



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/121/2022/DD/88/2022/DC/1717/2023]

In the matter of:

Sh. Shyam Sunder

ROC, Punjab and Chandigarh

Ministry of Corporate Affairs

Plot No. 4B, Sector 27B, Madhya Marg,

Chandigarh – 160 019

...Complainant

Versus

CA. Chander Mohan (M.No.092633)

SCO-20, Sector-20 D, Tribune Road,

Chandigarh – 160 020

...Respondent

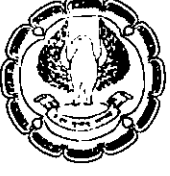
MEMBERS PRESENT:

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

DATE OF HEARING : 20th January 2025

DATE OF ORDER : 08th February 2025

- 1. That vide Findings dated 30/12/2024 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. Chander Mohan (M. No. 092633) (hereinafter referred to as the Respondent") is GUILTY of Professional and Other**



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Misconduct falling within the meaning of Item (2) of Part IV of First Schedule and Item (7) of Part I of Second Schedule to the Chartered Accountants Act, 1949.

2. That pursuant to the said Findings, an action under Section 21B (3) of the Chartered Accountants (Amendment) Act, 2006 was contemplated against the Respondent and a communication was addressed to him thereby granting 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 present through video conferencing. During the hearing, the Respondent stated that he had already submitted his written representation dated 08th January 2025 on the Findings of the Committee. He submitted that there was no Chinese Director or investment in the Company and no FEMA and RBI Rules were violated as alleged in the complaint. The amount of Rs. 68.20 lakhs towards share application money pending allotment was appearing in the books of accounts of the Company prior to audit period. He further submitted that share application money was received from directors of the Company and their family members. At present the said money has been refunded and Company has been converted into LLP. The Committee also noted the written representation of the Respondent dated 08th January 2025 on the Findings of the Committee, which, inter alia, are given as under: -

- a) Section 42 of the Companies Act 2013 came in force from 1st April 2014, whereas the amount of share application money was received prior to Financial Year 2013-14.
- b) There were no requirements under the provisions of the Companies Act or under any other regulatory provisions to make any such disclosure either in the Financial statements or in the audit report.
- c) There was no obligation, according to the provisions of law, on the auditor to give any additional disclosure in the audit report about the share application received prior to Financial Year 2013-14.
- d) In audit report(s), it was already disclosed that balance are subject to confirmation.



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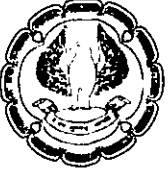
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4. The submissions of the Respondent were heard and completed in the meeting of the Committee held on 20/01/2025 and the decision was deferred. The Committee, thereafter, in its meeting held on 03/02/2025 considered the submissions of the Respondent and documents on record and took decision.

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. 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.

6. 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 upon perusal of the indicators as reflected in the Financial Statements for Financial Years 2013-2014 to 2018-2019 related to material uncertainties involved in Company's ability to continue as going concern; negative net worth; substantial operating losses for all these years and no revenue from operations, viewed that the Respondent being Auditor of the Company should have enquired from the Management of the Company as it cast significant doubt on entity's ability to continue as going concern. Considering the fact in instant case, the Respondent was required to express qualified/modified opinion in his Audit Report.

7. As regards matter related to external confirmations, the Committee observed that mere submitting that the balances are subject to confirmations and reconciliation was specifically mentioned in Notes to Accounts cannot be construed as sufficient. The auditor is required to perform necessary tests to avoid the risks and to ensure that sufficient audit evidences are obtained to confirm the balances as shown in the financial statements.



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8. Further as regards the matter related to share application money pending allotment, the Committee observed that the Respondent was required to verify the pending amount of share application money reflected in financial statements of the Company for financial years 2013-2014 to 2017-2018. The Committee observed that such an inappropriate disclosure has failed to receive the attention of the Respondent; whereas the Respondent has accepted the disclosure made by the Management of the Company. In view of this, the Committee was of the view that the Company had violated the requirements of Section 42 of the Companies Act, 2013 and the Respondent being Statutory Auditor of the Company failed to report the same in his Audit Report(s).

