**CA. Ashok Kumar Kher (M.No.080512)
101, B-14, Mukherjee Nagar,
Commercial Complex,
Delhi – 110 009**

...Respondent

MEMBERS PRESENT:

- 1. CA. Ranjeet Kumar Agarwal, Presiding Officer (In person)**
- 2. Shri Jiweish Nandan, IAS (Retd.), Government Nominee (in person)**
- 3. Ms. Dakshita Das, I.R.A.S. (Retd.), Government Nominee (Through VC)**
- 4. CA. Mangesh P Kinare, Member (Through VC)**
- 5. CA. Abhay Chhajed, Member (In person)**

DATE OF HEARING : 20th January 2025

DATE OF ORDER : 04th February 2025

1. That vide Findings dated 19.12.2024 under Rule 18(17) of the Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007, the Disciplinary Committee was inter-alia of the opinion that **CA. Ashok Kumar Kher (M. No. 080512)** (hereinafter referred to as the **Respondent**) is **GUILTY** of Professional



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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 an opportunity of being heard in person/ through video conferencing and to make representation before the Committee on 20th January 2025.

3. The Committee noted that on the date of the hearing on 20th January 2025, the Respondent was physically present for the hearing and appeared before it. Thereafter, the Committee asked the Respondent to make submissions in the matter. During the hearing, the Respondent stated that he had already submitted his written representation dated 09th January 2025 on the Findings of the Committee. He submitted that advance of Rs. 3.69 Crores was received on multiple dates and was received when the Company has business activities. Further, the bank accounts of the Company have been dormant, and he has given details of all the banks of the Company in audited Financial Statements of the Company. The Committee also noted the written representation of the Respondent dated 09th January 2025 on the Findings of the Committee, which, inter alia, are given as under:-

- In terms of Rule 2(c) (ii) of the Companies (Acceptance of Deposits) Rules 2014 any advance received by a Company will not be termed as deposit if it is received from a Foreign Body Corporate.
- Due to sudden downfall in business and change in technology, business of the Company was stopped resulting in huge losses and as such the Company was not able to repay the said advance amount. The Respondent as an auditor had no role to play in the decision making of the Company.
- The Interest receivable shown in Financial Statement amounting to Rs. 2,74,030/- is an accumulated amount of interest accrued over a period of time and the same figure is standing since 31-03-2014 till 31-03-2021 under the same head.



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- The Company has already paid tax on the said amount of Rs. 2,74,030/-in respective years on accrual basis.

4. The Committee considered the reasoning as contained in the Findings holding the Respondent 'Guilty' of Professional Misconduct vis-à-vis written and verbal representation of the Respondent. The Committee noted that the issues/ submissions made by the Respondent as aforesaid have been dealt with by it at the time of hearing under Rule 18.

5. Thus, keeping in view the facts and circumstances of the case, material on record including written and verbal representation of the Respondent on the Findings, the Committee was of the view that the Company had received an advance of Rs. 3.69 crores from a foreign Company and it was outstanding in spite of the fact that the Company had no business activity since 7 years. The Management of the Company in its representation letter dated 25/08/2013 addressed to the Respondent had stated that said advance was utilised towards payment of its operational costs. In view of this, the Committee noted that the Respondent had not reported this fact in his Audit Report; and he also failed to bring on record FEMA permission for receipt of said advance from a foreign Company.

6. Further, the Committee was of the view that interest should have been accrued every year on fixed deposits and corresponding income should have been recognised in the Profit and Loss account of the Company, but in the instant case, no income was booked in Profit & Loss account of the Company.

7. Hence, the Professional Misconduct on the part of the Respondent is clearly established as spelt out in the Committee's Findings dated 19.12.2024 which is to be read in consonance with the instant Order being passed in the case.

8. Accordingly, the Committee was of the view that the ends of justice would be met if punishment is given to him in commensurate with his Professional Misconduct.



