



भारतीय सनदी लेखाकार संस्थान

(संसदीय अधिनियम द्वारा स्थापित)

THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA

(Set up by an Act of Parliament)

PR/G/63/2022-DD/172/2022-DC/1683/2022

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

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

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

[PR/G/63/2022-DD/172/2022-DC/1683/2022]

In the matter of:

**Smt. Kamna Sharma, Dy. ROC,
O/o Registrar of Companies NCT of Delhi & Haryana
Ministry of Corporate Affairs
4th Floor, IFCI Tower
61, Nehru Place
New Delhi – 110019.**

..... Complainant

Versus

**CA. Gaurav Kansal (M. No. 419925)
Rahul Sunit Jain & Associates
F-502, Sixth Floor, Aditya Corporate HUB,
RDC Rajnagar,
Ghaziabad- 201001.**

..... Respondent

Members Present: -

**CA. Ranjeet Kumar Agarwal, Presiding Officer (in Person)
Mrs. Rani S Nair, I.R.S. (Retd.), Government Nominee (in Person)
CA. Sanjay Kumar Agarwal, Member (in Person)
CA. Cotha S Srinivas, Member (through VC)**

Date of Hearing : 3rd February 2025

Date of Order : 8th February 2025

1. That vide Findings under Rule 18(17) of the Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007, the Disciplinary Committee was, inter-alia, of the opinion that **CA. Gaurav Kansal (M. No. 419925), Ghaziabad** (hereinafter referred to as the '**Respondent**') is GUILTY of Professional and Other Misconduct falling within the meaning of Item (9) of Part-I and Item (2) of Part-IV of the First Schedule and Item (7) of Part I of the Second Schedule to the Chartered Accountants Act, 1949.

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2. That pursuant to the said Findings, an action under Section 21B (3) of the Chartered Accountants (Amendment) Act, 2006 was contemplated against the Respondent and a communication was addressed to him thereby granting opportunity of being heard in person / through video conferencing and to make representation before the Committee on 03rd February 2025.
3. The Respondent was present in person before the Committee on 03rd February 2025 and made his verbal representation on the Findings of the Disciplinary Committee, inter-alia, stating that he qualified as a Chartered Accountant in 2012 and got the audit under question for Financial Year 2013-14. He did not understand the Standards relating to limited transactions so, gave the adverse opinion in Financial Year 2013-14. He added that transaction of Rs.50,00,000/- was not a related party transaction. Besides, the money given to the Directors was shown in the Audit Report and accounting policy and Rs. 40,00,000/- in the Financial Year 2014-15 was sent to the FD account and the same amount was later returned through the sweep account. The money sent to the Directors was disclosed in Financial Year 2014-15. The Company was struck off in the Financial Year 2016-17, but he had no knowledge about the same. Neither had he been informed about the Directors. The Director in his Statement before the ROC has also submitted that it was not in his knowledge. An Affidavit was also provided in this respect. There were no transactions during the year and Respondent did not find anything material in the opening balance and the closing balance so as to make a detailed scrutiny. With regard to his appointment as an Auditor, he had previous auditor's resignation and his appointment letter and after 2013-14 AGM, he was reappointed for the next five years. So, he never thought that some non-compliance on his part was there. He further added that the audit was done in his initial years of practice, and he did due diligence on his part.
4. The Committee noted that the Respondent in his written representation dated 01.02.2025, inter-alia, submitted as under: -
 - i. In the very first year of audit of the Company, for FY 2013-14, the Respondent noticed glaring observations in the financial statements placed by the management for the purposes of audit. The Respondent in his professional judgement issued an Adverse Audit Report dt. 25.08.2014, wherein it was reported as under:

"the accompanying financial statements do not give a true and fair view of the state of affairs of the company".
 - ii. The Company received a sum of Rs.1.23 crores in FY 2013-14 from M/s Chang Shu Kam Kwong Printing & Dying (H.K.) Co. Ltd. in pursuance of a Contract dt.15.11.2013 to open a media channel, out of which the Company paid a sum of Rs. 50 lakhs to M/s Mediaguru Broadcast Pvt. Ltd. Further it was also reported that apart from the aforesaid payment to M/s Mediaguru Broadcast Pvt. Ltd, the Company also paid a sum of Rs. 19 lakhs to its two Directors. The balance of Rs. 54 Lakhs was available in the bank account of the Company.

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- iii. There were no other related party transactions other than above payments to the directors. This was also asserted by the management in its representation letter dt. 07.05.2014 at Point No14. There is no finding on record that M/s Mediaguru Broadcast Pvt. Ltd was a related party. It is incorrect to suggest that payment of Rs.50 Lacs pertaining to M/s Mediaguru Broadcast Pvt. Ltd was to a related party, without any finding on record to this effect by the Complainant.
- iv. Therefore, the Respondent issued an Adverse Audit Report categorically reported that the financial statements prepared by the management do not show the true and fair view of the financial affairs of the Company and narrated the above factual financial transactions in the paragraph "Basis for Adverse Opinion".
- v. So far as the Audit of FY 2014-15 is concerned, there were no material receipts in FY 2014-15. The transactions in FY 2014-15 pertained to payments to the Directors of the Company which were disclosed in the related party transaction in FY 2014-15.
- vi. Apart from that, there was a transaction in the bank account of the company whereas a sweeping FDR of Rs. 40 Lakhs was created out of the opening funds available in the bank account of the Company and the said FDR was liquidated and funds credited back to the bank account of the Company. It is incorrect to suggest that amount transferred to Bank FDR (sweep account) in favor of the Company pertained to any related party transaction.
- vii. Thus, the Audit Report for FY 2014-15 did not require any further reporting, in the professional judgement of the Respondent.
- viii. After FY 2014-15, there was no transactions in FY 2015-16 onwards and apart from statutory audit fees provisions, the opening balances got carried forward as the closing balances in those years. There was thus no occasion of any detailed scrutiny of accounts of the Company and the Respondent issued the audit reports accordingly.
- ix. So far as the striking off the name of the Company in 2017 is concerned, the Respondent was not aware of the same. No notice/order with respect to Strike Off was served upon the Respondent in his capacity as statutory auditor. Neither the Respondent was aware of any action of the ROC disqualifying any of the Directors of the Company.
- x. Even as per records and Inquiry Report of ROC, the Director also made a Statement before ROC that he was not aware of the Strike off with respect to the Company and likewise he was not aware about the disqualification as Director, and he came to know only when he was filing DIR-3. Thereafter, he approached the Hon'ble Delhi High Court by way of Writ which was admitted and stay Orders passed therein. The Affidavit of the Director is also placed on record in the reply filed by the Respondent to the Inquiry

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Report of ROC. Thus, the Respondent was neither aware about the strike off nor about the disqualification of the Director. Undisputedly these actions were taken in ex-parte proceedings by ROC.

- xi. The Respondent was appointed as Auditors for FY 2013-14, on account of casual vacancy arisen due to resignation of the previous Auditors whose resignation letter is part of record. Thereafter, in immediately next AGM of Sep 2014, the Respondent's appointment was approved, and he was reappointed as Auditors for 5 years from 2014-15 to FY 18-19. Proper Appointment Letter after AGM was issued to the Respondent which is part of record. Therefore, there was no occasion for the Respondent to get into examining of any reappointment of the auditors from year to year. Thus, the Respondent pleaded that he is not guilty of any professional negligence and/or misconduct regarding the appointment of the Respondent as Auditors of the Company. The reference to the provisions of Sec-224/225 of Companies Act, 1956 is unwarranted as the relevant provision are Sec 139 of the Companies Act, 2013 and casual vacancy provisions are as per Sec-139(8) of the Act.
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. As regard the submissions of the Respondent on the merits of the case, the Committee was of the view that the same were basically a reiteration of the submissions made by the Respondent during the course of hearing, due cognizance of which has already been taken by the Committee before arriving at its Findings in the instant case.
6. Keeping in view the facts and circumstances of the case and material on record including verbal and written representation of the Respondent on the Findings, the Committee noted the following as per its Findings dated 27th January 2025: -

Charge No.	Charge alleged(s)	Decision of the Committee	Item of the Schedule in which Respondent held Guilty
1.	Rs.1.23 Crores were received in the Company and was given to media persons Rs.50 lakhs & other dummy account of Company Rs. 40 lakhs and to the directors without disclosing the same in the related party transactions in violation of Section 188 of the Companies Act 2013 read with AS 18.	Guilty	Item (7) of Part I of the Second Schedule

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2.	The operations of the Company were carried out in fraudulent manner as the Financials of the Company for the year ended 31- 03-2018 and 31-03- 2019 were prepared and audited while the Company had already been struck off from the Register of ROC on 30.06.2017.	Guilty	Item (2) of Part-IV of the First Schedule and Item (7) of Part I of the Second Schedule
3.	The Company did not file ADT-1 w.r.t. the appointment of the Respondent as he had audited the Financials of the Company from the F.Y. 2016-17 to 2018-19.	Guilty	Item (9) of Part-I of the First Schedule

6.1 First Charge: For the F.Y.2013-14, the Committee noted from the Auditor's Report that though the Respondent has given Basis for Adverse Opinion in his report on the stated matter, the reason of giving Adverse Opinion is not clear from it. Accordingly, the Committee viewed that the purpose of the Auditor's Report to promote the user's understanding by reading the Auditor's Report has not been achieved. For the FY 2014-15, the Committee observed that Accounting Standard- 18 on Related Party Transactions clearly requires a Company to mention in its Financials apart from the name of the related party and description of the relationship, the nature of transactions also that took place between the Company and such party. However, in the extant case, the Company though has mentioned the name of the related party, description of such relationship and also disclosed the amount of payments viz. Rs.30,95,516 and Rs.14,09,261 made to the related parties (Mr. Mohammed Saqib and Ms. Farah Saqib) but omitted to disclose the nature/reasons of such payments as per the requirements of Accounting Standard-18. Hence, the financials are not giving complete details of the fact that why such a significant amount was transferred to the Directors during the year. The Committee was of the view that the reporting made by the Respondent clearly shows that the Respondent, being statutory auditor despite of violation by the Company of disclosure requirement of Accounting Standard-18, did not perform his professional responsibility of reporting on the financials of the Company diligently with modification rather had given a clean Audit Report. Accordingly, the Committee held the Respondent Guilty as per Item (7) of Part I of the Second Schedule to the Chartered Accountant Act 1949 with respect to the said charge.

