



# 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/123/22/DD/134/2022/DC/1787/2023]**

**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. Harsharanjit Singh Chahal (M.No.091689)**

**SCO-406, Level I & II,**

**Sector-20, 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 : 20<sup>th</sup> January 2025**

**DATE OF ORDER : 08<sup>th</sup> 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

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CA. Harsharanjit Singh Chahal (M. No. 091689) (hereinafter referred to as the Respondent") is 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.

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 20<sup>th</sup> January 2025.

3. The Committee noted that on the date of the hearing on 20<sup>th</sup> January 2025, the Respondent was present through video conferencing. During the hearing, the Respondent stated that he had already submitted his written representation dated 07<sup>th</sup> January 2025 on the Findings of the Committee. He submitted that issues raised in in Findings of the Committee were never part of complaint of the Complainant. Section 69 of the Companies Act, 1956 does not apply in instant case as the auditee Company was a Private Limited Company and said Section is applicable for share application offered to public. The Committee also noted the written representation of the Respondent dated 07<sup>th</sup> January 2025 on the Findings of the Committee, which, inter alia, are given as under: -

- a) Since the money was not from a public offer or deemed public offer, same does not fall within the provisions of Section 69 of the Companies Act 1956 and provision for refund within 120 is not applicable in this case.
- b) Audit reports were not required to be qualified for the mere reason of not obtaining external balance confirmations.

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 in the matter.

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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. 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 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.

7. Further as regards the matter related to share application money pending allotment, the Committee observed that the Companies Act 1956, in case of Private Limited Companies, is silent with regard to the provision of period of refund of share application money and if it is assumed for a moment that the contention of Respondent is unassailable; even then Private Companies were expected either to allot shares or refund the application money within a reasonable time. In the extant case, the Committee observed that no allotment of shares has been made by the Company and no refund was issued to the share application holders. The Committee also observed that the share application money was initially collected in Financial Year 2009-10 and it further kept on increasing for next three years i.e. 2010-11, 2011-12 and 2012-13 without making any allotment of shares or any refund of such amount during such period. More so, in Financial Years 2011-12 and 2012-13, the amount so collected is noted to be a material portion of Balance Sheet size being 19% and 25% respectively.

8. In this regard the Committee observed that the Guidance Note on 'Audit of Capital and Reserves' (as of January 2006) requires an auditor to follow certain audit procedures to verify the status/details of share application money pending allotment; and to ensure that the 'Share Application Money' has been appropriately disclosed in the Financial Statements, like either between the heads 'Share Capital' and 'Reserves & Surpluses' till the time the amount is transferred to the Share Capital Account; or its disclosure as 'Current Liability' in case the share

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application amount was due for refund to the share applicants. The Committee further observed that the Guidance Note also requires an auditor to examine the reasonableness of the period for which share application money remains pending for allotment. The Committee observed that no such disclosure either in the Financial Statements of the Company or in the Audit Report has been made, so as to ensure the transparency in the Financial Statements. The Committee noted that while share application money pending allotment was Rs. 36.30 lacs as at 31st March 2012, the bank balance was just Rs. 34,155/-. Similarly, as at 31st March 2013, while the share application money pending allotment was Rs. 68.20 lacs, bank balance was just Rs. 48,018/-. The Committee observed that the share application money was received from the proposed shareholders and the shares were still pending to be allotted by the Company i.e. the specific purpose of collecting the money was not achieved but still the whole amount was utilised by the Company for other purposes. The Committee was of the view that there was every chance of mis-utilization of this material amount by the Company and the Respondent being the Auditor was required to exercise necessary due diligence and report these instances in his audit report for those financial years but he failed to do so. In view of the observations as given above, the Committee viewed that the Respondent failed to carry out the appropriate audit procedures and report in his audit report despite the fact that the amount of share application money was material item of the balance sheet.