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9. Thus, the Committee ordered that the Respondent i.e. CA. Ashok Kumar Kher (M. No. 080512), Delhi be REPRIMANDED and also imposed a fine of Rs. 25,000/- (Rupees Twenty five thousand only) upon him, which shall be paid within a period of 60 (sixty) days from the date of receipt of the Order.

Sd/-

(CA. RANJEET KUMAR AGARWAL)
PRESIDING OFFICER

Sd/-

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

Sd/-

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

Sd/-

(CA. MANGESH P KINARE)
MEMBER

Sd/-

(CA. ABHAY CHHAJED)
MEMBER

सही प्रतिलिपि होने के लिए प्रमाणित
Certified to be true copy

मीनू गुप्ता / Meenu Gupta
वरिष्ठ कार्यकारी अधिकारी / Sr. Executive Officer
अनुशासनालयक निदेशालय / Disciplinary Directorate
इंस्टिट्यूट ऑफ चार्टर्ड एकाउंटेंट्स ऑफ इंडिया
The Institute of Chartered Accountants of India
आईसीएआई भवन, विश्वास नगर, शाहदरा, दिल्ली-110032
ICAI Bhawan, Vishwas Nagar, Shahdara, Delhi-110032

CONFIDENTIAL

DISCIPLINARY COMMITTEE [BENCH – IV (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/285/22-DD/200/2022-DC/1778/2023]

In the matter of:

**The Registrar of Companies, NCT of Delhi & Haryana,
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Versus

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...Respondent

MEMBERS PRESENT:

**Shri Jiwesh Nandan, IAS (Retd.), Government Nominee (in person)
Ms. Dakshita Das, IRAS (Retd.), Government Nominee (through VC)
CA. Mangesh P Kinare, Member (through VC)
CA. Abhay Chhajed, Member (in person)**

DATE OF FINAL HEARING : 20th June 2024

DATE OF DECISION : 21st August 2024

PARTIES PRESENT:

**Respondent : CA. Ashok Kumar Kher (in person)
Counsel(s) for Respondent : Advocate Sanjeev Anand
along with Mr. Yakesh Anand and Mr. Chirag Kher
(in person)**

1. **Background of the Case:**

In the instant case, the Respondent was the Auditor of M/s Haier Telecom (India) Private Limited (hereinafter referred to as the "Company") since its inception i.e. year 2005 to Financial Year 2020-2021.

2. **Charges in brief:**

- 2.1. The Company was having NIL Turnover for the last 7 years and thus, it can be said that the Company is not doing any business, and the Company had received advance from customers for an amount of Rs.3,69,07,857/- and withholding it despite no revenues. It raises doubt that the Company was not intending to deliver the goods/services to the customer and there were no inventories in the Company. It is alleged that it was not clear as to why the Company has withheld such advance with it.
- 2.2. The Company was not able to ascertain outstanding amount payable to Small Scale Industries. This implies that the Company was trying to escape from its liability and disclosures in this regard.
- 2.3. The details of bank accounts are not disclosed and are reported to be inactive, but interest is receivable on the deposits with the Bank.
- 2.4. The Respondent along with directors was involved in illegal and suspicious activities and they formed numerous companies with the intention to route the funds, money laundering, tax evasion etc.

3. **The relevant issues discussed in the Prima Facie Opinion dated 18th October 2022 formulated by the Director (Discipline) in the matter, in brief, are given below:**

- 3.1. In respect of first allegation, it was noted that the Respondent was auditor of the Company since its incorporation. On perusal of the Management letter dated 25.08.2013, it appears that the advance was taken for business purposes either in 2013 or earlier years. The Respondent only stated that he has no role in business decision making and the said amount could not be refunded due to stop in earning owing to change in technology. On the contrary, the Complainant raised question on withholding of the advance without any business purposes as the Company was having Nil turnover during the last 7 years.
- 3.2. The Respondent was supposed to ensure compliance of the provisions of the Companies Act, 1956 / 2013 relating to his duties and responsibility as an auditor. It was observed that the

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trade / business advance was taken either in 2013 or earlier years and it remained outstanding till 30.09.2021 (i.e., the date of signing of audit report by the Respondent for FY 2020-21). It was further observed that a Company can withhold the amount of advance for unlimited period or utilise the advance for any purpose but subject to the terms & conditions attached with the use of advance and subject to the provisions of the Companies Act, 1956 / 2013. It was viewed that since the advance remained outstanding for more than 8 years, the provisions of Sections 73 of the Companies Act, 2013 and Rules framed thereunder would apply to the said advance.