6.2 Second charge: The Committee was of the view that the Respondent was required to follow the requirements of SA 250 wherein he was required to report about the pending litigation which would impact -Company's financial position which he failed to do so. Further, the Respondent in his audit report failed to report the compliance aspect which is fundamental to the operating aspects of the business, to an entity's ability to continue its business and affecting going concern of the entity as the name of the Company got struck off and the litigation was going on before the Hon'ble Delhi High Court. The Committee also noted that



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though the written representation letter for FY 2018-19 is dated prior to the date of the auditor's report, the same is not near to the date of the signing of Auditor's Report but almost at the initiation of the financial year. The Committee further noted that as per Section 143 of the Companies Act 2013, the Respondent being the Statutory auditor was duty bound to check and report that the financial statements present a true and fair view of the state of the Company's affairs as at the end of its financial year. However, nowhere in the financial statements of the alleged Company for FY 2017-18 and 2018-19 the fact that the Company was strike off w.e.f. 30-06-2017 or the directors were disqualified, or a suit had been filed against the said disqualification which was pending was mentioned. Thus, the Committee was of the view that the Respondent was not only grossly negligent while discharging his Professional duties but also brought disrepute to the profession as he did not act independently and carried out audit to suit the requirements of the alleged Company. Accordingly, the Committee held the Respondent Guilty of 'Professional' and 'Other Misconduct' as per Item (7) of Part I of the Second Schedule and Item (2) of Part IV of the First Schedule to the Chartered Accountant Act, 1949 in respect of the said charge.

- 6.3 Third Charge: The Committee noted that the Company was incorporated in 2006. The Respondent was appointed as the Statutory Auditor of the Company w.e.f. 05-05-2014. He in his defence brought on record copy of his appointment letter dated 5th May 2014 together with the resignation letter dated 8th April 2014 of the previous auditor. Thus, it is clear that the Respondent had been appointed on account of resignation of the previous auditor. However, he did not bring on record any documentary evidence to establish that whether a proper resolution filling the vacancy has been passed at the General Meeting of the Company. He further brought on record a letter dated 30th September 2014 wherein the Company informed him that his firm had been re-appointed as a Statutory auditor at the AGM held on 30th September 2014 from 30th September 2014 to 31st March 2019. The Committee thus held that required checks were not exercised by the Respondent prior to acceptance of the appointment as auditor. Accordingly, the Committee held the Respondent Guilty of Professional Misconduct falling within the meaning of Item (9) of Part I of First Schedule to the Chartered Accountants Act, 1949 in respect of the said charge.
- 6.4 Hence, Professional Misconduct falling within the meaning of Item (9) of Part-I of the First Schedule and Item (7) of Part I of the Second Schedule and Other Misconduct falling within the meaning of Item (2) of Part IV of the First Schedule to the Chartered Accountants Act, 1949 on the part of the Respondent is clearly established as held out in the Committee's Findings dated 27th January 2025 which is to be read in consonance with the instant Order being passed in the case.
7. Accordingly, the Committee was of the view that ends of justice will be met if punishment is given to the Respondent in commensurate with his Professional and Other Misconduct.

[Signature]

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8. Thus, the Committee, keeping in view the facts and circumstances of the case, material on record and representation of the Respondent before it, ordered that a Fine of Rs. 1,00,000/- (Rupees One Lakh only) be imposed upon CA. Gaurav Kansal (M. No. 419925), Ghaziabad payable within a period of 60 days from the date of receipt of the Order.

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

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

Sd/-
(CA. SANJAY KUMAR AGARWAL)
MEMBER

Sd/-
(CA. COTHA S SRINIVAS)
MEMBER

सही प्रतिलिपि होने के लिए प्रमाणित
Certified to be true copy

गीता अनिरुध कुमार / GEETHA ANIRUDHA KUMAR
कार्यकारी अधिकारी / Executive Officer
अनुशासनसम्बन्धक निदेशालय / Disciplinary Directorate
भारतीय सनदी लेखाकार संस्थान
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 – II (2024-2025)]

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

Findings under Rule 18(17) of the Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007

File No.:- PR/G/63/2022-DD/172/2022-DC/1683/2022

In the matter of:

**Smt. Kamna Sharma, Dy. ROC,
O/o Registrar of Companies NCT of Delhi & Haryana
Ministry of Corporate Affairs
4th Floor, IFCI Tower
61, Nehru Place
New Delhi – 110019.**

..... Complainant

Versus

**CA. Gaurav Kansal (M. No. 419925)
Rahul Sunit Jain & Associates
F-502, Sixth Floor, Aditya Corporate HUB,
RDC Rajnagar,
Ghaziabad- 201001.**

..... Respondent

MEMBERS PRESENT:

**CA. Ranjeet Kumar Agarwal, Presiding Officer (in person)
Mrs. Rani S Nair, I.R.S. (Retd.), Government Nominee (in person)
Shri Arun Kumar, I.A.S. (Retd.), Government Nominee (through VC)
CA. Sanjay Kumar Agarwal, Member (in person)**

DATE OF FINAL HEARING : 29th August 2024

**DATE(s) OF SUBSEQUENT MEETING
IN WHICH CASE CONSIDERED : 18th September 2024**

DATE OF DECISION TAKEN : 03rd January 2025

PARTIES PRESENT:

**Respondent: CA. Gaurav Kansal (Through VC)
Counsel for the Respondent: CA. Vaibhav Goel (Through VC)**

1. BACKGROUND OF THE CASE:

- 1.1 It had come to the knowledge of the Central Government that certain Chinese Directors or individuals/Shareholders/entities in the involved Companies had engaged dummy persons as subscriber's to MOA & Directors and registered these companies with forged documents/falsified addresses/signatures, Director Identification Number (DIN) obtained by furnishing false/forged documents to MCA and found to be engaged in illegal/suspicious activities, Money Laundering, tax evasion and non – compliance of various provisions of laws. Certain professionals had connived with these companies /their directors/subscriber to MOA and Chinese individuals who were acting behind these companies and professionals had knowingly incorporated these companies and also assisting running of these companies for illegal/suspicious activities and auditors had also filed financial statements without attaching the annexure of Borrowing/Loan & Advances/Investments/Inventories and Notes to Accounts for hiding material information.
- 1.2 While the Professionals (CA) are duty bound to discharge their duties as per law and certify/ verify documents/ e-forms or give certificate/ Report after due diligence so that compliance to the provisions of law shall be ensured, however, they failed to discharge their duties and wilfully connived with directors/ Company/shareholders/ individuals in certifying e-Forms knowingly with false information/ documents/ false declaration/omitting material facts or information in the said Companies.

2. CHARGES IN BRIEF:-

- 2.1 In view of the aforesaid background, the Complainant Department alleged that on examination of the documents submitted by M/s Shangrila Exim Private Ltd (referred to as Company) with which the Respondent was associated as its Statutory auditor w.e.f. 05-05-2014 and had given its audit report on the Financials of the Company from the F.Y. 2013-14 to 2018-19, following irregularities have been observed:

S. No.	Allegation(s)	Prima Facie Opinion of DD	Item/Schedule
1.	Mr. Mohammed Saqib, who is one of the Directors of the subject Company while filing Form 32 in respect of M/s Dragon Exim India Private Limited had not disclosed his directorship in M/s Haq Consultants Pvt. Ltd	Not Maintainable	
2.	Rs.1.23 Crores were received in the Company and was given to media persons Rs.50 lakhs & other dummy account of Company Rs. 40 lakhs and to the directors without disclosing the same in the related party transactions in violation of Section 188 of the Companies Act 2013 read with AS 18.	Guilty	Item (7) of Part I of the Second Schedule

3(i)	The operations of the Company were carried out in fraudulent manner as the Financials of the Company for the year ended 31-03-2018 and 31-03- 2019 were prepared and audited while the Company had already been struck off from the Register of ROC on 30.06.2017.	Guilty	Item (2) of Part-IV of First Schedule and under Item (7) of Part I of Second Schedule
3(ii)	The Company did not file ADT-1 w.r.t. the appointment of the Respondent as he had audited the Financials of the Company from the F.Y. 2016-17 to 2018-19.	Guilty	Item (9) of Part-I of the First Schedule

3. THE RELEVANT ISSUE DISCUSSED IN THE PRIMA FACIE OPINION DATED 13th SEPTEMBER, 2022 FORMULATED BY THE DIRECTOR (DISCIPLINE) IN THE MATTER IN RESPECT OF THE ALLEGATIONS SPECIFIED AT S.NO. 2 TO 3 OF ABOVE TABLE WHEREIN THE RESPONDENT WAS PRIMA FACIE HELD GUILTY IN BRIEF, IS GIVEN BELOW:

3.1 ALLEGATIONS SPECIFIED AT S.NO. 2 of Para 2.1 above: From the perusal of the Written Statement of the Respondent and the audited Financials of the Company put forth by him for the F.Y.2013- 14, it was noted that the Company had entered into a contract on 15-11-2013 with its Chinese client M/s Chang Shu Sun Kwong Printing and Dying (H.K.) Co. Ltd. to open a media channel in India by way of incorporation of subsidiary in India and for which it had received Rs.1.23 Crores approx. in its bank account on 30-01-2014 and the Company in respect of such contract to open a media channel had paid an amount of Rs.50 Lakhs to M/s Mediaguru Broadcast Pvt. Ltd on 05-02-2014 and further Rs.40 Lacs was found to be shifted to an FD account on 14-06-2014 in the name of the Company. Thus, it was understood that the Company in respect of these payments proper disclosure as per the requirement of Section- 188 of the Companies Act 2013 read with AS- 18 was not made in the Financials of the Company for the year ended 31-03-2014 and 31-03-2015 and the Respondent being the statutory auditor of the Company allegedly failed to report in his auditor report.

3.1.1 The Respondent in his defence, admitted(as stated hereunder) that the payments from Company's bank account were made to the account of the Directors and he had given his Adverse Opinion in his Audit Report on the Financials for the year ended 31-03-2014:

"The defendant had obtained written representation at the time of audit wherein the management had clearly denied having entered into any related party transactions except payment made to the directors. Since, the nature of payment made to the directors was not sufficiently explained during audit, necessary adverse remark was made in the audit report."