9. Moreover, the Committee was of the view that the Respondent has given unmodified opinion, wherein the Company had negative net worth, substantial operating Losses incurred for all the years and there was no revenue from operations. The Respondent also failed to justify his role in securing audit evidence with regard to balance confirmation of sundry debtors, creditors and loans and advances. Further, share application money pending allotment has been disclosed by the Company in its balance sheet continuously from financial years 2013-14 to 2017-18, but no allotment of shares has been made by the Company and no refund was issued to the share application holders from whom the share application money has been received in violation of the provisions of the Companies Act, 2013. Hence, the Professional and Other Misconduct on the part of the Respondent is clearly established as spelt out in the Committee's Findings dated 30/12/2024 which is to be read in consonance with the instant Order being passed in the case.

10. 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 and Other Misconduct.



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11. Thus, the Committee ordered that the Respondent i.e. CA. Chander Mohan (M. No. 092633), Chandigarh be REPRIMANDED and also imposed a fine of Rs. 20,000/- (Rupees Twenty 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

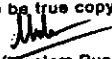
Sd/-
(SHRI JIWESH NANDAN, I.A.S. {RETD.})
GOVERNMENT NOMINEE

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


नीलम पुंडीर / Neelam Pundir
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, Shahdra, 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/121/2022/DD/88/2022/DC/1717/2023]

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

DATE OF FINAL HEARING : 29th July 2024

DATE OF DECISION : 21st August 2024

PARTIES PRESENT:

Complainant : Ms. Kamna Sharma, ROC (Authorized Representative of the Complainant (through VC)

Respondent : CA. Chander Mohan (through VC)

Counsel for Respondent : Mr. C.V. Sajan (through VC)

1. Background of the Case:

- 1.1. M/s. Shri Shyam Enterprises Pvt Ltd. (hereinafter referred to as **the Company**) was incorporated by subscribers/ First Directors namely Mr. Navraj Mittal and Mr. Ram Kumar Mittal on 23.05.2008 having its registered office at C/o. Navraj Mittal, #7, Model

Town. Patran- 147005. Incorporation documents were certified/ witnessed by Company Secretaries namely Ms. Richa Goel (ACS No. 19492) and Mr. Harsh Kumar Goyal (FCS No 3314). Thereafter, the Company was converted into M/s. Shri Shyam Enterprises LLP on 13.08.2019. The Respondent had audited the Balance Sheets of the Company for the Financial Years 2013-2014 to 2018-2019.

2. **Charges in brief:**

2.1. The Company was showing long term borrowings from directors and others in crores and on the other hand, it is giving same loans and advances to other parties. Some of the borrowers and lenders are not related to the Company, which shows the suspicious activities of the company and appears to be money laundering. It also appears that directors of the Company and certifying official have used the company as platform to provide the accommodation entries to various businesses in the form of bogus loans and bogus invoices and circular transactions. It is noteworthy that Company has accepted loan from individuals whose name is not shown in the list of shareholders, director and relative of director. It appears that Company has made violation of FEMA and RBI Rules. It has been alleged that the Respondent has audited the forged balance sheets of the Company for the financial years 2013-14 to 2018-19.

3. **The relevant issues discussed in the Prima Facie Opinion dated 16th September 2022 formulated by the Director (Discipline) in the matter, in brief, are given below:**

3.1 On perusal of the general purpose Financial Statements of the Company for the Financial Years 2013-14 to 2018-19 audited by the Respondent, it is noted that various uncertainties involved which may affect the going concern of the Company and the fact that inadequate disclosure about the material uncertainty is made in the financial statements, it was viewed that the auditor should have given either qualified opinion or disclaimer of opinion in his audit report as required by SA 570 (Revised) or SA 570. However, the Respondent has not even mentioned this fact in his audit report.

3.2 It was observed from notes to accounts from different financial years wherein it has been stated that all the balances of sundry debtors, creditors, loans and advances are subject to confirmation and reconciliation. It was viewed that if the amount is not material, then such note was not required in the financial statements. However, if the amount is material, then it was the responsibility of the auditor to qualify his report and quantify its effect as required by SA 705/ SA 705 (Revised). It was noted that the aggregate of loans

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& advances as well as sundry debtors ranges from 50% to 90 % of the total balance sheet size continuously from financial years 2013-14 to 2017-18., which clearly indicates that the amount involved was highly material when compared with total balance sheet size and it is not known as to how the Respondent could issue a clean report during all such period without independent verification of this highly material item in the balance sheet.