- 3.3. In case of the advance which has been taken against the supply of goods or provision of services, the supply of goods / provision of services shall be made within a period of 365 days from the date of acceptance of such advance otherwise the advance would be treated as public deposits. In the instant allegation, the advance from customer (M/s. Olive Telecom (HK) Limited)) has been shown in the balance sheet under the heading "*Other Current Liability*" which clearly indicates that the said advance was given against supply of goods or provision of services and no supply was made against the said advance as admitted by the Company in its representation letter. On the contrary, it was utilised for other purpose (payment of operations cost). Hence, it appears that the said advance should have been treated as public deposits in terms of the provisions of Section 73 read with Rules of Companies (Acceptance of Deposits) Rules, 2014 but as apparent from the Financial Statement of the Company, the same was neither treated as public deposits nor any clarification / note in this regard was given in the Notes to Accounts of the Company.
- 3.4. The Respondent in his audit report mentioned that the Company has not accepted any deposits from the public and the provisions with regards to the public deposits are not applicable on the Company. The said reporting made by the Respondent appears to be incorrect. Further, the amount of advance was material when compared with the total size of the Balance Sheet (around 10% of the size of the Balance Sheet(s)). The Respondent could not produce the copy of agreement, if any between the Company and M/s. HTIL(HK) / M/s. Olive Telcom (HK) Ltd, a Foreign Company which may indicate as to what was the nature of the transaction and what were terms and conditions of such advance payment to justify his stand. In view of the requirement of Section 73 read with Rules framed thereunder and materiality, the auditor should have modified his audit report or at least should have highlighted this issue in his audit report for the information of stakeholders, but he failed to do so. Thus, he was held prima facie Guilty of Professional Misconduct falling within the meaning of Item (7) of Part I of Second Schedule to the Chartered Accountants Act, 1949.

- 3.5. In respect of second allegation, the primary responsibility of preparation of financial statement is of the management of the Company and the Respondent was required to give opinion / report on the state of affairs of the Company based on his verification of record. Though the disclosure with regard to inability of the Company in ascertaining the outstanding amount was given in Notes to Accounts, yet it was also observed that in view of the requirement of SA-706 on "*Emphasis of Matter Paragraphs and Other Matter Paragraphs in the Independent Auditor's Report*", the Respondent should have mentioned the said matter in his audit report under paragraph "Emphasis of Matter" to draw the attention of the users towards it in view of the specific disclosures as required in terms of Schedule III to the Companies Act, 2013 which has not been given by the Company. Thus, the Respondent was held prima facie Guilty of Professional Misconduct falling within the meaning of Item (7) of Part I of Second Schedule to the Chartered Accountants Act, 1949.
- 3.6. In respect of third allegation, it was observed that the Respondent provided details of fixed deposits and current accounts of the Company along with balance as on 31.03.2020 and 2021. It was also observed that since the Respondent was auditor of the Company since inception (as claimed by the Respondent), he cannot deny his responsibility in respect of any irregularities / discrepancy pertaining to the financial statements of previous years. The Respondent remained silent on the issue as to when the interest was accrued and why the amount of interest could not have been received by the Company. The Respondent should have brought on record copy of bank statement / confirmation letter from bank to indicate that the entry of interest receivable is not a falsified / fake entry as claimed by the Complainant in his Complaint. Thus, he was held prima facie Guilty of Professional Misconduct falling within the meaning of Item (7) of Part I of Second Schedule to the Chartered Accountants Act, 1949.
- 3.7. In respect of the fourth allegation, there was nothing from the Respondent as to whether the terms & condition of advance allows the Company to use it for any purpose other than intended use and why no single rupee has been repaid to the foreign customer till date and why no interest has been charged by the foreign customer on the same. In absence of the said information, the role of the Respondent in facilitating or helping the Company in diversion of money for tax evasion or receipt of money from unlawful sources for illegal / suspicious activities could not be ruled out. Therefore, the Respondent was held Prima Facie Guilty of Other Misconduct falling within the meaning of Item (2) of Part IV of the First Schedule to the Chartered Accountants Act, 1949.
- 3.8. Accordingly, the Director (Discipline) in his Prima Facie Opinion dated 18th October 2022 opined that the Respondent was prima facie **Guilty** of Professional and Other Misconduct