However, it was noted that there were two payments referred and alleged by the Complainant one of Rs.50 Lacs made in F.Y.2013-14 (as made on 30-01-2014) to media persons i.e. M/s Mediaguru Broadcast Pvt and the other of Rs.40 Lacs made in

F.Y. 2014-15 (as made on 14-06-2014) to Directors and other dummy account while the Respondent had given his Adverse Opinion in his audit report only in the year 2013-14 and the audit report for the year 2014-15 was found to be a clean report giving a True and Fair view.

- 3.1.2 Further, even in respect of F.Y. 2013-14, it was noted that though the Respondent had given his Adverse Opinion in his audit report, nowhere the basis of such opinion was mentioned in the manner, he had stated in his written statement that the nature of the payments made to the Directors was not made clear to him.
- 3.1.3 In this regard, SA 705 – ‘Modifications to the Opinion in the Independent Auditor’s Report’ requires the Auditor to mention clearly the reasons behind giving his modified (adverse) opinion in the following manner.

“Basis for Modification Paragraph

16. When the auditor modifies the opinion on the financial statements, the auditor shall, in addition to the specific elements required by the SA 700 (Revised), include a paragraph in the auditor’s report that **provides a description of the matter giving rise to the modification.** The auditor shall place this paragraph immediately before the opinion paragraph in the auditor’s report and use the heading “Basis for Qualified Opinion”, “Basis for Adverse Opinion”, or “Basis for Disclaimer of Opinion”, as appropriate.

19. If there is a material misstatement of the financial statements that relates to the non-disclosure of information required to be disclosed, the auditor shall:

- (a) Discuss the non-disclosure with those charged with governance;
- (b) Describe in the basis for modification paragraph the nature of the omitted information; and**
- (c) Unless prohibited by law or regulation, include the omitted disclosures, provided it is practicable to do so and the auditor has obtained sufficient appropriate audit evidence about the omitted information. If the modification results from an inability to obtain sufficient appropriate audit evidence, the auditor shall include in the basis for modification paragraph, the reasons for that inability.”

Thus, the above relevant standard of auditing (SA - 705) clearly requires the auditor to mention the reason in a crisp manner which led him to give such Adverse Opinion on the financials of the Company. However, from the perusal of the basis of opinion given by the Respondent as mentioned above it is not clear as to why he had opined adversely in his audit report for the year ended 31-03-2014.

- 3.1.4 Further, in the F.Y. 2013-14, the allegation was for the amount of Rs.50 Lacs which was paid to M/s Mediaguru Broadcast Pvt. Ltd. on 05-02-2014 while in respect of such payment of Rs.50 Lacs, it was noted that the Respondent had further mentioned in his Written Statement that he had verified from MCA portal that no director of the Company was director in M/s Mediaguru Broadcast Pvt. Ltd. This statement signifies that the Respondent in respect of Rs.50 Lacs made to M/s Mediaguru was satisfied that such payment was not made to any director of the Company and hence, he concluded that no related party payment was made while on the other hand he has stated in the written statement that he was not sufficiently explained by the Company about the payments

made to Directors and hence, he had given the Adverse Opinion. Thus, the stand adopted by the Respondent in his written statement appears to be contradictory.

3.1.5 In respect of the F.Y. 2014-15 wherein Rs.40 Lacs have been alleged to have been made to Directors, it was noted that the Respondent had stated that such amount was verified by him as deposited towards FDR which was duly disclosed in the audited balance sheet. On perusal, no such FDR of Rs.40 Lacs had been found in the audited Balance sheet of the Company for the year ended 31-03-2015. However, when it was specifically asked by this Directorate as to how and where the amount of fixed deposit of Rs.40 Lacs was shown in the Balance Sheet, the Respondent vide his letter dated 23-08-2022 provided a statement of subsequent withdrawals by the Directors of the Company from such FDR account during the year 2014- 15 and 2015-16. Upon perusal of the said statement, it was noted that out of such FDR of Rs.40 Lacs, by 31-03-2015 the Directors had withdrawn Rs.33.07 Lacs along with accrued interest thereon and the balance amount of Rs.6.92 Lacs along with accrued interest of Rs.12,497 thereon had been stated to be shown in the Balance sheet for the year ended 31-03-2015. Further, the Respondent in his clarification also mentioned that such withdrawals were already shown in the Note 2.5 of Note to Accounts to the Financials for the year ended 31-03-2015.

3.1.6 In this regard, Paragraph 23 of AS – 18 'Related Party Disclosure' reads as below:

"If there have been transactions between related parties, during the existence of a related party relationship, the reporting enterprise should disclose the following:
(iii) a description of the nature of transactions;

3.1.7 The above para of relevant Accounting Standard on related party transactions clearly requires a Company to disclose the nature of transactions also that took place between the Company and such party. However, in the extant case, it was noted that the Company though had mentioned the name of the related party, description of such relationship and also disclosed the amount of payments viz. Rs.30,95,516 and Rs.14,09,261 made to the related parties (Mr. Mohammed Saqib and Ms Farah Saqib) however, the nature/reasons of such payments was not mentioned which is a clear violation of AS-18. From the perusal of the Audit Report of the Respondent on the Financials of the Company for the year ended 31-03-2015, no violation is found to have been reported by the Respondent in the Auditor's Report under Section 143 (3) (c) of the Act. Rather he has reported in the following manner.

"Report on Other Legal and Regulatory Requirements

1.....

2.As required by Section 143(3) of the Act, We report that:

(a)

(b).....

(c)

In our opinion, **the aforesaid financial statements comply with the Accounting Standards specified under Section 133** of the Act, read with Rule 7 of the Companies (Accounts) Rules,2014."

The above reporting clearly shows that the Respondent, being statutory auditor inspite of violation by the Company of disclosure requirement of AS-18 as mentioned above,

has not performed his professional responsibility of reporting on the Financials of the Company diligently with modification rather had given his clean report.

- 3.1.8 The Respondent in his defence, with respect to the alleged payment of Rs.40 Lacs in June 2014, only clarified that an FDR was made with such amount. However, he neither mentioned anything about the subsequent withdrawals during the year 2014-15 by the Directors from such FDR nor did he mention that such withdrawals were disclosed by the Company in Note to Accounts of the Financials and only upon asking by this Directorate to specify the amount of such FDR in the Balance Sheet of the Company, the Respondent had provided the justification of the amount of Rs.6.92 Lacs actually shown in the Balance Sheet as FDR as on 31-03-2015 (after withdrawals of amount by Directors from such FDR during the year) by providing withdrawal details. This approach of the Respondent also signifies that in order to hide his negligence, he had deliberately mentioned incomplete facts before the Directorate in his Written Statement.
- 3.1.9 Thus, it was concluded that in respect of the alleged amount of Rs.50 Lacs made to M/s Mediaguru Broadcast Pvt. Ltd./Directors, the Respondent has not been able to justify his stand and rather has adopted contradictory stand and further even the basis of Adverse Opinion does not clarify whether such opinion was given because of payment of Rs. 50 Lacs made to any related party in 2013-14. Further, in respect of the alleged payment of Rs.40 Lacs too made to the Directors, he failed to qualify his report in the F.Y. 2014-15 for improper disclosure as required under AS-18. Accordingly, the Respondent is held prima facie **Guilty** of 'Professional' Misconduct falling within the meaning of Item (7) of Part-I of Second Schedule to the Chartered Accountant Act, 1949.

- 3.2 **ALLEGATIONS SPECIFIED AT S.NO. 3(i) of Para 2.1 above:** The Respondent had admitted in his written statement that the name of the Company was struck off from the Register of ROC w.e.f. 30-06-2017. For his audit of the financials of the Company for the year ended 31-03-18 and 31-03-2019. However, he had given the reference of Section 250 and Section 252(3) of the Companies Act, 2013. Section 250 of the Companies Act, 2013 which specifies that a Company after its name gets strike off under section 248(5) of such Act ceases to operate as Company and the Certificate of Incorporation issued to it by the ROC shall be deemed to have been cancelled, except for the discharge of any existing liabilities or obligations which means with the cancellation of certificate of Incorporation, the Memorandum of Association is also canceled, which defines the name of the Company as Private Limited or Public limited as the case may be.

Further, sub-section 6 and 7 of Section 248 of the Companies Act, 2013 clarifies the manner in which payment/discharge of pending liabilities of the Company shall take place, as stated hereunder:

"(6) The Registrar, before passing an order under sub-section (5), shall satisfy himself that sufficient provision has been made for the realization of all amount due to the Company and for the payment or discharge of its liabilities and obligations by the Company within a reasonable time and, if necessary, obtain necessary undertakings from the managing director, director or other persons in charge of the management of the Company: Provided that notwithstanding the undertakings referred to in this sub-section, the assets of the Company shall be made available for the payment or discharge of all its liabilities and obligations even after the date of the order removing the name of the Company from the register of companies."

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"(7) The liability, if any, of every director, manager or other officer who was exercising any power of management, and of every member of the Company dissolved under sub-section (5), shall continue and may be enforced as if the Company had not been dissolved."

However, nowhere it is mentioned that the Company will continue to prepare its financials and get it audited from a Chartered Accountant as required under the Companies Act.

3.2.1 The Respondent had taken the plea that as required in Section 250 of the Act, the Company had not carried out any fresh operational activity post cancellation of incorporation except the transaction of audit fee and the payment towards discharge of the liabilities of the Company only. However, from the perusal of the Financials of the Company, the following points were observed:

- a) In the Financial year ended 31-03-2018 and 31-03-2019, no liability had been paid written off or no income or expenses had been booked except the audit fee of Rs.10,000 had been charged in the Profit and loss account and had been accumulated to other current liabilities which was viewed as violation of the provision of Section 250 which allows the Company, after strike off, to discharge the existing liability while in the extant case the fresh audit fee for the year 2017-18 and 2018-19 have been charged to P&L Account. Further, it was noted that the matter of appointment of auditor of the Company was governed by the Companies Act and when after strike off such status (Company) had already been taken away by the Complainant department then it was highly incomprehensible that how the Respondent was appointed / continued as auditor to audit the accounts in the name of Company.
- b) Further, the Directors of the Company signed such financials as the Directors of the Company on its letter head as its done in the normal course of finalization of Financials Statements.
- c) The format of the audit report is exactly the same as in the case of a normal audit report as if no strike off was made in this case and nowhere in such audit reports the fact that the Company was strike off w.e.f. 30-06-2017 was mentioned.
- d) While auditing the Financials for the year 2017-18 and 2018-19, the name of the Company was already struck off from the Register of Companies and in that way the Company's ability to continue as going concern, which is a fundamental principle in the preparation of financial statements was completely effected however, nowhere in the Financials of such years a disclosure in respect of such going concern was given. Further, it is beyond any doubt that the Respondent was well aware of such strike off of the name of the Company while auditing the Financials of the Company for the F.Ys 2017-18 and 2018-19 and while signing the audit report for the F.Y. 2016-17 on 05-09-2017 even then the Respondent was noted to have given his clean/unmodified report on such Financials of the Company in violation of Standard on Auditing (SA) 570 (Revised) – 'Going Concern' *Adverse Opinion*
- e) Apparently, the audited financials of the Company for FYs 2017-18 and 2018-19 appear to be made only for misleading its users or stakeholders to believe that the Company was still holding the status as active.