- 3.3 As per paragraphs 7, 8 and 9 of SA 505, External Confirmation, an auditor shall maintain control over external confirmation requests, and in case management refuses the auditor to send a confirmation request, the auditor shall, inter alia, perform alternative audit procedures designed to obtain relevant and reliable audit evidence. It was viewed that the auditor had not complied with the requirements of SA 705 and SA 505.
- 3.4 The Company took long term borrowings from directors and providing funds in terms of loans and advances to other parties without specifying their nature and relationship with the Company which should have raise doubt in the mind of the Respondent being Statutory auditor. It is also not in line with the requirement of Note 6 (R) of 'General Instructions for preparation of Balance Sheet' of Part I, Division I, Schedule III to the Companies Act, 2013.
- 3.5 It was noted that share application money pending allotment has been disclosed by the Company in its balance sheet continuously from financial years 2013-14 to 2017-18. It seems that this item was mere a book entry without this amount actually being received just to cover up the shortfall of sources of fund in the balance sheet where liabilities were exceeding the assets of the Company and net worth of the Company was completely eroded.
- 3.6 Despite all major/ glaring discrepancies, the Respondent gave unqualified/ clean audit reports for all the aforesaid periods which not only clearly shows gross negligence and lack of due diligence on his part but the possibility of him being hand in gloves with the management of the Company can also not be ruled out at this stage.
- 3.7 Accordingly, the Director (Discipline) in his Prima Facie Opinion dated 16th September 2022 opined that the Respondent was prima facie **Guilty** of Professional and Other Misconduct falling within the meaning of Item (2) of Part IV of First Schedule and Item (7) of Part I of Second Schedule to the Chartered Accountants Act, 1949. The said items of the Schedule to the Act, states as under:

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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 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 x

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

3.8 The Prima Facie Opinion formed by the Director (Discipline) was considered by the Disciplinary Committee in its meeting held on 16th January 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 (2) of Part IV of First Schedule and Item (7) of Part 1 of Second Schedule to the Chartered Accountants Act, 1949 and accordingly, decided to proceed further under Chapter V of the Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007.

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 –

S. No.	Particulars	Dated
1.	Date of Complaint in Form 'I' filed by the Complainant	31 st January 2022
2.	Date of Written Statement filed by the Respondent	Not filed
3.	Date of Prima Facie Opinion formed by Director (Discipline)	16 th September 2022
4.	Written Submissions filed by the Respondent after PFO	01 st August 2023
5.	Written Submissions filed by the Complainant after PFO	Not filed

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5. Written Submissions filed by the Respondent:

The Respondent, vide letter dated 01st August 2023 had, inter alia, made the submissions which are given as under –

- a) The Company was incorporated in year 2008 and the two promoters namely Mr. Ram Kumar Mittal and his son Mr. Navraj Mittal want to create a corporate structure for their property business. Therefore, revenue from operations was not regular.
- b) It was not possible for anyone to form such a view that the said Company faced material uncertainties to continue as a going concern, by merely seeing a few numbers in the financial statements, without analysing them with reference to ground factors.
- c) By picking existence of a few conditions listed in SA 570, in isolation from the Financial Statement, an outsider to the Company cannot form a correct judgment about the ability of the Company to continue as going concern.
- d) Reason for negative net worth is the peculiar business model of the Company. Growth in value of the properties held for sale in future on long term will not reflect in Profit and Loss account until those assets are sold, because of the provisions in Accounting Standards. At the same time operating expenses get charged to Profit and loss account on regular basis. Therefore, it is an unavoidable accounting mismatch, resulting in book loss. Although the Company's intrinsic net worth has increased because of the gain in value of the assets (properties), it is not reflected in the Balance sheet.
- e) Current ratio also could not be treated as adverse in the instant case because the amount of current liability of Rs 2.10 Crores was advance against sale of property that was to be settled against sale of asset and not to be paid off. There was no obligation to pay off liabilities. So, shortage of current assets was technical only and not substantive, and hence did not matter.
- f) The Respondent by having proper discussion with management had obtained appropriate sufficient audit evidence about the correctness in the assessment of the management about the ability of the Company to continue as a going concern.
- g) Balances in the liability side of the financial statements were loans from Director Navraj Mittal, and two Advance received against sale of property supported by agreement. There was no dispute on the accuracy of these balances.
- h) The amount collected towards the share capital was prior to the period since the Respondent became Auditor. There were 11 Applicants and it was informed by the management that allotment could not be done because of the differences arising