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falling within the meaning of Item (7) of Part I of Second Schedule and Item (2) of Part IV of the First Schedule to the Chartered Accountants Act, 1949. The said items of the Schedules 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—:

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(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:

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(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 09th June 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 prima facie **GUILTY** of Professional and Other Misconduct falling within the meaning of Item (7) of Part I of Second Schedule and 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.

4. Dates of Written Submissions/ Pleadings by the Parties:

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

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S. No.	Particulars	Dated
1.	Date of Complaint in Form 'I' filed by the Complainant	15 th March 2022
2.	Date of Written Statement filed by the Respondent	15 th June 2022
3.	Date of Rejoinder filed by the Complainant	25 th August 2022
4.	Date of additional submissions/ documents filed by the Respondent	21 st September 2022
5.	Date of Prima Facie Opinion formed by Director (Discipline)	18 th October 2022
6.	Written Submissions filed by the Respondent after PFO	04.08.2023 and 27.05.2024
7.	Rejoinder filed by the Complainant after PFO	---
8.	Submissions of the Respondent during Hearing	14 th June 2024 and 21 st June 2024

5. **Written Submissions filed by the Respondent:**

The Respondent vide letter dated 04.08.2023 and 27.05.2024 had, inter alia, made the submissions which are given as under –

- a. The amount was received by the Company from Olive Telecom (HK) Ltd (a Foreign Company). The said sum of money was shown as advance in Financial Statements.
- b. In view of Rule 2(c) Companies (Acceptance of Deposits) Rules, 2014, any amount received by a Company will not be termed as deposit if it is received from a Foreign Body Corporate. It is not in dispute that Olive Telecom (HK) Ltd is foreign body corporate, as such the allegation that the advance ought to be treated as deposit is wrong and contrary to exclusion provided in Rule 2 (c) of the Companies (Acceptance of Deposits) Rule, 2014.
- c. Notes to Accounts accompanying the Balance Sheet have properly disclosed the fact of non-receiving of information from creditors. Further, SA-706 does not anywhere stipulate and/ or mandates that failure to disclose any outstanding to MSME on account of non-receipt of information from such suppliers towards the applicability of MSME Act is a necessary requirement to be disclosed in the Independent Auditor's Report.
- d. Interest receivable shown in the financial statement amounting to Rs. 2,74,030/- is an accumulated amount of interest accrued over a period of time and the same figure is standing from 31.03.2014 till 31.03.2021. No interest income was accrued and received

by the Company from Financial Year 2014-15 to Financial Year 2020-21 as all bank accounts are inactive / in-operative.

- e. Relying upon some of the judgements of the Court, it is submitted that misconduct arises from ill-motive and mere acts of negligence, innocent mistake or errors of judgement do not constitute the misconduct.

6. **Brief facts of the Proceedings:**

Details of the hearing(s) fixed and held/ adjourned in the said matter are given as under –

Particulars	Date of Meeting(s)	Status
1 st Hearing	10 th August 2023	Part heard and adjourned.
2 nd Hearing	28 th May 2024	Deferred due to paucity of time.
3 rd Hearing	03 rd June 2024	Part heard and adjourned.
4 th Hearing	20 th June 2024	Hearing concluded and judgment reserved.
---	21 st August 2024	Decision taken.

