भारतीय सनदी लेखाकार संस्थान

(संसदीय अधिनियम द्वारा स्थापित)

THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA

(Set up by an Act of Parliament)

DISCIPLINARY COMMITTEE [BENCH-III (2025-2026)]

[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/132/2014-DD/203/2014-DC/764/2018

In the matter of:

The Deputy General Manager,
State Bank of India,
Commercial Branch,
232, N.S.C. Bose Road
Chennai – 600 001 **.....Complainant**

Versus

CA. V Balasubramanyan (M. No. 018444)
M/s Sarathy & Balu,
No. 6 (Old No. 27) 11th Avenue,
Ashok Nagar
Chennai – 600 083 **.....Respondent**

MEMBERS PRESENT:

CA. Charanjot Singh Nanda, Presiding Officer
Shri Jiwesh Nandan, Member (Govt. Nominee)
Dr. K Rajeswara Rao, Member (Govt. Nominee)
CA. Piyush S Chhajed, Member
CA. Abhay Chhajed, Member

Date of Hearing: 30th July 2025
Date of Order: 9/8/2025

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

dated 11th February 2021, the Disciplinary Committee was, inter-alia, of the opinion that **CA. V Balasubramanyan (M. No. 018444)** (hereinafter referred to as the "**Respondent**") was **GUILTY** of Professional Misconduct falling within the meaning of Item (5), (7) and (8) of Part I of the Second Schedule to the Chartered Accountants Act, 1949.

2. That pursuant to the said findings, an action under Section 21B(3) of the Chartered Accountants Act, 1949 was contemplated against the Respondent and a communication was addressed to him thereby granting an opportunity of being heard in person/through video conferencing and to make representation before the Committee on 9th July 2025 and thereafter on 30th July 2025.

3. The Committee noted that in response to the notice for hearing on 9th July 2025; the Respondent vide his email dated 3rd July 2025, had stated that the whole proceedings should be started de-novo allowing the Respondent to participate along with his counsel. The Respondent further requested the Disciplinary Committee to defer the proposed hearing. The Committee further noted that the Respondent vide email dated 7th July 2025 further submitted gist of his objections for consideration of the Disciplinary Committee. The Respondent further requested the Committee to place the matter for hearing under Rule 18 of CA Rules, 2007 instead of awarding the punishment under Rule 19(1) of CA Rules, 2007. In this regard, the Committee noted that vide email dated 8th July 2025 in response to the email of the Respondent, he was advised to appear before the Committee on 9th July, 2025 at the scheduled time and accordingly make his submissions.

3.1 On the first date of hearing, i.e. on 9th July 2025, the Committee noted that the Respondent was present for the hearing through Video Conferencing. Thereafter, he gave a declaration that there was nobody present in the room except him from where he was appearing and that he would neither record nor store the proceedings of the Committee in any form. On being asked by the Committee, whether he had received the findings of the Disciplinary Committee, the Respondent confirmed to have received the same. Thereafter, the Committee drew attention of the Respondent that the purpose of the extant hearing was to afford him an opportunity of hearing before passing any order for punishment.

3.2 The Respondent, thereafter, made his oral submissions by raising certain objections in the matter. He further submitted that the matter to be heard at Rule 18 of the Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007 and not at Punishment Stage under Rule 19 of said Rules. Accordingly, he sought adjournment in the matter to establish these facts.

3.3 The Committee further noted that the Respondent had initially approached the Hon'ble High Court of Madras and filed Writ Petition no. 3881/2021 to quash the disciplinary proceedings. The Learned Single Judge of the High Court vide order dated 12th June, 2024

disposed of the Writ Petition granting liberty to the Respondent to participate in the enquiry. The Respondent, thereafter, challenged the same before the Division Bench which was also disposed of vide their order dated 19th March, 2025 declining to interfere with the Order of the Learned Single Judge. The Committee further noted that the Division Bench of the Hon'ble High Court has directed the Disciplinary Committee vide its order dated 19th March 2025 and clarification order dated 24th March 2025 to complete the disciplinary proceedings in all respects and pass final order on merits in accordance with law. The Committee noted that the Division Bench vide its order dated 19th March 2025 observed as under:

> *"... It is not in dispute that disciplinary proceedings are initiated against the appellant. The writ petition was instituted challenging the initiation of disciplinary proceedings by the Disciplinary Committee. Initially on receipt of complaint, prima facie opinion has been formed by the Director (Discipline) of the Institute of Chartered Accountants of India. On formation of prima facie opinion, the matter was referred to the Disciplinary Committee. Therefore, all the grounds raised in the writ petition and the writ appeal by the appellant are to be adjudicated by the Disciplinary Committee. The learned single Judge, following the orders passed in W.P.No.13169 of 2020 dated 09.02.2024, disposed of the writ petition granting liberty to the appellant to participate in the process of enquiry and defend his case. Thus this Court is not inclined to interfere with the writ order impugned and consequently the writ appeal stands dismissed."*

3.4 The Committee further noted that Respondent again approached the same Division Bench of Hon'ble High Court seeking clarification to order dated 19th March 2025 and in this regard Hon'ble High Court vide order dated 24th March 2025 further observed as under:

> *"3. As far as the letter dated 25.02.2021; it indicates that the Disciplinary Committee has given its finding and further opportunity has been provided to the appellant to submit his representation if any, within a period of fourteen (14) days. Unfortunately, three years lapsed, on account of pendency of the litigation. Therefore, the appellant is not entitled to get any more leniency from the hands of this Court. The appellant is at liberty to submit his representation within a period of one week from today i.e., 24.03.2025, if any already submitted. On receipt of representation, if any, from the appellant within a period of one week, the respondents shall proceed with the process, complete the disciplinary proceedings in all respects and pass final orders on merits in accordance with law."*

3.5 The Committee, after considering all the grounds raised by the Respondent and facts of the case, clarified him that in accordance with the directions of the Hon'ble Court, the Disciplinary Committee is required to address the issues/ objections raised by him while

passing the final order. The Committee considering his adjournment request decided to give one more opportunity to him and accordingly instructed him to submit his further representation on the quantum of punishment in the next hearing.

4. On the date of the hearing held on 30th July 2025, the Respondent was not present for the hearing. The Committee further noted that the Respondent vide email dated 29th July 2025 submitted that he had filed Writ Petition no. 27795/2025 before Hon'ble High Court of Madras challenging the issue of notice dated 11th July 2025 in respect of extant proceedings. The Respondent further stated that in view of the pendency of the said Writ Petition and also as the Hon'ble High Court of Madras is seized of the matter, requested the Disciplinary Committee to postpone the hearing fixed for 30th July 2025.

4.1 The Committee, in this regard, observed that proceedings before the Disciplinary Committee are quasi-judicial in nature where the misconduct can be proved by preponderance of probabilities having regard to the conduct of the Respondent. While coming to the said view the Committee took into consideration the decision of the Hon'ble Supreme Court in the matter of Ajit Kumar Nag Vs. General Manager (PJ) Indian Oil Corporation Limited [AIR 2005 SC 4217] wherein the Hon'ble Apex Court held as under :-

> *"The degree of proof which is necessary in order to conviction is different from the degree of proof necessary to record the commission of delinquency. The rules relating to appreciation of evidence in the two proceedings is also not similar. In criminal law, burden of proof is on the prosecution and unless the prosecution is able to prove the guilt of the accused beyond reasonable doubt he cannot be convicted by a Court of law. In a departmental enquiry penalty can be imposed on the delinquent officer on a finding recorded on the basis of preponderance of probability."*

Similarly in the matter of Capt. M Paul Anthony Vs. Bharat Gold Mines Limited [AIR 1999 SC 1416] the Hon'ble Supreme Court held as under:-

> *"In departmental proceedings, factors prevailing in the mind of the disciplinary authority may be many, such as enforcement of discipline of to investigate level of integrity of delinquent or other staff. The standard of proof required in those proceedings is also different from that required in a criminal case. While in departmental proceedings, the standard of proof is one of preponderance of probabilities, in a criminal case, the charge has to be proved by the prosecution beyond reasonable doubt."*

The Committee further noted that there was no stay and accordingly, the Committee decided to proceed with the matter based on the representation submitted by the Respondent.