9. Moreover, the Committee was of the view that the Respondent has given unmodified opinion, wherein the Respondent failed to justify his role in securing audit evidence with regard to balance confirmation of sundry debtor, 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 2009-10 to 2012-13, 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.

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. Harsharanjit Singh Chahal (M. No. 091689), Chandigarh be REPRIMANDED under Section 21B(3)(a) of the Chartered Accountants Act,1949.

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

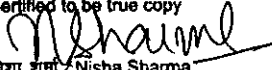
Sd/-  
(SHRI JIWESH NANDAN, I.A.S. {RETD.})  
GOVERNMENT NOMINEE

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

  
निशा शर्मा / Nisha Sharma  
वरिष्ठ कार्यकारी अधिकारी / Sr. Executive Officer  
अनुशासनात्मक 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/123/22-DD/134/2022/DC/1787/2023]

In the matter of:

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...Respondent

MEMBERS PRESENT:

**Shri Jiwesh 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 : 29<sup>th</sup> July 2024**

**DATE OF DECISION : 21<sup>st</sup> August 2024**

PARTIES PRESENT:

**Complainant** : Ms. Kamna Sharma, ROC – Authorized Representative of the  
Complainant (through VC)  
**Respondent** : CA. Harsharanjit Singh Chahal (through VC)  
**Counsel for Respondent** : CA. C.V. Sajan (through VC)

**1. Background of the Case:**

1.1 M/s. Shri Shyam Enterprises Pvt Ltd. (hereinafter referred 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 2008-09 to 2012-2013.

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 2009-10 to 2012-13.

3. **The relevant issues discussed in the Prima Facie Opinion dated 19<sup>th</sup> December 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 2008-09 to 2012-13 audited by the Respondent, it was observed from Notes to Accounts that all the balances as appearing under Unsecured Loans, Current Assets, Loans & Advances and Current liabilities & Provisions 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. It was noted that the aggregate of loans & advances as well as current assets ranges from 50% to 90 % of the total balance sheet size continuously from financial years 2008-09 to 2012-13, 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 periods without independent verification of this highly material item in the balance sheet.
- 3.2. As per paragraphs 7, 8 and 9 of SA 505, External Confirmation, the 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 has not complied with the requirements of SA 705 and SA 505.

- 3.3. The Company took long term borrowings from directors and providing funds in the form of loans and advances to other parties without specifying their nature and relationship with the Company which should have raised doubt in the mind of the Respondent being a statutory auditor. It was also not in line with the requirement of Note 6 (R) of 'General Instructions for preparation of Balance Sheet' given under Part I, Division I, Schedule VI to the Companies Act, 1956.
- 3.4. Share application money pending allotment has been disclosed by the Company in its balance sheet continuously from financial years 2009-10 to 2012-13. The Company has used this fund for other purpose i.e., for meeting the shortage of its sources of funds instead of setting aside the same in a separate bank account as per requirements of the Companies Act, 1956.
- 3.5. In spite of all the major/ glaring discrepancies, Respondent has given 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.
- 3.6. Accordingly, the Director (Discipline) in his Prima Facie Opinion dated 19<sup>th</sup> December 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:

**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."

3.7. The Prima Facie Opinion formed by the Director (Discipline) was considered by the Disciplinary Committee in its meeting held on 09<sup>th</sup> 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 (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 <sup>st</sup> January 2022
2.	Date of Written Statement filed by the Respondent	22 <sup>nd</sup> July 2022
3.	Date of Rejoinder filed by the Complainant	13 <sup>th</sup> September 2022
4.	Date of Prima Facie Opinion formed by Director (Discipline)	19 <sup>th</sup> December 2022
5.	Written Submissions filed by the Respondent after PFO	17 <sup>th</sup> June 2024
6.	Written Submissions filed by the Complainant after PFO	Not filed

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

The Respondent, *vide* letter dated 17<sup>th</sup> June 2024 had, inter alia, made the submissions which are given as under –

- a) The Company was incorporated in year 2008 and two promoters, Mr. Ram Kumar Mittal and his son Mr. Navraj Mittal wanted to create a corporate structure for their property business. The Company had invested in properties as long term investments. Therefore, revenue from operations was not regular, except for occasional commission incomes from property services.