- 6.1 On the day of the first hearing on 10th August 2023, the Committee noted that the Respondent along with Counsel were present in person before it. The office apprised the Committee that the Complainant was not present and notice of listing of the case has been served upon him.
- 6.2 Being first hearing of the case, the Respondent was put on oath. Thereafter, the Committee enquired from the Respondent as to whether he was aware of the charges and then charges against the Respondent were read out. On the same, the Respondent replied that he was aware of the charges and pleaded Not Guilty to the charges levelled against him. In the absence of the Complainant and in view of Rule 18(9) of the Chartered Accountants (Procedure of Investigation of Professional and Other Misconduct and Conduct of Cases) Rules, 2007, the Committee adjourned the case to a later date.
- 6.3 On the day of the hearing on 28th May 2024, consideration of the subject case was deferred by the Committee due to paucity of time.
- 6.4 On the day of the hearing on 03rd June 2024, the Committee noted that the authorized representative of the Complainant and Respondent along with Counsel(s) were present and appeared before it. The Committee noted that the Respondent was put on oath on 10.08.2023. The Committee also noted that the Respondent had filed Written Statement(s) dated .04.08.2023 and 27.05.2024.

6.5 Thereafter, the Committee asked the Counsel for the Respondent to make submissions. The Committee noted the submissions of the Counsel for the Respondent which, inter alia, are given as under –

- a. Management representation letter dated 25.08.2013 is on record, which stated that advance of Rs. 3.69 Crores is against cancellation of order.
- b. Company from whom the said amount was received was a foreign Company.
- c. In terms of Rule 2(c)(ii) of Companies (Acceptance of Deposit) Rules 2014, an advance received from a Foreign Company is not covered under provision of deposit(s).
- d. There was no business in the Company.
- e. A small error may not tantamount to professional misconduct.
- f. He was still continuing the Auditor of the Company.

The Committee asked the authorised representative of the Complainant to make submissions. He replied that all the documents/ information had already been submitted and he has nothing more to submit in the captioned case.

6.6 The Committee after considering the arguments/submissions of the parties, directed the Respondent to provide the following documents/information within 7 days:

- (i) Current status of the Company.
- (ii) Whether the Respondent has received any professional fees from the Company and to provide the details of fees so received.
- (iii) The present status of case, in Economic Offences Wing and details of allegations contained therein. Further, provide report (if any) of Economic Offences Wing in the matter.

6.7 In response to the direction given on 03.06.2024, the Respondent vide letter dated 14.06.2024 has, inter alia, submitted certain submissions / documents, which are given as under –

- a. The status of the Company is currently active. Since incorporation of the Company, Mr Arun Kishore Khanna and Mr Rajesh Duggal have remained the Directors of the Company till date.
- b. The Respondent has been working as a professional with this Company since the financial year 2005-06 and has till date received payment of Rs 29,58,729/- (inclusive of all applicable taxes) as professional fee.
- c. The Complainant had filed a vague and bald complaint dated 15.02.2022 against the Company and the Respondent before the Economic Offences Wings, New Delhi. The Respondent duly joined the enquiry and participated in the same and submitted his reply.