5. The Committee noted that the Respondent in his written representation dated 27th March 2025 on the findings of the Committee, inter-alia had raised certain objections as under:

   a. On the maintainability of the Complaint specifically citing Rule 3(4) of the CA Rules, 2007.
   b. On the time Limit for entertaining Complaint as per Rule 12 of the CA Rules, 2007.
   c. On the time Limit for fixing of hearing in violation of Rule 18(6) of the CA Rules, 2007.
   d. Requested for documents relied upon by the Director (Discipline), in terms of 18(2)(b) of the CA Rules, 2007. The Respondent stated that the Director (Discipline) based his opinion solely on the forensic audit report which is an un-testified document, as furnished by the Complainant Bankers and nothing beyond it. The Respondent requested the Committee to provide the particulars or documents relied upon by the Director (Discipline), in order to defend his case. He further requested for a copy of the noting and basis/ order in respect of exoneration of Internal Auditor of the subject Company. The Respondent further requested the Committee to provide copy of the noting and basis/ order wherein the Internal Auditors of the subject company so exonerated. He also requested for copy of appraisal documents including the minutes of the consortium meetings of the Complainant Banks. The Respondent further requested the Committee to provide the copy of the appraisal documents including the minutes of the consortium meetings of the Complainant Banks.
   e. Requested for examination of witnesses in terms of the Rule 18(14) of the CA Rules, 2007. The Director (Discipline) had formed his Prima Facie Opinion wholly based on the Forensic Audit Report of M/s. Maharaj N.R. Suresh and Co., Chartered Accountants. The said report is an un-testified document and the Partners of the said Audit firm who conducted the said audit was not summoned by the Committee to record his testimony especially when the said Forensic Auditor was appointed by the very Complainant Banks and obtained the Report.

6. The Committee, with respect to objections raised by the Respondent, considered the reasoning as contained in the findings holding the Respondent guilty of professional misconduct vis-a-vis written and verbal representation of the Respondent made before it. As regards other submissions of the Respondent, the Committee held that due consideration to the submissions and documents on record had been given by the Committee before arriving at its findings and that no fresh ground can be adduced at this stage.

a. As regards the plea regarding maintainability of Complaint, the Respondent stated that there was no specific resolution or power of attorney to lodge complaint against him. The Respondent further submitted that the Complainant has merely filed a copy of notification dated 2nd May 1987 under which concerned officers who were connected with the current or authorized business of the bank were authorized to sign documents. The Respondent further stated that filing of case against an independent Chartered Accountant/ Firm cannot be construed as part of current or authorized business of Complainant Bank. The Committee, in this regard, observed that the Complainant Bank filed extant compliant (under Rule 3(1) of CA Rules, 2007) in Form I dated 23rd May 2014 with signatures and rubber stamp of Deputy General Manager, State Bank of India, Commercial Branch, Chennai alongwith particulars of evidence(s) adduced in support of the allegations. Thereafter, the Disciplinary Directorate at the time of registration of extant complaint vide letter dated 10th June 2014 specifically sought authorization from the Complainant Bank and in its response, the Complainant Bank vide letter dated 7th July 2014 confirmed its authority to initiate extant disciplinary proceedings and specifically mentioned name of the Respondent Firm in the said letter. Further, the representative of the Complainant Bank has referred Regulation 76(1) of the State Bank of India General Regulations 1955 framed under Section 50 of the State Bank of India with respect to his authorization to file extant complaint against the Respondent Firm. The Committee further noted that the said issue is dealt with in detail in paragraph 6.1 and 6.1.1 of the findings report and the representative of the Complainant Bank also corroborated the charges at the hearing stage and accordingly, the plea of the Respondent is not maintainable.

b. As regards limitation under Rule 12 of CA Rules, 2007, the Committee the said issue is already dealt with in paragraph 6.3 and 6.3.1 of the findings report. The Committee also noted that:

In State of A.P. Vs. N. Radhakishan [1998] 2 SCR 693, A.R. Antulay v. R.S. Nayak and Anr. AIR 1992 SC 1701 and State of Punjab and Ors. Vs. Chaman Lal Goyal (1995) 2 SCC 570, the Hon'ble Supreme Court had held that whether a disciplinary proceeding is to be quashed on the ground of delay is to be determined according to the facts and circumstances of each case and that the essence of the matter is that the Court has to take into consideration all the relevant factors, to balance and weigh them to determine if it is in the interest of clean and honest administration that the disciplinary proceedings should be allowed to terminate after delay particularly when the delay is abnormal and there is no explanation for the delay. Further, in the matter of *DDA Vs. D.P. Bambah and Anr. LPA No. 39/1999 date 29.10.2003*, a Division Bench of the Hon'ble High Court of Delhi has held that unless the statutory rules prescribe a period of limitation for initiating disciplinary proceedings, there is no period of limitation for initiating the disciplinary proceedings. If bona fide and reasonable

explanation for delay is brought on record by the disciplinary authority, in the absence of any special equity, the court would not intervene in the matter. Balancing all the factors, it has to be considered whether prejudice to the defence on account of delay is made out and the delay is fatal, in the sense, that the delinquent is unable to effectively defend himself on account of delay. Applying the said principles to the facts of the present case; it is submitted that the plea of delay/laches is liable to be rejected.

Further, it is observed that the alleged delay could not be sole ground for quashing the proceedings. Moreover, when the allegations made were on the practice adopted by various firms across India which was collectively affecting the profession of Chartered Accountants as a whole. It was in the larger public interest that the matter should be adjudicated and even if for the sake of argument alleged delay is accepted, it must be condoned. It is trite law that important questions affecting public interest should not be defeated on technical objections. The Hon'ble Supreme Court in Collector, Land Acquisition, Anantnag & Anr. Vs. Katiji & Ors. [1987(2) SCC 107] has held that:

> *"Refusing to condone delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated. When substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done because of a non-deliberate delay."*

It is pertinent to note that there is no timeline prescribed in Section 21 of the CA Act. The timeline prescribed through subordinate legislation in the Rules is not to render any complaint/ information defunct/ invalid merely on the ground of procedural time lag, if any occurred. In this regard, the observations of the Hon'ble Supreme Court in Sardar Amarjit Singh Kalra and Ors. Vs. Parmod Gupta and Ors. [(2003) 3 SCC 272] are:

> *"Law of procedure are meant to regulate effectively, assist and aid the objection of doing substantial and real justice and not to foreclose even an adjudication on merits of substantial rights of citizen under personal, property and other laws. Procedure has always been viewed as the handmaid of justice and not meant to hamper the cause of justice or sanctify miscarriage of justice."*

Further, reference be also made in this context in the judgement of Hon'ble Supreme Court in 'Shaikh Salim Haji Abdul Khayumsab Vs. Kumar and Ors' [2006 AIR (SC) 396].

c. Regarding time line prescribed under Rule 18(6) of CA Rules 2007, it is noted that the said Rule provides that "*The Presiding Officer of the Committee shall fix a date, hour*

and place of hearing, which shall not ordinarily be later than 45 days from the date of receipt of prima facie opinion and the committee shall cause a notice to be sent of such date, hour and place to the Director, respondent and complainant and require them to appear before it in person to make oral submissions, if any." In this regard, it is clarified that 45 days period is directory and not mandatory and it is aimed at expeditious handling of cases. Delay in scheduling the first hearing does not vitiate the proceedings and no legal right accrues to the Respondent to claim lapse solely on this ground. This view is also supported by judicial pronouncements as discussed herein above and such procedural timelines in disciplinary matters are not rigid unless explicitly prescribed as mandatory. The intent is to ensure fair hearing and natural justice rather than to penalize technical delay.

d. As regards the request for seeking documents, minutes of the consortium meetings of the Complainant Banks and exoneration of internal auditor, the Committee noted that the documents referred and relied upon while formulating/ considering the Prima-Facie Opinion were already provided to the Respondent at various stages. As regards exoneration of internal auditor, the Committee noted that the allegations raised against him were different and the Respondent cannot be permitted to shift burden on internal auditor. Since, the allegations are separate and independent, hence sharing of documents related to other parties cannot be taken as a valid objection.

e. As regards the request for examination of witnesses, the Committee noted that the Respondent has requested examination of various bank officials and other fellow chartered accountants who had performed their official duties and none of them had performed any duty in their personal capacity. The request for examination of witness was considered by the then Committee during hearing stage, however, the request of the Respondent was declined. The Respondent also acknowledged in his submissions that the then Disciplinary Committee had considered and denied the witness request. Hence, this objection of the Respondent is not maintainable.