3.2.2 Thus, it was viewed that the incorporation certificate is the document which provides the Company a separate legal entity separate from its members and once such incorporation certificate is cancelled, the identity of the Company also comes to an end.

Hence, the act of the Respondent of certifying the Financial Statements in the name of the Company which was not in existence and giving his two audit reports subsequently for the year ended 31-03-2018 and 31-03-2019 even after knowing that such Company was already struck off by the Complainant Department and that too without giving any single disclosure of such status of the Company. This clearly raises serious doubt on the Respondent of his connivance with the Directors of the Company in issuing audited Financials and to mislead the general public or users/stakeholders of such financials to believe that the Company still was in existence. This act of the Respondent is not only highly unbecoming of a Chartered Accountant but also indicates the casual approach of the Respondent while performing audit of the Company which was not in existence on the day of signing of such audit report.

- 3.2.3 The Respondent in his Written Statement had mentioned that the Director Mr. Mohammed Saqib had obtained stay against his disqualification from Hon'ble Delhi High Court on 11-01-2019. On perusal, it was noted that Mr. Mohammed Saqib vide letter 06-09-2017 and 12-9-2017 of the Complainant Department was disqualified under Section 164(2)(a) of the Companies Act, 2013 to act as Director in any Company for the reason of default in submitting returns of the Company for a continuous period of three financial years. The date of the Order of obtaining stay on such disqualification notice was 04-02-2019 which means as on 31-03-2018 the Director Mr. Mohammed Saqib was disqualified from acting as Director of the Company. However, the Financials statements of the Company for the Period ended on 31-03-2018 have been signed by such Director also and the Respondent nowhere in his audit report had mentioned the fact of such disqualification of the said Director, rather the reporting is done in the following manner:

“Report on Other Legal and Regulatory Requirements

1.
2. *As required by Section 143(3) of the Act, We report that:*
 - (a)
 - (b)
 - (c)
 - (d)

*On the basis of written representation received from the Directors as on 31st March 2018 and taken on record by the Board of Directors, **none of the Directors are disqualified as on 31st March, 2018 from being appointed as a director in terms of Section 164(2) of the Act.**”(Emphasis added)*

The above reporting further signifies the negligence on the part of the Respondent as well as his connivance with the directors while auditing the Financials of the Company for the year ended 31-03-2018. Further, it was also not clear that if such Director was disqualified for appointing as Director in the Company, then how could he adopt the Financials of the Company for such year ended 31-03-2018 in accordance of Section 134 of the Companies Act, 2013 before submission of such Financials to the Respondent for audit.

- 3.3 **ALLEGATIONS SPECIFIED AT S.NO. 3(ii) of Para 2.1 above:** According to the proviso to Section 139 of the Companies Act, 2013, it is the responsibility of the Company to file a notice in ADT-1 of the appointment of auditor with the Complainant Department within fifteen days of the meeting in which the auditor is appointed. Hence, though the specific allegation of non - filing of Form ADT 1 by the Company is not maintainable

3.5 The Prima Facie Opinion formed by the Director (Discipline) was considered by the Disciplinary Committee at its meeting held on 07th December 2022. The Committee on consideration of the same, concurred with the reasons given against the charge(s) and thus, agreed with the Prima Facie opinion of the Director (Discipline) that the Respondent is **GUILTY** of Professional and Other Misconduct falling within the meaning of Item (9) of Part-I and Item (2) of Part-IV of the First Schedule and Item (7) of Part I of the Second Schedule to the Chartered Accountants Act, 1949 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. DATE(S) OF WRITTEN SUBMISSIONS/PLEADINGS BY PARTIES:

4.1 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	13 th January, 2022
2.	Date of Written Statement filed by the Respondent	18 th June, 2022
3.	Date of Rejoinder filed by the Complainant	25 th July 2022
4.	Date of Prima facie Opinion formed by Director (Discipline)	13 th September, 2022
5.	Written Submissions filed by the Respondent after Prima Facie Opinion	16 th June 2023, 14 th June 2024 & 17 th October 2024
6.	Written Submissions filed by the Complainant Department after Prima Facie Opinion	04 th October 2024

5. WRITTEN SUBMISSIONS FILED BY THE RESPONDENT:

The Respondent in his Written Submissions dated 16th June 2023 and 14th June 2024, inter-alia, stated as under: -

- 5.1. There was no relationship between the Company under question and M/s Mediaguru Broadcast Pvt. Ltd. Therefore, the question of related party transaction disclosure requirement does not arise. He had independently verified that there were no common directors in both the companies. He also took a Management Representation regarding disclosures of Related Party transactions, and it nowhere mentioned any relationship with Mediaguru. Hence, the Respondent formed a view that M/s Mediaguru Broadcast Pvt. Ltd. and the Company were not related.
- 5.2 The Director (Discipline) has taken note of the submissions made by the Respondent in his Written Statement whereby he admitted that certain payments were made from the Company's Bank account to the accounts of directors and since the nature of payments made to the Directors was not sufficiently explained during audit, therefore he has made adverse remarks in the audit report. The same is a fact as the Respondent has clearly mentioned the same under 'Basis of Adverse Opinion' in the audit report for the FY 2013-14 at Point No 3.

- 5.3 The Respondent duly verified the payment of Rs. 40 Lakhs which was deposited as FDR and this amount was duly disclosed in the Financial Statements of the Company for F.Y 2014-15. Further, interest accrued in such FDRs was recorded in the books of accounts which was duly verified from Form 26AS and Financial Statements of the Company for the F.Y 2014-15 wherein the interest was duly recorded as its income in the Profit & Loss Statement and carrying value of the FDR was clearly disclosed in 'Other Current Assets'.
- 5.4 Merely because some payments were made in accounts of director for which balances were being carried forward from the Financial Statements from FY 2013-14 didn't warrant any Adverse Opinion.
- 5.5 The Respondent also disclosed in Point (ii) of 'Basis of Adverse Opinion' that Company has booked liability towards project expenses. It is further requested that all the points mentioned in the 'Basis of Adverse Opinion' be read all together which were given based on auditor's judgement and manner of constructing a sentence cannot be challenged by Disciplinary Committee and should not be construed as gross negligence unless there is lack of due diligence in carrying out the professional duties.
- 5.6 The Respondent reported in a proper manner the 'Basis of Adverse Opinion' as required in Para 16 of SA-705 as he clearly explained the amount in his Adverse Opinion. However, Quantification of these amounts on the basis of Adverse Opinion was not possible as required by Para 17 as Company didn't take any expenses or income in books of accounts. As regard requirement of Para 18 and 19, there was no misstatement in the financial statements that related to the non-disclosure of the Information required to be disclosed. Hence, the provisions as stated therein are not applicable.
- 5.7 Nothing is contradictory and all the points of the Basis of Adverse Opinion' should be read together.
- 5.8 The interest in the carrying value of the FDR was duly recorded in the books of accounts and the amount of FD was duly shown in bank account as a new FD was opened on 14th June 2014 of ₹40,00,000.
- 5.9 The transactions related to FY 2013-14 are sufficiently explained in point no 2 of the Basis of Adverse Opinion' which stated as under:

"The Company has neither booked any income nor booked any expenses in respect of above transaction [Point (i)]. Although the Company has also booked liability Rs. 66,25,840/- & Rs. 25,09,261 towards director Mr. Md. Saqib and Mrs. Farah Saqib respectively for payment of expenses towards set up of above-mentioned project apart from payment given to Medlaguru Broadcast Private Limited."

A liability regarding setting up of TV Channel and payment in this regard was booked in the financial statements in FY 2014-15. The same was reported in Adverse Opinion and Notes to Account. The Financial Statements of FY 2013-14 already disclosed the liability in the name of directors and payment made in this regard has been clearly shown in notes to account.

- 5.10 In the Financial Statements for the FY 2013-14, the management has taken amount against payment of TV Channel Setup Project and it has been disclosed/reported by the Respondent in his 'Basis of Adverse Opinion' that the Company neither booked any revenue nor booked any expenses in their financial statements in FY 2013-14 but has booked liabilities towards Directors for payment of expenses towards set up of the above mentioned projects.
- 5.11 All the transactions and entries related to the Fixed Deposit Sweep account of the Company are duly reflected in the Company's bank account and money received on revoking the FDRs has not been transferred any time to any director but has been directly credited to the bank account of the Company.
- 5.12 There is no negligence or deliberate attempt to mention incomplete facts as the Respondent has provided all the information as and when asked for by the Directorate which the Complainant has failed to do.
- 5.13 The extant case is an outcome of Striking off of the name of the Company by ROC in pursuance of Section 248(5) of the Companies Act 2013 but without issuance of proper notice and chance of fair hearing to the Director. As per the provisions of Section 250 read with Section 248 of the Companies Act, it is nowhere mentioned that a Company has lost its right to get the Financial Statement of the Company audited until the time for revival of the company lapses in case of strike off either by voluntarily or by ROC, as the case by be.
- 5.14 If a Company is struck off by the Registrar of Companies, the auditor's engagement is not automatically disqualified. The Act nowhere restricts CA to audit the company's accounts. The financial statements cannot be updated on RoC portal and didn't affect any stakeholder's interest.
- 5.15 The name of the Company was struck off for FY 2017-18 and FY 2018-19 on technical grounds of non-filing of financial Statements and not on the basis of existence of any events or conditions that, individually or collectively, may cast significant doubt on the entity's ability to continue as a going concern as per SA-570. The Company can file the revival application and thus, it cannot be concluded that the Company has ceased to be a Going Concern.
- 5.16 The Respondent signed the Financial Statements of the Company for the F.Y. 2017-18 on 3rd September 2018 and by that time, the director himself was not aware of the disqualification so as to inform the Respondent about the same.
- 5.17 The Respondent was issued the engagement letter for the term of 5 Year (01.04.2015 to 31.03.2019) and thus there is no requirement for separate engagement letter. The name of the company was strike off on technical grounds for which an action was already initiated by ROC which neither disqualified the Respondent nor arose any need for a separate appointment letter.
- 5.18 Subsequent to the conclusion of the hearing on 14th June 2024, extract of Inquiry Report dated 31st December 2020 was received from the Complainant Department which was shared with the Respondent vide email dated 7th October 2024. The Respondent, in response thereto, in his written submissions dated 17th October 2024, inter-alia, made the following submissions: -