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- d. Thereafter, the EOW conducted its investigation and after duly satisfying itself that no cognizable / predicate offence is made out proceeded to close the Complaint.
- 6.8 On the day of the final hearing on 20th June 2024, the Committee noted that Respondent along with Counsel(s) were present and appeared before it. The Complainant was not present and the notice of listing of subject case was duly served upon the Complainant. The Committee noted that the Respondent was already on oath and had filed Written Statement(s) dated 04.08.2023 and 27.05.2024.
- 6.9 Thereafter, the Committee asked the Counsel for the Respondent to make submissions. The Committee noted the submissions of the Counsel for the Respondent which, inter alia, are given as under –
- a. On account of cancellation of sales orders, the stock advances to the tune of Rs. 3.69 crores were utilised towards payment of operational costs. Said advance was received in various instalments.
 - b. As per Management Representation Letter, the Company informed the Respondent that no information was received as per Section 22 of MSMED Act, 2006 from its suppliers, so it could not ascertain the MSME information.
 - c. In Notes to Accounts to the Financial Statements, it is mentioned that the Company is not able to ascertain outstanding amount payable to the MSMEs.
 - d. Bank accounts of the Company had become inactive.
 - e. The Company had fixed deposits in banks and interest was accrued on these FDs which was shown as receivable in Balance Sheet.
- 6.10 Based on the documents/ material and information available on record and the oral and written submissions made by the parties, and on consideration of the facts of the case, the Committee concluded the hearing in subject case and judgement was reserved.
- 6.11 The Committee directed the Respondent to provide the following information/document within 10 days:
- (i) To provide further written submissions/information related to permission/provisions of FEMA Act in regard of receipt of said advance from foreign Company.
- 6.12 In view of directions of the Committee, the Respondent vide e-mail dated 21/06/2024 has submitted that there were normal business activities between the Company and M/s. Olive Telecom (HK) Ltd. and has submitted copy of ledger account of M/s. Olive Telecom (HK) Ltd.

6.13 Thereafter, on 21st August 2024, the subject case was fixed for taking decision. After detailed deliberations, and on consideration of the facts of the case, various documents on record as well as oral and written submissions made by the parties, the Committee took decision on the conduct of the Respondent.

7. Findings of the Committee:

The Committee noted the background of the case as well as oral and written submissions made by the Complainant and the Respondent, documents/ material on record and gives its findings as under: -

7.1 The Committee noted that the charges against the Respondent are as under: -

- i. The Respondent was statutory auditor of M/s Haier Telecom (India) Private Limited (**Company**), and the Company had received an advance of Rs.3,69,07,857/- from customers and withheld it despite no revenue/ business for 7 years.
- ii. The Company was not able to ascertain the outstanding amount payable to Small Scale Industries.
- iii. The details of a bank accounts are not disclosed and are reported to be inactive, but interest is receivable on the deposits with the Bank.
- iv. The Respondent along with directors was involved in illegal and suspicious activities for routing of funds, money laundering, tax evasion etc.

The details of charges are given in paras 2.1 to 2.4 above.

7.2 As regards the **first Charge**, the Committee noted that the Counsel for the Respondent during the hearing had submitted that Management representation letter dated 25.08.2013 is on record, which stated that advance of Rs. 3.69 crore is to be adjusted towards operational costs on account of cancellation of sales orders, the stock advances to the tune of Rs. 3.69 crores were utilised towards payment of operational costs. The said advance was received in various instalments.

7.3 Further, the Committee noted that the Counsel for the Respondent submitted that an advance received from foreign Company does not fall within the meaning of deposits. The Committee asked the Respondent to provide document showing permission granted under FEMA to substantiate that said amount was received from a foreign Company. The Counsel for the Respondent replied that it was a regular business dealing for which invoices were raised, supply was made and services were provided and therefore FEMA did not apply in this case. The Committee noted the statement of the Counsel for the Respondent and was of the view

that the Respondent failed to bring on record FEMA permission for receipt of advance from a foreign Company.

- 7.4 Thereafter, the Committee observed that when an advance is used for meeting operational costs, in such a situation, it becomes income of the Company. Further, as the Company in the instant case had already used advance towards operational cost, then it had become income of the Company and should be accounted for in the Profit and Loss account of the Company.
- 7.5 After noting the submissions of the Respondent, the Committee was of view that since the advance remained outstanding for more than 8 years, the provisions of Section 73 of the Companies Act, 2013 and Rules framed thereunder would apply to the said advance which stipulate as under: -

"73. Prohibition on acceptance of deposits from public –

- (1) On and after the commencement of this Act, no company shall invite, accept or renew deposits under this Act from the public except in a manner provided under this Chapter."*

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Rule 2(c) of the Companies (Acceptance of Deposits) Rules, 2014 –

- (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 –*

(xii) any amount received in the course of, or for the purposes of, the business of the company, -

- (a) as an advance for the supply of goods or provision of services accounted for in any manner whatsoever provided that such advance is appropriated against supply of goods or provision of services within a period of three hundred and sixty-five days from the date of acceptance of such advance:*

Provided that in case of any advance which is subject matter of any legal proceedings before any court of law, the said time limit of three hundred and sixty-five days shall not apply."