after the receipt of money on terms of use. The Company has already refunded the amount as evident from the financial statements of 2018-19.

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	05 th June 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	Deferred due to paucity of time.
5 th Hearing	15 th July 2024	Adjourned at the request of the Complainant.
6 th Hearing	29 th July 2024	Hearing concluded and judgment reserved.
---	21 st August 2024	Decision taken.

- 6.1 On the day of the first hearing on 05th June 2023, the Committee noted that Ms. Kamna Sharma (Dy. ROC, Chandigarh) was present through Video conferencing. The Committee further noted that the Respondent along with his Counsel were also present through Video Conferencing mode. Thereafter, they gave a declaration that there was nobody present, except them from where they were appearing and that they would neither record nor store the proceedings of the Committee in any form.
- 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 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 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 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 were present and appeared before it. The Committee noted that the Respondent was put on oath on

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05.06.2023. The Committee also noted that the Respondent had filed written statement dated 01.08.2023.

- 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. Negative net worth is not a sign that the Company would not revive.
 - b. Company has been converted into LLP at present.
 - c. No share application money pending allotment was there at the time of conversion of Company into LLP.
 - d. The Respondent was never apprehended by Economic Offence Wing for any misappropriation of funds of the Company.
- 6.6 The Committee asked the authorised representative of the Complainant to make submissions. In response to the same, she stated that she has no information as to whether there is any case against the promoters/ Directors of the Company. She also stated that the Department had sent report to Ministry of Corporate Affairs. The Committee after considering the arguments/ submissions of the parties, directed to call the following documents/ information from the parties within 7 days:

Respondent:

- (i) Current Status of LLP.
- (ii) Whether the Respondent was auditor of the LLP.

Complainant:

- (i) To submit evidence, if any, in support of allegation.

- 6.7 On the day of the hearing on 20th June 2024, consideration of the subject case was deferred by the Committee due to paucity of time.
- 6.8 On the day of the hearing on 15th July 2024, the Committee noted that the Complainant Department vide mail dated 15.07.2024 had sought an adjournment on account of urgent official commitments. Acceding to the said request of the Complainant, the Committee adjourned the captioned case to a future date.
- 6.9 On the day of the final hearing on 29th July 2024, the Committee noted that the authorized representative of the Complainant and Respondent along with Counsel were present and appeared before it through VC.

6.10 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. None of the Directors of the Company was related to Chinese National.
- b. It seems to be a case of mistaken identity as "Shyam Enterprise" is a very generic name used by many entities.
- c. The Company was converted into LLP in year 2019.
- d. The profitability of the Company was fluctuating year to year.
- e. In Financial Statements, it is mentioned that balance of Debtors, creditors, loan and advances are subject to confirmation and reconciliation.
- f. SA 500 establishes that an auditor may use confirmation from third parties as one of the audit evidence. There is no compulsion on the auditor to obtain balance confirmation on all occasions.
- g. Not obtaining balance confirmation does not make any case that the balances outstanding were materially mis-stated.
- h. Amount of share application money pending allotment was appearing in the Financial Statements of the Company prior to the audit by the Respondent.
- i. Share application money was collected by the Company prior to commencement of Companies Act, 2013, hence Section 42 of the Companies Act, 2013 was not applicable in this case.

6.11 The Committee asked the authorised representative of the Complainant to make submissions. The authorized representative of the Complainant submitted that she had already provided all the documents related to this case and has nothing more to submit in this case and Committee may decide the case on merits.