- a) Sub-para 2 of the Investigation Report states that the Company was not carrying on any business in the immediately preceding 2 FYs and therefore, was struck off on 30.06.2017; No evidence (no Annexure as claimed in that para) has been provided to the Respondent to show that the Company was not carrying any business. Further, no averment has been made in respect of the Respondent's professional conduct.
- b) Para 11 (Page 4-6 of 7): Observations Clause (a), (b), (c) merely enlists certain facts and conduct of the Company and directors till FY 2012-13 and no allegations/averment has been made against the Respondent's professional conduct.
- c) Clause (d)-Sub-para 1 of the Investigation report merely enlists certain facts and conduct of the Company. The copies of financial statement for FY 2013-14 to FY 2015-16 have been already placed on record wherein the Respondent had given an adverse audit opinion for FY 2013- 14 with respect to transactions undertaken by the Company.
- d) Director (Mr Mohd Saqib) had preferred Writ before Hon'ble Delhi High Court with WPC 222/2019 dated 11.01.2019 which stands disposed of in favour of the director (Mr Mohd Saqib) in WPC 62/2019 (and other connected appeals) dated 18.08. 2022.Filing of audited financial statement with ROC is the responsibility of the management and not that of the auditors. No cause of action arise against the Respondent for failure on the part of the directors to upload financial statement.
- e) Without prejudice to the arbitrary/unreasonable/disproportionate action taken by ROC in striking off the name of the Company, even after the name of the Company is struck off, the Company is required to prepare the financial statements and get it audited in order to secure restoration in terms of section 252(1) of the Companies Act, 2013 wherein one of the attachments to Form NCLT-9 is audited financial statement for the last 3 years.
- f) There is no allegation that the auditor has not followed any Guidance Note or Standard of Auditing or any restriction from MCA in respect of struck off companies. If the rationale of Complainant is tested on the principles of reasonableness, it appears to be contrary to the settled principles as at one hand NCLT requires audited financial statement of last 3 years (and restoration application can be moved upto 20 years) and on the other hand, ROC recommending action against auditors for auditing such companies. This action by ROC would create apprehension to the auditors and restrain them from taking up assignments of such companies, thus, violating the rights of these companies to get restoration and this cannot be the intention of the Legislature.
- g) Filing of intimation of resignation in Form ADT-3 by retiring auditor is the responsibility of the retiring auditor. The Respondent had obtained copy of resignation letter from retiring auditor and brought on record the Letter of Appointment as auditor. Filing of Form ADT-1 (unlike Form 23B under Companies Act, 1956) is the responsibility of management and not that of the auditor. Filing of Form ADT-1 is a mere intimation/procedure and would not disqualify the auditor from acting as auditor when other substantive conditions are fulfilled.
- h) Further, the registered address of the Company is also the address of one of the directors of the Company. Copy of electricity bill in the name of the director is attached. Thus, the finding/inference drawn by the Complainant Department cannot be relied upon. There might be several reasons for return of notice undelivered like wrong/incomplete typing of address at envelope etc.
- i) The Complainant has failed to make a distinction between a dormant Company and shell Company and has merely highlighted points for further inquiry or action

by different agencies; no allegations have been made against the Respondent, and it relates to conduct of previous auditor or directors of the Company.

6. SUBMISSION OF THE COMPLAINANT DEPARTMENT:-

6.1 The Complainant Department vide email dated 04th October 2024 provided the copy of Inquiry Report dated 31st December 2020, wherein it was observed as under:

"On receipt of direction from the Directorate O/o RoC, Delhi had issued Order u/s 206(4) of CA, 2013 on 28.09.2020 to the Company and both directors. Further, summons u/s 207(3) of the CA, 2013 were served to both its directors for recording statement on oath vide order dated 26.11.2020 and revised order dated 08.12.2020 with rescheduled time and date to both directors from whom no response was received thereby giving them an opportunity to be heard taking into consideration the present scenario of pandemic....."

No reply of the Company was received (as the post came undelivered saying that no person exist here- Annexure I III), however Mr. Mohammad Saqib came for recording of the statement on oath on 15.12.2020 and had later submitted copy of the bank statement of the subject Company and the financial statement of the Company for the FY 2016-17 to 2018-19 (although the Company was struck off in 2017 from the records of MCA-21)....."

*The subject Company has filed its financial statements in MCA 21 till F.Y. 2012-13 and as on date it is a struck off Company u/s 248(1)(c) of CA, 2013. On the basis of filing made till the F.Y. 2012-13, it was observed that Company has revenue from operations, expenses, staff salary etc., profit/loss as Nil. Which means Company has not shown its regular expenses like annual filing fess expense, Statutory Audit fees, electricity expenses, rent expenses etc. in the profit & loss accounts since its incorporation hence **there arises a question on the True and fair view of the financial statements filed, as the Company ought to have incurred expenditure on Audit fees, Salary etc. which is in the normal course of business exist.**" (Emphasis Added)*

The last filed Balance Sheet of the Company as per MCA 21 registry is for the FY 2012-13 in which the Statutory Auditor Mr. Sanjay Joshi. There is no status of the Balance Sheet from the FY 2013-14 to 2015-16. However, on issuance of order u/s 206 (4) to the Company and director, one of the director Mr. Mohammad Saqib has submitted the financial statement for the FYs 2016-17, 2017-18 and 2018-19 which is audited by Mr. Gaurav Kansal (another auditor)....."

At the time issuance of letter by RoC to the Company intimating the striking off in 2017, came undelivered. Further the order issued u/s 206 (4), to the Company on 28/09/2020 also came undelivered. As such the Company has not maintained its registered office address as per MCA 21 records from 2017 onwards only. However, when Mr. Saqib came for recording of statement on oath, he submitted the documents of the Company viz. bank statement and the financial statements of the Company from 2016-17 to

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2018-19. The documents so furnished, on 22.12.2020 still have the registered address as A-82, Zakir Bagh, New Delhi-25 (which is in MCA 21 records) and as per his statement the Company is inoperative, and he had no knowledge of striking off of the Company. This means that the audited financial statements were produced or made only for sufficing the reply to the order issued under section 206 (4) of the Act.....

The subject Company has common attributes of a Shell Company. Although the Company is formally incorporated, registered and is legally operational in the economy but it does not conduct its operation for the economy of India other than being in a pass-through capacity. Potentially this being a suspected shell Company and other agencies are also looking into matter, as per their jurisdiction and domine laws.”

7. BRIEF FACTS OF THE PROCEEDINGS:

7.1 The details of the hearing(s) fixed and held/adjourned in said matter is given as under:

S.No.	Particulars	Date of meeting(s)	Status
1.	1 st hearing	22 nd June 2023	Part heard and adjourned.
2.	2 nd hearing	23 rd April 2024	Adjourned due to paucity of time.
3.	3 rd hearing	17 th May 2024	Part Heard and Adjourned
4.	4 th hearing	18 th June 2024	Part Heard and Adjourned
5.	5 th hearing	15 th July 2024	Part Heard and Adjourned
6.	6 th hearing	29 th August 2024	Hearing Concluded and decision on the conduct of the Respondent reserved
7.	-----	18 th September 2024	On account of non-submission of the requisite documents from the Complainant Department, the Committee directed to send a reminder to the Complainant Department.
8.	-----	03 rd January 2025	Decision on conduct of the Respondent taken

7.2 On the day of hearing on 22nd June 2023, the Committee noted that the Respondent was present through video conferencing. The Committee noted that the Complainant was not present, nor was any intimation received despite notice/email duly served upon him. The Respondent was administered on Oath. Thereafter, the Committee enquired from the Respondent as to whether he was aware of the charges. On the same, the Respondent replied in the affirmative and pleaded Not Guilty to the charges levelled against him. The Committee looking into grounds of natural justice decided to give the final opportunity to the Complainant to present his representations, if any. Thereafter, the Committee decided to adjourn the hearing to a future date. With this, the hearing in the matter was part heard and adjourned.

7.3 On the day of the hearing held on 23rd April 2024, the consideration of the case was adjourned due to paucity of time.

7.4 On the day of the hearing held on 17th May 2024, the Committee noted that the Authorized representative of the Complainant Department and the Counsel for the

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Respondent was present before it through video conferencing. Since there had been a change in the composition of the Committee, the same was duly intimated to the Authorized Representative of the Complainant Department and the Counsel for the Respondent who were present before the Committee. Thereafter, the case was taken up for hearing. On being asked by the Committee to substantiate their case, the authorized representative of the Complainant Department referred to the contents of Complaint made in Form 'I' against the Respondent. Subsequently, the Counsel for the Respondent presented the Respondent's line of defence, inter-alia, reiterating the written submissions made by him on the Prima Facie Opinion. On consideration of the submissions made by the authorized representative of the Complainant Department and the Counsel for the Respondent, the Committee posed certain questions to them which were responded by them. Thus, on consideration of the submissions and documents on record, the Committee directed the authorized representative of the Complainant Department to provide their submissions on the following within next 02 Weeks with a copy to the Respondent to provide his comments thereon, if any: -

1. Response on the written submissions dated 16th June 2023 made by the Respondent on the Prima Facie Opinion.

The Committee also advised the Respondent if he wishes to make any further written submissions in the case, he may do so, with a copy to the Complainant Department. With the above, the hearing in the case was part heard and adjourned.