- 7.6 In view of the above provisions of law as stated above, the Committee was of the view that in case of the advance which has been taken against the supply of goods or provision of services, the supply of goods/ provision of services shall be made within a period of 365 days

from the date of acceptance of such advance otherwise the advance would be treated as public deposits. In the instant allegation, the advance from customer (M/s. Olive Telecom (HK) Limited)) has been shown in the balance sheet under the heading "*Other Current Liability*" which clearly indicated that the said advance was given against supply of goods or provision of services and no supply was made against the said advance as admitted by the Company in its representation letter. On the contrary, it was utilised for other purpose (payment of operations cost). Hence, the said advance should have been treated as public deposits in terms of the provisions of Section 73 read with Rules of Companies (Acceptance of Deposits) Rules, 2014 but as apparent from the Financial Statement of the Company, the same was neither treated as public deposits nor any clarification / note in this regard was given in the Notes to Accounts of the Company.

- 7.7 After noting the submissions of the Respondent, the Committee was of view that the Company had received an advance of Rs. 3.69 crores from a foreign Company and it was outstanding in spite of the fact that the Company had no business activity since 7 years. Further, the Management of the Company in its representation letter dated 25/08/2013 addressed to the Respondent had stated that said advance was utilised towards payment of its operational costs. In view, of this, the Committee noted that the Respondent had not reported this fact in his Audit Report; and he also failed to bring on record FEMA permission for receipt of said advance.
- 7.8 Thereafter, the Committee observed that an amount of advance was material when compared with the total size of the Balance Sheet and the Respondent could not produce any document which may indicate as to what was the nature of the transaction and what were terms and conditions of such advance payment to justify his stand. The Committee observed that the Respondent in his audit report has mentioned that the Company has not accepted any deposits from the public and the provisions with regard to the public deposits are not applicable on the Company. In view of this statement, the Committee was of the view that the said reporting made by the Respondent is incorrect keeping in view the above facts. In view of the requirement of Section 73 read with Rules framed thereunder, the auditor should have modified his audit report or at least should have highlighted this issue in his audit report for the information of stakeholders, but he failed to do so. Hence, the Committee decided that the Respondent is **GUILTY** of Professional Misconduct falling within the meaning of of Item (7) of Part I of Second Schedule to the Chartered Accountants Act, 1949, in respect of this charge.
- 7.9 In respect of **second charge**, the Committee noted that the Counsel for the Respondent during the hearing has submitted that as per Management Representation Letter, the Company informed the Respondent that no information was received as per Section 22 of

MSMED Act, 2006 from its suppliers, so it could not ascertain the amount payable to Small Scale Industries. He further submitted that in Notes to Accounts to the Financial Statements, it is mentioned that the Company is not able to ascertain outstanding amount payable to the MSMEs.