6.12 The Committee noted that in response to the direction given on 03rd June 2024, the Respondent vide mail dated 12th July 2024 had submitted that as per the information available on MCA portal, the status of the LLP is active, and he is not the Auditor of the LLP.

6.13 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.

6.14 The Committee directed the authorized representative of the Complainant to file written submissions (if any) within 10 days.



6.15 Thereafter, on 21st August 2024, the subject case was fixed for taking decision. The Committee noted that the subject case was heard by it at length in the presence of the Complainant and the Respondent and the hearing was concluded at its meeting held on 29.07.2024 and the judgment was reserved. The Committee noted the allegations against the Respondent. The Committee further noted that in pursuance of the direction given on 29th July 2024, the Complainant department has not submitted any written submissions.

6.16 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 Respondent, documents / material on record and gives its findings as under: -

7.1 The Committee noted that it is alleged that the Company had borrowed funds from directors and provided funds in terms of loans and advances to other parties. Some of the borrowers and lenders are not related to the Company which shows the suspicious activities of the Company and appears to be money laundering. The Respondent had audited the balance sheets of the Company (M/s Shri Shyam Enterprises Pvt Ltd.) for the Financial Years 2013-14 to 2018-19. The details of charges are given in para 2.1 above.

7.2 The Committee noted that in Prima Facie Opinion dated 16th September, 2022, upon perusal of Financial Statements of the Company for the Financial Years 2013-14 to 2018-19 audited by the Respondent, various items extracted therefrom were noted as under:-

(Amount in Rs.)

Amount in bracket are negative figures

Particulars	2013-14	2014-15	2015-16	2016-17	2017-18	2018-19
Net Worth	(426,928)	(1,044,898)	(1,368,492)	(1,379,697)	(1,385,339)	(1,415,637)
Long term Borrowings	33,999,633	32,369,275	15,576,200	15,167,400	15,060,815	15,105,815
Other Current Liabilities	21,263,930	15,611,672	13,925,922	11,784,580	11,791,940	12,214,640

Short term loans & advances along with Sundry Debtors	31,358,019	26,309,103	8,300,000	2,100,000	2,126,316	23,549,675
Share Application Money Pending Allotment	6,820,000	6,820,000	6,820,000	900,000	750,000	-
Total Assets	61,656,635	53,756,049	34,955,629	26,472,283	26,217,416	25,904,818
Profit (Loss) for the year	(589,447)	(602,520)	(323,594)	(11,205)	(5,642)	(30,298)
Revenue from Operations	-	-	-	2,000,000	-	-
Other Income	426,000	400,000	373,000	48,000	526,316	400,000

7.3 The Committee noted that the following anomalies/ discrepancies were observed in the Prima Facie Opinion 16th September, 2022, which are as under: -

Material uncertainties involved in the Company's ability to continue as a going concern included the followings:

- Negative Net worth.
- Substantial operating Losses incurred for all the years.
- No revenue from operations.

7.4 Thereafter, the Committee considered the matter related to Going concern assumption and in this regard noted the submissions of the Counsel for the Respondent that the Management of smaller entities may not have prepared a detailed assessment of the entity's ability to continue as a going concern, but instead may rely on in-depth knowledge of the business and anticipated future prospects. For smaller entities, it may be appropriate to discuss the medium and long-term financing of the entity with Management, provided that Management's contentions can be corroborated by sufficient documentary evidence and are not inconsistent with the auditors' understanding of entity. The Committee further noted the submissions of the Counsel for the Respondent that the Company faced no material uncertainty to continue as a going concern as per assessment of the Respondent and therefore, there was no need of any disclosure in the Notes to Accounts or in the Audit Report with respect to going concern assumption.

7.5 The Committee noted that paragraph 23 of SA 570 (Revised): Going Concern, applicable from financial year 2017-18, requires that –

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"23. If adequate disclosure about the material uncertainty is not made in the financial statements, the auditor shall. (Ref: Para. A32–A34)

(a) Express a qualified opinion or adverse opinion, as appropriate, in accordance with SA 705 (Revised); and

(b) In the Basis for Qualified (Adverse) Opinion section of the auditor's report, state that a material uncertainty exists that may cast significant doubt on the entity's ability to continue as a going concern and that the financial statements do not adequately disclose this matter."