- 7.5 On the day of the hearing held on 18th June 2024, the Committee noted that the Authorized representative of the Complainant Department and the Respondent along with his Counsel was present before it through video conferencing. The Committee further noted that no response was received from the Complainant Department in compliance of the directions given at the time of last hearing held in the case on 17th May 2024. Also, the Respondent reiterated the further written submissions made earlier in the case. Thereafter, during the present hearing in the case, the Representative from the Complainant Department sought some time to file his counter submissions in the instant case. The Committee further noted that the Counsel for the Respondent mentioned that he had already made his submissions in the instant case. On consideration of the submissions made by the Counsel for the Respondent, the Committee posed certain questions to him which were responded to by him. Thus, on consideration of the submissions and documents on record, the Committee directed the authorized representative of the Complainant Department to provide the following within next 10 days with a copy to the Respondent to provide his comments thereon, if any: -

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

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

- 7.6 On the day of the hearing held on 15th July 2024, the Committee noted that the Authorized representative of the Complainant Department and the Respondent along with his Counsel was present before it through video conferencing. The Committee further noted that no response was received from the Complainant Department in compliance of the directions given at the time of last hearing held in the case on 18th June 2024. Thereafter, during the present hearing in the case, the authorized representative of the Complainant Department sought some time to file their response on the written submissions of the Respondent. Keeping in view the request made by the

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authorized representative of the Complainant Department, the Committee directed the authorized representative of the Complainant Department to provide their submissions on the following within next 03 days with a copy to the Respondent to provide his comments thereon, if any: -

1. Response on the written submissions made by the Respondent on the Prima Facie Opinion.
2. The Order dated 18th August 2022 passed by the Hon'ble High Court of Delhi while disposing off Writ Petition bearing case no W.P.(C) 62/2019, CM APPL. 390/2019 & CM APPL. 2310/2019 in the connected/tagged matters.
3. Is a Company allowed to file its Financial Statements despite the Company being struck off as per MCA records.

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

- 7.7 On the day of the hearing held on 29th August 2024, the Committee noted that the Respondent along with his Counsel was present before it through video conferencing. However, there was no representation from the Complainant Department. The Committee noted that in response to the direction of the Committee at the last hearing held on 15th July 2024, the Complainant Department vide email dated 16th July 2024 informed that contents mentioned in the complaint filed against the professional earlier are reiterated. Hence, the matter may be decided on merit. Thereafter, Counsel for the Respondent submitted his final submissions in the instant case. Thus, on consideration of the submissions and documents on record, the Committee decided to conclude the hearing in the instant cases. However, the decision on the conduct of the Respondent was kept reserved by the Committee.
- 7.8 The Committee at its meeting held on 18th September 2024, as per the directions in the meeting held on 29th August 2024, directed the office to seek from the Complainant Department a copy of the complete Investigation/Inquiry report so that the Committee can arrive at a logical conclusion in the instant case. The Committee was also of a view that a reasonable time can only be granted to the Complainant Department to furnish the requisite documents/information. Accordingly, the Committee advised the office to ask the Complainant Department to provide the requisite documents/information within 07days of the receipt Communication. Also, a copy of the said communication be sent to the DGCoA office with a request to ensure compliance within the stipulated time period. With this, the consideration of the case was deferred by the Committee.
- 7.9 Accordingly, an email dated 20th September 2024 followed by reminder email dated 03rd October 2024 was sent to the Complainant Department. The Complainant Department vide its email dated 04.10.2024 provided the Complete Inquiry Report dated 31st December 2020 which was shared with the Respondent vide email dated 07th October 2024. The Respondent vide communication dated 17th October 2024 filed his written submission on the Inquiry Report.
- 7.10 Thereafter, at its meeting held on 03rd January 2025, the Committee, duly considered the submissions and documents, on record and decided on the conduct of the Respondent.



8. FINDINGS OF THE COMMITTEE:-

- 8.1 The Committee noted that with regard to **charge specified at s.no. 2 of para 2.1 above** against the Respondent that Rs.1.23 Crores were received in the Company and was given to media persons Rs.50 lakhs and other dummy account of Company Rs. 40 lakhs and to the directors without disclosing the same in the Related Party Transactions in violation of Section 188 of the Companies Act 2013 read with AS 18- Related Party Transactions, it was noted from the financial statements for FY 2013-14 that the Company had entered into a contract on 15-11-2013 with its Chinese client M/s Chang Shu Sun Kwong Printing and Dying (H.K.) Co. Ltd. to open a media channel in India by way of incorporation of subsidiary in India and for which it had received Rs.1.23 Crores approx. in its bank account on 30-01-2014 and the Company in respect of such contract to open a media channel had paid an amount of Rs.50 Lakhs to M/s Mediaguru Broadcast Pvt. Ltd on 05-02-2014 and further Rs.40 Lacs was found to be shifted to an FD account on 14-06-2014 in the name of the Company.
- 8.2 Thus, it is understood that such payments of Rs.50 Lacs and Rs.40 Lacs from Company's bank account to M/s Mediaguru Broadcast Pvt. Ltd. and FD account of the Company respectively has been alleged as made to Related Parties/Directors of the Company and in respect of which proper disclosure as per the requirement of Section 188 of the Companies Act 2013 read with AS18 has not been made in the Financials of the Company for the FY 2013-14 and FY 2014-15 and the Respondent being the statutory auditor of the Company allegedly failed to report in his auditor report.
- 8.3 The Committee noted that there are two payments referred to and alleged by the Complainant one of Rs.50 Lacs made in F.Y.2013-14 (as made on 30-01-2014) to media persons i.e. M/s Mediaguru Broadcast Pvt and the other of Rs.40 Lacs made in F.Y.2014-15 (as made on 14-06-2014) to Directors and other dummy accounts. The Committee also noted that the Respondent gave an Adverse Opinion in his audit report only for the financial year 2013-14.
- 8.4 The Committee noted that in respect of F.Y.2013-14, though the Respondent gave an Adverse Opinion in his audit report, no- where the basis of such opinion was mentioned in the manner he has stated in his written statement that the nature of the payments made to the Directors was not made clear to him. He had mentioned the following as the basis of his Adverse Opinion:

"Basis of Adverse Opinion:

(i) *The Company has entered into a contract for a Project on 15/11/2013 with **Chang Shu Sun Kam Kwongg Printing & Dying (H.K) Co. Ltd.** to open a media channel in India by way of Incorporation of Subsidiary in India for which it received Rs. 1,23,56,000/- on 30/01/2014 in HDFC A/c No. 03197630001017 in South Ex Branch. The Company has entered into a contract with **Mediaguru Broadcast Private Limited** on 10/12/2013 for market survey and consulting services to launch a TV Channel for one of its client Company desirous to open and operate media channel in India. The Company has paid Rs. 50,00,000/- on 05/02/2014 to **Mediaguru Broadcast Private Limited** for the above mentioned project to set up a TV Channel.*

(ii) *The Company has neither booked any Income nor booked any expense in respect of above transaction although the Company has also*

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booked liability Rs. 66,25,840/- & Rs. 25,09,261/- towards Director Mr. Md Saqib and Ms. Farah Saqib respectively for payment of expenses towards setup of above mentioned projects apart from expenses given to **Mediaguru Broadcast Private Limited** one of the director of Company on account of project.

(iii) The Company has paid Rs. 7,00,000/- on 17/02/2014 and Rs. 100000/- on 12/03/2014 to Md Saqib one of the director of the Company on account of project and Rs. 11,00,000/- to Ms Farah Saqib.

(iv) The Company has contracted the mutual consulting agreement with **Chang Shu Sun Kam Kwongg Printing & Dying (H.K) Co. Ltd of USD 6,50,000** of which USD 2,00,000 has been received during the year. On the other hand, the Company has made agreement to pay the amount of Rs. 2,50,00,000 for above mentioned project and Company have to pay 50% advance at the time of mutual consulting agreement but Company have paid Rs.50,00,000 and there have not paid any other major amount thereafter. The agreement have not executed completely

(v) The Company has written off the balances of Preliminary expenses and pre-operative expenses with TV Channel Setup Project Expenses during the year."

The Committee further noted the following related party disclosure made in the Notes to Accounts in the said Financial Year:

"(viii) Related Party Disclosure

As required by the Accounting Standard 18 issued by the Institute of Chartered Accountant of India, The Company has not paid remuneration to Directors Although Company has paid Rs 8 lakhs to Mohammed Saqib & 11 Lakhs to Farah Saqib during the year. The management has taken amount against payment of TV Channel Setup Project."

- 8.5 The Committee further noted from Paragraph 16 of SA 705, Modifications to the Opinion in the Independent Auditor's Report which states about the basis of opinion in case of modified opinion:

"Form and Content of the Auditor's Report When the Opinion Is Modified

Basis for Modification

16. When the auditor modifies the opinion on the financial statements, the auditor shall, in addition to the specific elements required by the SA 700 (Revised), include a paragraph in the auditor's report that provides a **description of the matter giving rise to the modification**. The auditor shall place this paragraph immediately before the opinion paragraph in the auditor's report and use the heading "Basis for Qualified Opinion", "Basis for Adverse Opinion", or "Basis for Disclaimer of Opinion", as appropriate. (Ref: Para. A17)"

For the FY 2013-14, the Committee noted from the Auditor's Report that though the Respondent has given Basis for Adverse Opinion in his report on the stated matter, the reason of giving Adverse Opinion is not clear from it. Accordingly, the Committee viewed

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that the purpose of the Auditor's Report to promote the user's understanding by reading the Auditor's Report has not been achieved.

- 8.6 The Committee on perusal of Note 2.5 of Notes to Accounts further noted that, in respect of the F.Y. 2014-15 wherein Rs.40 Lacs have been alleged to have been made to Directors, , the Company has mentioned the disclosure in the following manner:

"2.5 Related Party Disclosures:

A Key Managerial Personnel (KMP)

b. *Mohammed Saqib* Director

c. *Farah Saqib* Director

B Related Parties

• *Farah Saqib* - 50% Shareholding

• *Mohammed Saqib* - 50% Shareholding

The Company has not paid remuneration to Directors. Although Company has paid Rs.30,95,516 to Mohammed Saqib and Rs.14,09,261 to Farah Saqib during the year and received Rs.2,20,000 from Mohammad Saqib."