- b) The Promoters of the Company were providing funds to the Company whenever necessary.
- c) Realizable value of real estate assets of the Company was much higher as compared to their book values.
- d) The advances taken from third parties related to real estate deals. Advances given also were towards property purchases envisaged.
- e) Not obtaining balance confirmation from third parties does not constitute any material misstatement. Balance confirmations are audit evidence of highest degree that an auditor has to obtain where there is necessity to do so. It is a matter of professional judgment.
- f) External confirmation is one of the procedures and it is the judgment of the auditor to select the appropriate evidence in the circumstances of the case and to adopt necessary procedure.
- g) There is no compulsion on the auditor to obtain balance confirmations on all occasions.
- h) Not obtaining balance confirmation does not affect the appropriateness of audit evidence obtained by the Auditor.
- i) Except a loan from the director, all other loans had been repaid/ settled in due course of time according to the terms of each of those liabilities. This proves that there was no room for suspecting genuineness of those loans.
- j) Except for two advances for properties that have been absorbed by the LLP formed by conversion of this Company, all other Advances had been repaid/ settled in due course of time according to the terms of each of those Advances.
- k) In the case of private limited Companies for preferential allotment or for private placement up to 50 identified persons, there were no such requirements to create a separate bank account and retain money in it until allotment, unlike the provisions in the present Companies Act, 2013.

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

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

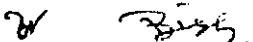
Particulars	Date of Meeting(s)	Status
1 <sup>st</sup> Hearing	18 <sup>th</sup> August 2023	Part heard and adjourned.

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2 <sup>nd</sup> Hearing	28 <sup>th</sup> May 2024	Deferred due to paucity of time
3 <sup>rd</sup> Hearing	03 <sup>rd</sup> June 2024	Adjourned at the request of the Respondent.
4 <sup>th</sup> Hearing	20 <sup>th</sup> June 2024	Deferred due to paucity of time.
5 <sup>th</sup> Hearing	15 <sup>th</sup> July 2024	Adjourned at the request of the Complainant.
6 <sup>th</sup> Hearing	29 <sup>th</sup> July 2024	Hearing concluded and judgment reserved.
—	21 <sup>st</sup> August 2024	Decision taken.

- 6.1 On the day of the first hearing on 18<sup>th</sup> August 2023, the Committee noted that Ms. Kamna Sharma (Dy. ROC, Chandigarh) was present through Video conferencing mode from Complainant department. The Committee further noted that the Respondent was 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 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 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 28<sup>th</sup> 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 03<sup>rd</sup> June 2024, the Committee noted that the Respondent vide mail dated 31.05.2024 had sought an adjournment as he was occupied with some prior official commitments on the day of the hearing. Acceding to the above request of the Respondent, the Committee adjourned the captioned case to a future date.
- 6.5 On the day of the hearing on 20<sup>th</sup> June 2024, consideration of the subject case was deferred by the Committee due to paucity of time.
- 6.6 On the day of the hearing on 15<sup>th</sup> July 2024, the Committee noted that the Complainant Department vide mail dated 15.07.2024 had sought adjournment on account of urgent official commitments. Acceding to the above request of the Complainant, the Committee adjourned the captioned case to a future date.