7.6 Further, paragraph 20 of SA 570: Going Concern, applicable upto financial year 2016-17, requires that –

"20. If adequate disclosure is not made in the financial statements, the auditor shall express a qualified or adverse opinion, as appropriate (See SA 705). The auditor shall state in the auditor's report that there is a material uncertainty that may cast significant doubt about the entity's ability to continue as a going concern. (Ref: Para. A23-A24)"

7.7 The Committee observed that as per SA 570, the auditor has to comment on the going concern status of the Company in respect of capability of the Company to continue its operation in near future based upon its financial health. The Committee in this regard noted the submission of the Counsel for the Respondent that by seeing a negative net worth, the auditor cannot hold a view that the Company is not a going concern; as the evidence shows that the Company continues to run even to current date. The Committee noted that the Respondent has not commented upon the assumption of going concern in his Audit Report or in the Financials of the Company.

7.8 On overall consideration, the Committee was of the view that assumption is merely based on the adequacy of disclosure provided by the Management. Moreover, it is expected that auditor shall enquire from the Management any event or condition beyond Management's assessment and that may cast significant doubt over going concern assumption as a part of additional audit procedure. The Auditor shall then evaluate the Management's assessment of going concern by obtaining sufficient audit evidences and critically examine the past and present situation of the Company, the progress and planned course of action foreseeable in the future.

7.9 The Committee, upon perusal of the indicators as reflected in the Financial Statements for Financial Years 2013-2014 to 2018-2019 (as given in para 7.3 above) related to

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material uncertainties involved in Company's ability to continue as going concern; negative net worth; substantial operating losses for all these years and no revenue from operations, viewed that the Respondent being Auditor of the Company should have enquired from the Management of the Company as it cast significant doubt on entity's ability to continue as going concern. Considering the fact in instant case, the Respondent was required to express qualified/modified opinion in his Audit Report. Accordingly, the Committee viewed that the requirements of SA 570 (Revised) or SA 570 have not been complied with.

7.10 The Committee considered the matter related to external confirmations and in this regard noted the submissions of the Counsel for the Respondent, wherein he submitted that SA 505 does not mandate to collect external balance confirmation and it prescribes the procedure to be followed by the Auditor when he decides to collect balance confirmation. It is disclosed in Financial Statements that balance confirmations have not been received. He further submitted that not obtaining balance confirmation does not affect the appropriateness of audit evidence obtained by the auditor. He also submitted that balance in liability side were loans from Directors and some advances received against sale of property supported by agreement and there was no dispute on accuracy of these balances.

7.11 The Committee noted paragraph 7 of SA 705, applicable up to financial year 2017-18, as well as paragraph 7 of SA 705 (Revised), applicable from financial year 2018-19, Modification to the Opinion in the Independent Auditor's Report, provides as follows –

"7. The auditor shall express a qualified opinion when:

(a) The auditor, having obtained sufficient appropriate audit evidence, concludes that misstatements, individually or in the aggregate, are material, but not pervasive, to the financial statements; or

(b) The auditor is unable to obtain sufficient appropriate audit evidence on which to base the opinion, but the auditor concludes that the possible effects on the financial statements of undetected misstatements, if any, could be material but not pervasive."

7.12 The Committee was viewed that as per paragraphs 7, 8 and 9 of SA 505, External Confirmation, (as reproduced below) the auditor shall regulate the procedure for external confirmation requests, and in case management refuses the auditor to send a

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confirmation request, the auditor shall, inter alia, perform alternative audit procedures designed to obtain relevant and reliable audit evidence:

"7. When using external confirmation procedures, the auditor shall maintain control over external confirmation requests, including:

(a) Determining the information to be confirmed or requested; (Ref: Para.A1)

(b) Selecting the appropriate confirming party; (Ref: Para.A2)

(c) Designing the confirmation requests, including determining that requests are properly addressed and contain return information for responses to be sent directly to the auditor; and (Ref: Para.A3-A6)

(d) Sending the requests, including follow-up requests when applicable, to the confirming party.