- 8.7 The Committee observed that AS 18 on Related Party Transactions clearly requires a Company, in its Financials apart from the name of the related party and description of the relationship, to mention the nature of transactions also that took place between the Company and such party. However, in the extant case, the Company though has mentioned the name of the related party, description of such relationship and also disclosed the amount of payments viz. Rs.30,95,516 and Rs.14,09,261 made to the related parties (Mr. Mohammed Saqib and Ms. Farah Saqib) but omitted to disclose the nature/reasons of such payments as per the requirements of AS-18. Hence, the financials are not giving complete details of the fact that why such a significant amount was transferred to the Directors during the year.
- 8.8 The Committee was of the view that the reporting made by the Respondent clearly shows that the Respondent, being statutory auditor despite of violation by the Company of disclosure requirement of AS-18, did not perform his professional responsibility of reporting on the financials of the Company diligently with modification rather had given a clean Audit Report. Accordingly, the Committee held the Respondent **Guilty** as per Item (7) of Part I of the Second Schedule to the Chartered Accountant Act 1949 with respect to the said charge.
- 8.9 With regard to **charge specified at s.no. 3(i) of para 2.1 above** relating to filing of financial statements for FY 2017-18 and FY 2018-19, though the Company had already been struck off from the register of ROC on 30.06.2017, it is noted that the Respondent submitted in his defence that ROC published list of directors associated with struck off companies on its website whereby it retrospectively disqualified Mr. Mohammed Saqib, the director of the Company under Section 164 (2) (a) with respect to Section 167 (1) of the Companies Act 2013 w.e.f. 1.11.2016 to 31.12.2021. Further, the said director had filed Writ Petition for non-serving due notice of disqualification to him before Hon'ble High Court of Delhi on which stay was granted by the Hon'ble Court vide Order dated 11th January 2019. The Respondent also submitted an Affidavit dated 23rd May 2023 given by the Director (Mohammed Saqib) who had been so disqualified, inter-alia, to the following effect:



4. ***That the said disqualification came to my knowledge only after 4th September 2018 when DIR-3 was filed-by me for carrying out my KYC as the Director. It was only after this event that I checked the website of MCA-21 and found impugned lists wherein my name was also included...***

5. ***Company regarding my disqualification in terms of Section 164(2) of the Companies Act 2013 as I was taken a back due to the fact that no notice was received by me from ROC before my name was published in the list of Directors associated with struck off companies....***

6. ***That I had no chance to make any representation either to the Company or to the Statutory Auditor, CA Gaurav Kansal about my said disqualification as the Financial Statement of the Company for the F.Y. 2017-18 were already approved by the board of Directors of the Company and thereafter audited and signed by the statutory auditor, CA Gaurav Kansal as by that time, I myself had no knowledge about my said disqualification."***

8.10 The Committee noted that the Respondent had audited the Financial Statement of the Company for FY 2017-18 and FY 2018-19 on 3rd September 2018 and 25th June 2019 respectively which had been authenticated by Mohammed Saqib also as one of the directors of the company. The Committee was of the view that even if it is presumed that the disqualification of the alleged director was known only after 4th September 2018 subsequent to which a Writ Petition had been filed in the Honourable High Court of Delhi which vide its Order dated 11th January 2019 stayed the disqualification of the said director, what precluded the Respondent from disclosing about the status of the Company while auditing the financial statement of the Company for the financial year 2018-19.

8.11 The Committee also noted the following from the Paragraphs 6(b), 8,14,15,16 of SA 250 - Considerations of Laws and Regulations in an audit of the financial statements:

"6. This SA distinguishes the auditor's responsibilities in relation to compliance with two different categories of laws and regulations as follows:

(a) The provisions of those laws and regulations generally recognised to have a direct effect on the determination of material amounts and disclosures in the financial statements such as tax and labour laws. (see paragraph 13); and

(b) Other laws and regulations that do not have a direct effect on the determination of the amounts and disclosures in the financial statements, but compliance with which may be fundamental to the operating aspects of the business, to an entity's ability to continue its business, or to avoid material penalties (for example, compliance with the terms of an operating license, compliance with regulatory solvency requirements, or compliance with environmental regulations); non-compliance with such laws and regulations may therefore have a material effect on the financial statements (see paragraph 14)."

"8. The auditor is required by this SA to remain alert to the possibility that other audit procedures applied for the purpose of forming an opinion on

financial statements may bring instances of identified or suspected non-compliance to the auditor's attention. Maintaining professional skepticism throughout the audit, as required by SA 200, is important in this context, given the extent of laws and regulations that affect the entity."

"14. The auditor shall perform the following audit procedures to help identify instances of non-compliance with other laws and regulations that may have a material effect on the financial statements:

(a) Inquiring of management and, where appropriate, those charged with governance, as to whether the entity is in compliance with such laws and regulations; and

(b) Inspecting correspondence, if any, with the relevant licensing or regulatory authorities. (Ref: Para. A9-A10)

15. During the audit, the auditor shall remain alert to the possibility that other audit procedures applied may bring instances of non-compliance or suspected non-compliance with laws and regulations to the auditor's attention. (Ref: Para. A11)

16. The auditor shall request management and, where appropriate, those charged with governance to provide written representations that all known instances of non-compliance or suspected non-compliance with laws and regulations whose effects should be considered when preparing financial statements have been disclosed to the auditor. (Ref: Para. A12) (emphasis supplied)"

8.12 The Committee further noted that the Respondent in the audit report of Financial Year 2018-19 had mentioned as under:

"the Company does not have any pending litigations which would impact its financial position".

However, the Respondent was required to follow the requirements of SA 250 wherein he was required to report about the pending litigation which would impact its financial position which he failed to do so. Further, the Respondent in his audit report failed to report the compliance aspect which is fundamental to the operating aspects of the business, to an entity's ability to continue its business and affecting going concern of the entity as the name of the Company got struck off and the litigation was going on before the Hon'ble Delhi High Court.

8.13 The Committee also noted that the said alleged Director was summoned by ROC and his Statement was recorded on Oath on 15th December 2020 wherein he also submitted the bank statements and financial statements of the Company audited by the Respondent for the three consecutive financial years namely 2016-17, 2017-18 and 2018-19 signed by Respondent on 05.09.2017, 03.09.2018 and 25.06.2019 respectively. The Observations made in this regard in Inquiry Report dated 31st December 2020 is reproduced below:



"Observation:

On receipt of direction from the Directorate O/o RoC, Delhi had issued order u/s 206(4) of CA, 2013 on 28.09.2020 to the Company and both directors. Further, summons u/s 207(3) of the CA, 2013 were served to both its directors for recording statement on oath vide order dated 26.11.2020 and revised order dated 08.12.2020 with rescheduled time and date to both directors from whom no response was received thereby giving them an opportunity to be heard taking into consideration the present scenario of pandemic.....

No reply of the Company was received (as the post came undelivered saying that no person exist here- Annexure I III), however **Mr. Mohammad Saqib came for recording of the statement on oath on 15.12.2020 and had later submitted copy of the bank statement of the subject Company and the financial statement of the Company for the FY 2016-17 to 2018-19 (although the Company was struck off in 2017 from the records of MCA-21). (Emphasis Added).....**

The subject Company has filed its financial statements in MCA 21 till F.Y. 2012-13 and as on date it is a struck off Company u/s 248(1)(c) of CA, 2013. On the basis of filing made till the F.Y. 2012-13, it was observed that Company has revenue from operations, expenses, staff salary etc., profit/loss as Nil. Which means Company has not shown its regular expenses like annual filing fess expense, Statutory Audit fees, electricity expenses, rent expenses etc. in the profit & loss accounts since its incorporation hence there arises a question on the True and fair view of the financial statements filed, as the Company ought to have incurred expenditure on Audit fees, Salary etc. which is in the normal course of business exist....

At the time issuance of letter by RoC to the company intimating the striking off in 2017, came undelivered. Further the order issued u/s 206 (4), to the company on 28/09/2020 also came undelivered. As such the company has not maintained its registered office address as per MCA 21 records from 2017 onwards only. However, when Mr. Saqib came for recording of statement on oath, he submitted the documents of the company viz. bank statement and the financial statements of the company from 2016-17 to 2018-19. **The documents so furnished, on 22.12.2020 still have the registered address as A-82, Zakir Bagh, New Delhi-25 (which is in MCA 21 records) and as per his statement the company is inoperative and he had no knowledge of striking off of the company. This means that the audited financial statements were produced or made only for sufficing the reply to the Order issued under section 206 (4) of the Act.(emphasis added)**

The subject company has common attributes of a Shell company. Although the company is formally incorporated, registered and is legally operational in the economy but it does not conduct its operation for the economy of India other than being in a pass- through capacity. Potentially this being a suspected shell company and other agencies are also looking into matter, as per their jurisdiction and domine laws.."

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Thus, the Committee was of the view that the obliviousness being claimed by the Respondent is unacceptable.

- 8.14 The Committee also noted that the Respondent brought on record the copy of the Management Representation Letter obtained from the Company for the following financial years with the following dates and compared the same with the date of the signing of the Audit Report:

Particulars	FY 2017-18	FY 2018-19
Date of Management Representation Letter	8 th June, 2018	18 th May, 2018
Date of Signing the Auditor's Report	3 rd September, 2018	25 th June, 2019

From the above, the Committee observed that the Management Representation Letter was given to the Respondent for FY 2018-19 on 18.5.2018 i.e. almost at the initiation of the financial year and that too prior to giving for the FY 2017-18.

- 8.15 The Committee further noted from Question 15 given under the Implementation Guide on SA 580, Written Representations which states as below:

“Question 15: Explain the date and period(s) covered by the Written Representations?”

Response: Furthermore, because the auditor is concerned with events occurring up to the date of the auditor's report that may require adjustment to or disclosure in the financial statements, the written representations are dated **as near as practicable to, but not after, the date of the auditor's report on the financial statements.** The written representations are for all periods referred to in the auditor's report because **management needs to reaffirm that the written representations it previously made with respect to the prior periods remain appropriate.** The auditor and management may agree to a form of written representation that updates written representations relating to the prior periods by addressing whether there are any changes to such written representations and, if so, what they are. In some circumstances it may be appropriate for the auditor to obtain a written representation about a specific assertion in the financial statements during the course of the audit. Where this is the case, it may be necessary to request an updated written representation.”