- 6.7 On the day of the final hearing on 29<sup>th</sup> July 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 18.08.2023. The Committee also noted that the Respondent had filed a Written Statement dated 17<sup>th</sup> June 2024.
- 6.8 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 Director of the Company was related to Chinese National.
  - b. Audit Report was issued under Section 227 of the Companies Act, 1956.
  - c. The Respondent had obtained Management Representation Letter dated 17.06.2024 and as per the said letter, long term borrowings, loans and advances and share application money pending allotment had been paid off/ refunded.
  - d. It seems to be a case of mistaken identity as "Shyam Enterprise" is a very generic name used by many entities.
  - e. The Company was converted into LLP in year 2019.
  - f. SA 500 establishes that the 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 misstated.
  - h. Except the loan from Director, all other loans had been repaid/ settled in due course of time.
  - i. Except two advances which were taken over by the LLP, all other advances had been repaid/ settled in due course of time.
  - j. Share allotment plan was cancelled due to difference of opinion on pricing of shares and share application money was repaid to the investors.
- 6.9 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.
- 6.10 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 Thereafter, on 21<sup>st</sup> 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 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 2008-09 to 2012-13. The details of charge is given in para 2.1 above.

7.2 The Committee noted that in Prima Facie Opinion dated 19<sup>th</sup> December, 2022, upon perusal of Financial Statements of the Company for the Financial Years 2008-09 to 2012-13 audited by the Respondent, various items extracted therefrom were noted as under:-

(Amount in Rs.)

Amount in bracket are negative figures

Particulars	2008-09	2009-10	2010-11	2011-12	2012-13
Net Worth	86,720	586,913	704,689	3,727,335	6,982,519
Long term Borrowings	-	1,380,000	35,475,517	14,890,872	19,936,090
Other Current Liabilities	5,000	10,000	13,236	51,912	51,326
Loans & advances	-	13,750,000	32,505,000	15,397,958	20,062,756
Current Assets	33,940	79,213	1,861,425	1,562,378	1,570,139
Share Capital	100,000	100,000	100,000	100,000	100,000
Share Application Money Pending Allotment	-	520,000	620,000	3,620,000	6,820,000
Total Assets	86,720	14,386,913	36,180,206	18,670,119	26,969,934
Profit (Loss) for the year	(13,280)	(19,807)	17,776	22,645	55,184
Revenue from Operations	-	-	-	300,000	-
Other Income	-	-	524,200	995,600	590,000

In view of the above table, the Committee noted that the following anomalies/ discrepancies were observed in the Prima Facie Opinion 19<sup>th</sup> December, 2022:-

- Non obtaining external Confirmation for the balances appearing under Unsecured Loans, Current Assets, Loans and Advances and Current Liabilities.
- Share application money pending allotment for the financial years 2008-09 to 2012-13.

7.3 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 the Respondent had obtained Management Representation Letter dated 17.06.2024 and as per the said letter, long term borrowings and loans & advances had been paid off/ refunded and the Company was converted into LLP in year 2019. He further submitted that not obtaining balance confirmation does not make any case that the balances outstanding were materially mis-stated and there was no dispute on accuracy of these balances.

7.4 The Committee noted Paragraph 7 of SA 705, 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."*

7.5 The Committee 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 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. (Ref: Para A7)

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."

7.6 The Committee questioned the Respondent on the role performed by him as required under SA 505 with regard to balance confirmations. 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 Unsecured Loans, Current Assets, Loans & advances and Current Liabilities & Provisions. 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 would assist the auditor in obtaining audit evidence with high level of reliability.



- 7.7 The Committee observed that mere submitting that the balances are subject to confirmations 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 Unsecured Loans, Current Assets, Loans & advances and Current Liabilities & Provisions has been secured by the Respondent as an auditor. The Committee observed that the aggregate of Loans & advances as well as current assets ranges from 50% to 90% of the total balance sheet size continuously from financial years 2008-09 to 2012-13, 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 the Balance Sheet was without confirmation of balances as admitted and disclosed by the Management through Notes to Accounts. Therefore, it is clear that the Respondent has failed to exercise due diligence.
- 7.8 Accordingly, the Committee was of the view that the auditor has not complied with the requirements of SA 705 and SA 505.
- 7.9 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 in the case of private limited Company for preferential allotment or for private placement up to 50 identified persons, there were no such requirements to create a separate bank account and retain money in it until allotment. The Counsel for the Respondent further submitted that he had obtained Management Representation Letter, wherein the Company had refunded the money after resolving the differences.
- 7.10 After recording the submissions of the Counsel for the Respondent, the Committee noted that an amount of Rs. Rs. 5.20 Lakhs, 6.20 Lakhs, 36.20 lakhs and 68.20 lakh were pending allotment since Financial Year 2009-2010, 2010-11, 2011-12 and 2012-13 respectively on account of share application money pending allotment and the Respondent had not made any disclosure or comment in his Audit Report(s)