"8. If management refuses to allow the auditor to send a confirmation request, the auditor shall:

(a) Inquire as to management's reasons for the refusal and seek audit evidence as to their validity and reasonableness; (Ref: Para. A8)

(b) Evaluate the implications of management's refusal on the auditor's assessment of the relevant risks of material misstatement, including the risk of fraud, and on the nature, timing and extent of other audit procedures; and (Ref: Para.A9)

(c) Perform alternative audit procedures designed to obtain relevant and reliable audit evidence. (Ref: Para.A10)"

"9. If the auditor concludes that management's refusal to allow the auditor to send a confirmation request is unreasonable, or the auditor is unable to obtain relevant and reliable audit evidence from alternative audit procedures, the auditor shall communicate with those charged with governance in accordance with SA 260. The auditor also shall determine the implications for the audit and the auditor's opinion in accordance with SA 705."

7.13 The Committee questioned the Respondent on the role performed by him as required under SA 505 with regard to balance confirmations. Further, the Respondent himself stated that he did not secure external evidence like confirmation from parties. The Committee on this charge noted that the Respondent failed to justify his role in securing audit evidence with regard to balance confirmation of sundry debtors, creditors and loans & advances. The Committee further noted that the evidences were to be obtained by

performing tests of controls and substantive procedures as per SA 500. The Committee noted that the reliability of audit evidence is influenced by its source and by its nature and audit evidence is more reliable when it is obtained independently from outside sources. Further, the external confirmation procedures may assist the auditor in obtaining audit evidence with high level of reliability.

7.14 The Committee observed that mere submitting that the balances are subject to confirmations and reconciliation was specifically mentioned in Notes to Accounts cannot be construed as sufficient. The auditor is required to perform necessary tests to avoid the risks and to ensure that sufficient audit evidences are obtained to confirm the balances as shown in the financial statements. External confirmation needs to be secured to reduce the audit risk to an acceptable level. The auditor may perform alternative audit procedures designed to obtain relevant and reliable audit evidence, and the Respondent has not stated anything on this aspect and also not brought on record whether any alternative audit procedure was adopted by him. In the present case, no confirmation of balances of sundry debtors, creditors and loans and advances has been secured by the Respondent as an auditor. The Committee observed that the aggregate of loans & advances as well as sundry debtors ranges from 50% to 90% of the total balance sheet size continuously from financial years 2013-14 to 2017-18, which clearly indicated that the amount involved was highly material when compared with total balance sheet size, but the Respondent had not given any comment in Audit Report(s) and had issued a clean report(s) during all such periods without independent verification of this highly material items in the balance sheets. This is despite the fact that such highly significant item of balance sheet was unreconciled as admitted and disclosed by the management through notes to accounts. Therefore, it is clear that the Respondent has failed to exercise due diligence.

7.15 Accordingly, it was viewed that the auditor has not complied with the requirements of SA 705 and SA 505.

7.16 Thereafter, the Committee considered the matter related to share application money pending allotment and in this regard noted the submissions of the Counsel for the Respondent that it is prerogative of the Management of the Company to issue the shares and collect share application money. In the Financial Statements of the Company for Financial Year 2018-2019 audited by the Respondent there was no share application money pending allotment. The Counsel for the Respondent, further submitted that share application money pending allotment was outstanding prior to his audit period i.e. prior to Financial Year 2013-2014 and allotment could not be done because of differences

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arising after receipt of money on terms of issue. The Company decided to refund the money in year 2016 after resolving the differences and paid most of the money in year 2016-2017.

7.17 After recording the submissions of the Counsel for the Respondent, the Committee noted that an amount of Rs. 68.20 lakhs was pending since Financial Year 2013-2014 on account of share application money pending allotment and the Respondent had not made any disclosure or comment in his Audit Report(s) rather the Counsel for the Respondent during the hearing submitted that it is prerogative of the Management of the Company to issue the shares and collect share application money. However, in the Financial Statements of the Company for Financial Year 2018-2019 audited by the Respondent, no share application money was pending for allotment.