From the above facts and above-mentioned requirements, it was noted that though the written representation letter for FY 2018-19 is dated prior to the date of the auditor's report, the same is not near to the date of the signing of Auditor's Report but almost at the initiation of the financial year. The Committee viewed that it raises question on the appropriateness of Written Representation letter submitted by the Respondent.

- 8.16 Further, the Committee noted that the ICAI announced 'Client KYC Norms' as mandatory for compliance by 'Members in Practice' for maintaining requisite documentation/ information about the Clients" in respect of engagements accepted on or after 1st Jan 2017. These norms apply in all assignments pertaining to attest functions, i.e. audit, review, certification, etc. As per the prescribed format of KYC norms with regard to client being a Corporate Entity, the following information is required to be obtained by the Chartered Accountant:

"2. WHERE CLIENT IS A CORPORATE ENTITY**A. GENERAL INFORMATION**

Name and address of the entity....

Copy of the last audited financial Statement

B. ENGAGEMENT INFORMATION**C. REGULATORY INFORMATION**

Company PAN No.

Company Identification No.

Director's Names & Addresses

Director's Identification No."

- 8.17 From the above Guidelines, the Committee observed that an auditor should be aware about the information of his client. Accordingly, the Respondent's plea that he was not aware about strike off is not tenable as the notification dated 30.06.2017 of striking off was also uploaded on the MCA website which was available on public domain. The Committee also noted the following observation in the Inquiry report pertinent to the Respondent:

"(d) The last filed Balance Sheet of the Company as per MCA 21 registry is for the FY 2012-13 in which the Statutory Auditor is Mr. Sanjay Joshi. There is no status of the Balance Sheet from the FY 2013-14 to 2015-16. However, on issuance of order u/s 206 (4) to the Company and director, one of the director Mr. Mohammad Saqib has submitted the financial statement for the FYs 2016-17, 2017-18 and 2018-19 which is audited by Mr. Gaurav Kansal (another auditor).*

On examination of the documents filed by the director it is submitted that the present Auditor has not verified the status of the Company on the MCA-21 registry/records and has kept on preparing the audited balance sheet for the financial year 2016-17, 2017-18 and 2018-19 although these three financial year Balance sheets are not filed in MCA records nor the Balance Sheet prepared shows any business activities after striking off of the name from the MCA portal from 2017 onwards. Also Mr. Mohammad Saqib was not aware that the Company has been struck off.

Thus, it is observed that Auditor has negligently made and signed the Audit report without ensuring his proper appointment or re-appointment or the resignation of the previous auditor under the provisions of Companies Act, 2013 neither their respective e-forms (ADT 1 & 3) have been filed in MCA 21.

Therefore, a reference may be sent to ICAI for reprimanding Mr. Gaurav Kansal* and appropriate action at its end for his professional negligence."

** instant disciplinary case initiated on the basis of this report*

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- 8.18 The Committee also on perusal of audited financial statements of the alleged Company noted as under:

Particulars	2013-14	2014-15	2015-16	2016-17	2017-18	2018-19
Revenue from Operations	-	1,48,350	-	-	-	-
Other Income	-	79,204	50,257	-	-	-
Audit Fees	-	10,000	10,000	10,000	10,000	10,000
Staff Salary	-	Rs.1,21,000/-	-	-	-	-
Total Expenses	-	6,32,515	10,000	10,000	10,000	10,000
Profit/Loss	-	(4,04,961)	40,257	(10,000)	(10,000)	(10,000)

- 8.19 The Committee noted that as per Section 143 of the Companies Act 2013, the Respondent being the Statutory auditor was duty bound to check and report that the financial statements present a true and fair view of the state of the Company's affairs as at the end of its financial year. However, nowhere in the financial statements of the alleged Company for FY 2017-18 and 2018-19 the fact that the Company was strike off w.e.f. 30-06-2017 or the directors were disqualified, or a suit had been filed against the said disqualification which was pending was mentioned.

From the aforesaid observations, the Committee was of the view that the Respondent was not only grossly negligent while discharging his Professional duties but also brought disrepute to the profession as he did not act independently and carried out audit to suit the requirements of the alleged Company as evident from the aforesaid observations. Accordingly, the Committee held the Respondent **Guilty** of 'Professional' and 'Other Misconduct' as per Item (7) of Part I of the Second Schedule and Item (2) of Part IV of the First Schedule to the Chartered Accountant Act, 1949 in respect of the said charge.

- 8.20 With respect to the **charge specified at S.no. 3(ii) of Para 2.1 above**, the Committee noted that the Respondent was appointed as the Statutory Auditor of the Company w.e.f. 05-05-2014. The Committee noted that as per the Code of Ethics, the following is the requirement of Item (9) of Part I of the First Schedule to the Chartered Accountants Act, 1949:

"the incoming auditor has to ascertain whether the Company has complied with the provisions of the above sections. The word "ascertain" means "to find out for certain". This would mean that the incoming auditor should find out for certain as to whether the Company has complied with the provisions of Sections 224, 224A and 225 of the Companies Act. In this respect, it would not be sufficient for the incoming auditor to accept a certificate from the management of the Company that the provisions of the above sections have been complied with. It is necessary for the incoming auditor to verify the relevant records of the Company and ascertain as to whether the

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Company has, in fact, complied with the provisions of the above sections. If the Company is not willing to allow the incoming auditor to verify the relevant records in order to enable him to ascertain as to whether the provisions of the above sections have been complied with, the incoming auditor should not accept the audit assignment.

It is suggested that the incoming auditor should verify the following records of the Company:- 9.1 If the appointment of the auditor is being made for the first time after incorporation of the Company, the auditor should verify as to whether the Board of Directors have passed the resolution for his appointment within one month of the date of registration of the Company.

If the Board of Directors have not appointed the first auditor but the appointment is being made by a general meeting of the Company, the auditor should verify as to whether a proper notice convening the general meeting has been issued by the Company and whether the resolution has been validly passed at the general meeting of the Company.

If the appointment is being made to fill a casual vacancy, the incoming auditor should verify as to whether the Board of Directors have powers to fill the casual vacancy and whether the Board of Directors have passed the resolution filling the casual vacancy.

If the vacancy has arisen due to resignation of the auditor, the incoming auditor should see as to whether a proper resolution filling the vacancy has been passed at the General Meeting of the Company.
(emphasis added)

If the vacancy has arisen as a result of removal of the auditor before the expiry of his term of office, the incoming auditor should see that proper resolution has been passed at the General Meeting of the Company and that the previous approval of the Central Government has been obtained by the Company.

If the provisions of Section 224A apply to the Company, the incoming auditor should verify as to whether a special resolution as required under the said Section has been duly passed.

Where the auditor other than the retiring auditor is proposed to be appointed, the incoming auditor should ascertain whether the provisions of Section 225 have been complied with. These provisions equally apply where an auditor who was jointly holding office with another auditor or auditors and any one or more of such joint auditors has not been reappointed.

For the purpose of ascertaining whether the Company has complied with the provisions of Section 225 of the Companies Act the incoming auditor should verify the records of the Company in respect of the following matters:-

- (i) Whether a member of the Company has given special notice of the resolution as required under Section 225(1) at least 14 days

before the date of the general meeting. A true copy of this notice should be obtained by the incoming auditor.

- (ii) Whether this special notice has been sent to all the members, of the Company as required under Section 190(2) at least 7 days before the date of the General Meeting.
- (iii) (iii) Whether this special notice has been sent to the retiring auditor forthwith as required under Section 225(2).
- (iv) Whether the representation received from the retiring auditor has been sent to the members of the Company as required under Section 225(3).
- (v) Whether the representation received from the retiring auditor has been considered at the general meeting and the resolution proposed by the special notice has been properly passed at the general meeting.

In the instant case, the Company was incorporated in 2006. The Respondent was appointed as the Statutory Auditor of the Company w.e.f. 05-05-2014. He in his defence brought on record copy of his appointment letter dated 5th May 2014 together with the resignation letter dated 8th April 2014 of the previous auditor. Thus, it is clear that the Respondent had been appointed on account of resignation of the previous auditor. However, he did not bring on record any documentary evidence to establish that whether a proper resolution filling the vacancy has been passed at the General Meeting of the Company. He further brought on record a letter dated 30th September 2014 wherein the Company informed him that his firm had been re-appointed as a Statutory auditor at the AGM held on 30th September 2014 from 30th September 2014 to 31st March 2019.

8.21 The Committee thus held that required checks were not exercised by the Respondent prior to acceptance of the appointment as auditor. Accordingly, the Committee held the Respondent **Guilty** of Professional Misconduct falling within the meaning of Item 9 of Part I of First Schedule to the Chartered Accountants Act, 1949 in respect of the said charge.

8.22 In view of the above, the Committee held the Respondent **GUILTY** of Professional and Other Misconduct falling under Item (9) of Part-I and Item (2) of Part-IV of the First Schedule and under Item (7) of Part I of the Second Schedule to the Chartered Accountants Act, 1949.

9. CONCLUSION:

9.1 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
S.no. 2 of Para 2.1 as given above	Paras 8.1 to 8.8 as given above	GUILTY - Item (7) of Part I of Second Schedule
S.no. 3(i) of Para 2.1 as given above	Paras 8.9 to 8.19 as given above	GUILTY - Item (7) of Part I of Second Schedule and Item (2) of Part-IV of First Schedule.
S.no. 3(ii) of Para 2.1 as given above	Paras 8.20 to 8.21 as given above	GUILTY - Item (9) of Part-I of the First Schedule.

10. In view of the above observations, considering the oral and written submissions of the parties and material on record, the Committee held the Respondent **GUILTY** of Professional Misconduct and Other Misconduct falling within the meaning of Item (9) of Part-I and Item (2) of Part-IV of First Schedule and Item (7) of Part I of Second Schedule to the Chartered Accountants Act, 1919.

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

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

Sd/-
(SHRI ARUN KUMAR, I.A.S. (RETD.))
GOVERNMENT NOMINEE

Sd/-
(CA. SANJAY KUMAR AGARWAL)
MEMBER

DATE: 27th January 2025
PLACE: NEW DELHI

प्रमाणित सत्य प्रतिलिपि / Certified true copy
सीए अंशुल कुमार / CA. Anshul Kumar
सहायक निदेशक / Assistant Director
अनुशासनिक निदेशालय / Disciplinary Directorate
भारतीय चरtered Accountants of India
आईसीएआई भवन, विश्वास नगर, शाहदरा, दिल्ली-110032
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