7.11 The Committee perused the provisions of Section 69 of the Companies Act, 1956, which requires that –

**“69. Prohibition of allotment unless minimum subscription received**

*(1) No allotment shall be made of any share capital of a company offered to the public for subscription, unless the amount stated in the prospectus as the minimum amount which, in the opinion of the Board of directors, must be raised by the issue of share capital in order to provide for the matters specified in clause 5 of Schedule II has been subscribed, and the sum payable on application for the amount so stated has been paid to and received by the company, whether in cash or by a cheque or other instrument which has been paid.*

*(2) The amount so stated in the prospectus shall be reckoned exclusively of any amount payable otherwise than in money, and is in this Act referred to as “the minimum subscription.*

*(3) The amount payable on application on each share shall not be less than five per cent of the nominal amount of the share.*

*(4) All moneys received from applicants for shares shall be deposited and kept deposited in a Scheduled Bank-*

*(a) until the certificate to commence business is obtained under section 149, or  
(b) where such certificate has already been obtained, until the entire amount payable on applications for shares in respect of the minimum subscription has been received by the company, and where such amount has not been received by the company within the time on the expiry of which the moneys received from the applicants for shares are required to be repaid without interest under sub-section (5), all moneys received from applicants for shares shall be returned in accordance with the provisions of that sub-section.*

*In the event of any contravention of the provisions of this sub-section, every promoter, director or other person who is knowingly responsible for such contravention shall be punishable with fine which may extend to fifty thousand rupees.”*

*(5) If the conditions aforesaid have not been complied with on the expiry of one hundred and twenty days after the first issue of the prospectus, all moneys received from applicants for shares shall be forthwith repaid to them without interest ; and if any such money is not so repaid within one hundred and thirty days after the issue of the prospectus, the directors of*

*the company shall be jointly and severally liable to repay that money with interest at the rate of six per cent per annum from the expiry of the one hundred and thirtieth day :*

*Provided that a director shall not be so liable if he proves that the default in the repayment of the money was not due to any misconduct or negligence on his part."*

- 7.12. The Committee noted that share application money pending allotment has been disclosed by the Company in its balance sheet continuously from financial years 2009-10 to 2012-13. From the perusal of financial statements, it has been noted that no allotment of shares has been made 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.
- 7.13. 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 2009-2010 to 2012-2013. 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. The Committee was of the view that the Company had violated the requirements of Section 69 of the Companies Act, 1956 and the Respondent being Statutory Auditor of the Company failed to report the same in his Audit Report(s).
- 7.14. In view of above noted facts/findings, the Committee was of the opinion that the Respondent has given unmodified opinion, wherein the Respondent failed to justify his role in securing audit evidence with regard to balance confirmation of sundry debtor, 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 2009-10 to 2012-13, 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 provisions of Section 69 of the Companies Act, 1956.
- 7.15. 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.

7.16. 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, 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 above.	Para 7.1 to 7.16 as above.	<b>GUILTY-</b> 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/-  
(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

वाली प्रतिनिधि होने को लिए प्रमाणित  
Certified to be true copy

*Bisw*  
श्री बशु तिबारी / Bishwa Nath Tiwari  
कार्यकारी अधिकारी / Executive Officer  
अनुसारनायक-निदेशालय / Chartered Accountants  
इस्टिब्लिशमेंट ऑफ चार्टर्ड एकाउंटेंट्स ऑफ इंडिया  
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