7.18 The Committee perused the provisions of Section 42 of the Companies Act, 2013, which requires that –

“42. Offer or invitation for subscription of securities on private placement

*...
(6) A company making an offer or invitation under this section shall allot its securities within sixty days from the date of receipt of the application money for such securities and if the company is not able to allot the securities within that period, it shall repay the application money to the subscribers within fifteen days from the date of completion of sixty days and if the company fails to repay the application money within the aforesaid period, it shall be liable to repay that money with interest at the rate of twelve per cent per annum from the expiry of the sixtieth day:*

Provided that monies received on application under this section shall be kept in a separate bank account in a scheduled bank and shall not be utilised for any purpose other than-

(a) for adjustment against allotment of securities; or

(b) for the repayment of monies where the company is unable to allot securities.”

7.19 The Committee noted that share application money pending allotment has been disclosed by the Company in its balance sheet continuously from financial years 2013-14 to 2017-18. As per section 42 of the Companies Act, 2013, a company making an offer or invitation under this section shall allot its securities within sixty days from the date of receipt of the application money for such securities and if the Company is not able to allot the securities within that period, it shall repay the application money to the subscribers within fifteen days from the date of completion of sixty days. However, from the financial statements, it has been noted that no allotment of shares has been made

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by the Company as the share capital is same for all the years and no refund was issued to the share application holders from whom the share application money has been received.

7.20 The Committee observed that the Respondent was required to verify the pending amount of share application money reflected in financial statements of the Company for financial years 2013-2014 to 2017-2018. The Committee observed that such an inappropriate disclosure has failed to receive the attention of the Respondent; whereas he felt it appropriate to accept the disclosure made by the Management of the Company. It was further noted by the Committee even if the said disclosure was a conscious decision of the Management, still the Respondent as an independent auditor was required to make sufficient disclosure regarding the same in his Audit Report. In view of this, the Committee was of the view that the Company had violated the requirements of Section 42 of the Companies Act, 2013 and the Respondent being Statutory Auditor of the Company failed to report the same in his Audit Report(s).

7.21 In view of above noted facts/findings, the Committee was of the view that the Respondent has given unmodified opinion, wherein the Company had negative net worth, substantial operating Losses incurred for all the years and there was no revenue from operations. The Respondent also failed to justify his role in securing audit evidence with regard to balance confirmation of sundry debtors, creditors and loans and advances. Further, share application money pending allotment has been disclosed by the Company in its balance sheet continuously from financial years 2013-14 to 2017-18, but no allotment of shares has been made by the Company and no refund was issued to the share application holders from whom the share application money has been received in violation of the provisions of the Companies Act, 2013.

7.22 The Committee was of the view that despite all the major/ glaring discrepancies as discussed above in the financial statements of the Company, the Respondent has given unmodified opinion for all the aforesaid periods which shows lack of due diligence on his part and is unbecoming of a Chartered Accountant.

7.23 In view of the above facts 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 and Other Misconduct falling within the meaning of Item (2)

of Part IV of First Schedule and Item (7) of Part I of Second Schedule to the Chartered Accountants Act, 1949.

8 **Conclusion:**

In view of the findings stated in above paras, vls-à-vls 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 above.	Para 7.1 to 7.23 as above.	GUILTY as per Item (2) of Part IV of First Schedule and Item (7) of Part I of Second Schedule.

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

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

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

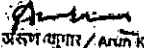
Sd/-
(MS. DAKSHITA DAS, IRAS (RETD.))
GOVERNMENT NOMINEE

Sd/-
(CA. MANGESH P KINARE)
MEMBER

Sd/-
(CA. ABHAY CHHAJED)
MEMBER

Date: 30/12/2024

Place: New Delhi

सही प्रतिलिपि होने के लिए प्रमाणित
Certified to be true copy

अरुण कुमार / Arun Kalmár
वरिष्ठ कार्यकारी अधिकारी / Sr. Executive Officer
अनुशासनात्मक निदेशकमंडल / Disciplinary Directorate
इंस्टीट्यूट ऑफ चार्टर्ड एकाउंटेंट्स ऑफ इंडिया
The Institute of Chartered Accountants of India
इंस्टीट्यूट ऑफ चार्टर्ड एकाउंटेंट्स ऑफ इंडिया-110032
ICAI Chartered Accountants House, Connaught Place, Delhi-110032