- 7.10 After noting the submissions of the Counsel for the Respondent, the Committee perused the Financial Statements of the Company and observed that the Respondent had made disclosure in Notes to Accounts stating that *"the Company is not able to ascertain outstanding amount owed by Small Scale Industries as it is required to be disclosed as per Companies Act, 2013"*. The Committee was of the view that the Respondent should have mentioned the said matter in his audit report under paragraph "Emphasis of Matter" to draw the attention of the users towards it in view of the specific disclosures as required in terms of Schedule III to the Companies Act, 2013 which has not been given by the Company. However, in view of disclosure made in Notes to Accounts, the Committee decided to extend benefit of doubt and thus absolved the Respondent of this charge. Hence, the Committee decided that the Respondent is **NOT GUILTY** of Professional Misconduct falling within the meaning of of Item (7) of Part I of Second Schedule to the Chartered Accountants Act, 1949, in respect of this charge.
- 7.11 In respect of **third charge**, the Committee noted the submissions of the Counsel for the Respondent, wherein he submitted that bank accounts of the Company had become inactive, but the Company had fixed deposits in banks and interest was accrued on these FDs which was shown as receivable in Balance Sheet.
- 7.12 The Committee noted the submission of the Counsel for the Respondent, wherein he stated that bank had refused to give statement(s) as the Respondent had submitted the application to the bank(s) for obtaining statement(s) of the Company. The Company and bank(s) refused to give any information or provide statement(s) of the bank account(s) to the Respondent.
- 7.13 In view of the above statement of the Counsel for the Respondent and on perusal of audited Financial Statements, the Committee noted that the Respondent failed to qualify his Audit Report as he had admitted that the Company and the bank(s) had refused to provide the statement(s) of the accounts. Further, the Committee noted that interest receivable was reflected as Rs. 2,74,030/- and the said figure is constant from financial year 2019 to 2021. The Committee was of the view that interest should have been accrued every year on fixed deposits and corresponding income should have been recognised in Profit and Loss account of the Company. But in the instant case, no income was booked in Profit & Loss account of the Company. Hence, the Committee decided that the Respondent is **GUILTY** of Professional

Misconduct falling within the meaning of of Item (7) of Part I of Second Schedule to the Chartered Accountants Act, 1949, in respect of this charge.

7.14 Further, in respect of the **fourth charge**, related to general allegation that the Respondent along with Directors were involved in illegal and suspicious activities and they formed numerous Companies with intention to route the funds, money laundering, tax evasion etc., the Committee was of the view that no evidence of the involvement of the Respondent to that effect had been brought on record by the Complainant Department. The role of the Respondent was limited to being the Auditor of the Company which has been examined by the Committee. Thus, the Committee absolved the Respondent of this charge. Accordingly, the Committee decided that the Respondent is **NOT GUILTY** of Other Misconduct falling within the meaning of of Item (2) of Part IV of First Schedule to the Chartered Accountants Act, 1949, in respect of this charge.

7.15 Accordingly, in view of the above and based on the documents/material and information available on record and after considering the oral and written submissions made by the Complainant and the Respondent, the Committee was of the view that the Respondent was **GUILTY** of Professional Misconduct falling within the meaning of Item (7) of Part I of Second Schedule to the Chartered Accountants Act, 1949 for charges as discussed in para(s) 7.2 to 7.8 and 7.11 to 7.13 only.

8. Conclusion

In view of the above findings stated in the above paras, vis-à-vis material on record, the Committee gives its charge-wise findings as under: -

Charges (as per PFO)	Findings (Para ref.)	Decision of the Committee
Para 2.1 as given above	Para 7.2 to 7.8 as given above	GUILTY as per Item (7) of Part I of Second Schedule
Para 2.2 as given above	Para 7.9 to 7.10 as given above	NOT GUILTY as per Item (7) of Part I of Second Schedule
Para 2.3 as given above	Para 7.11 to 7.13 as given above	GUILTY as per Item (7) of Part I of Second Schedule
Para 2.4 as given above	Para 7.14 as given above	NOT GUILTY as per Item (2) of Part IV of First Schedule

9. In view of the above observations, considering the oral and written submissions of the parties and documents on record, the Committee held the Respondent **GUILTY** of Professional Misconduct falling within the meaning of Item (7) of Part I of Second Schedule to the Chartered Accountants Act, 1949.

Sd/-
(SHRI JIWESH NANDAN, IAS {RETD.})
GOVERNMENT NOMINEE

Sd/-
(MS. DAKSHITA DAS, IRAS {RETD.})
GOVERNMENT NOMINEE

Sd/-
(CA. MANGESH P KINARE)
MEMBER

Sd/-
(CA. ABHAY CHHAJED)
MEMBER

DATE: 19/12/2024
PLACE: New Delhi

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

मीनू गुप्ता/Meenu Gupta
वरिष्ठ कार्यकारी अधिकारी/Sr. Executive Officer
अनुशासनात्मक निदेशालय/Disciplinary Directorate
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