The Committee further noted that the then Committee arrived at the findings after evaluating all the evidence produced before it and after adhering to the due procedure as enshrined in the Chartered Accountants Act, 1949 and the Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007.

7. As regards merits of the case are concerned, it is noted that the brief background of the case is as under:

a. The Complainant Bank in its complaint stated that M/s. First Leasing Company of India Ltd. (hereinafter referred to as the '**Company**') had availed credit facilities under

consortium arrangement. The Respondent firm was statutory auditor of the Company for the Financial year 2002-03 till 2012-13. The Complainant Bank came to know that the Reserve Bank of India (RBI) issued a press release dated 13th September 2013 restricting the Company to sell, transfer and create charge or mortgage or deal in any manner to protect its property/ assets, distribution of profits and transaction of business/ incur any further liability to protect the interest of stakeholders.

b. It was observed by the Complainant that there was substantial mismatch in asset-liability position of the Company. The audited financials of the Company did not reflect correct position of assets and receivables. Hence on behalf of consortium of banks, forensic audit was entrusted to M/s Maharaj N.R. Suresh and Co. to verify books and restatement of accounts for previous years and to investigate and find out how the huge gap between assets and liabilities had arisen. Meanwhile, the Respondent Firm who was the statutory auditors of the Company resigned from the position and stated that the certificates for the year ended 31st March 2013 and limited review reports of four quarters ending 30.06.2012, 30.09.2012, 31.12.2012 and 30.06.2013 issued by them should no longer be relied upon.

c. It was mentioned that the consortium of banks had taken substantial exposure on the Company based on the audited financials of the Company. The forensic audit report finds serious lapses / negligence in conduct of audit of the Company by statutory auditors who had audited the accounts since 2002 onwards. It was alleged that the revenue and profitability parameters were highly inflated to show profit, while the Company was actually incurring huge losses. Against the above background, the Complainant Bank had raised following charges against the conduct of the Respondent:

(i) First Charge: It was alleged that income was inflated for last eleven years from FY 2002-03 to FY 2012-13. In case of non-performing assets, as the receipt of interest itself was in doubt, the Company had charged penal interest which was not as per RBI guidelines. Other finance charges were debited to borrower account without concurrence of the borrower. Interest on Re-finance loans were mostly fictitious entries. The auditors failed to verify loan assets, documents, legal rights to receive the interest and had not checked for constructive receipt in the bank account.

(ii) Second Charge: Foreclosure of lease was directly accounted as income and corresponding write off of assets was not accounted and lease on such transactions was not properly verified by auditors. The Company falsified records since 1999-2000 and shown arbitrary disbursement by creating unsubstantiated

entries in the books of account. The Company was inflating income and assets. Stock on hire, re-finance loan and leasing assets were at a higher amount.

(iii) Third Charge: It was alleged that depreciation on lease assets for disbursements was made up to 2001 (as per AS-6). In respect of lease assets (including pre closed leases) accounting standard AS 19 was not been followed properly. In the year 2009-10, depreciation amounting to Rs. 2216 lacs was provided (which included earlier years depreciation). Thus, depreciation not charged correctly in earlier years resulted in overstatement of Income.

(iv) Fourth Charge: Violation of Section 269SS of the Income Tax Act, 1961 and payment of interest (without deduction of tax at source), cash expenses and reimbursement of expenses. Loans were received in cash and repaid in cash to an account called "factors". Interest was paid in cash without deduction of tax at source. This was neither reported in tax audit nor disclosed under CARO. These expenses in cash violating section 40A (3) of the Income Tax Act were not reported. Managing Director (MD) and other key personnels were paid certain allowances in cash on which tax at source was not deducted. No permission from Board was on record. Such payments to MD were also not disclosed in the notes to accounts.

(v) Fifth Charge: The Respondent Firm being the auditor failed to report that the Companies directly/ indirectly controlled by the Managing Director in the financial statement in Violation of CARO.

(vi) Sixth Charge: The Respondents failed to properly audit and certify the profit and loss account for the financial year 2002-03 to 2011-12. The balance sheet was not certified properly, income was inflated, dividend and MD remuneration was paid on non-existent profits and current assets were inflated.

(vii) Seventh Charge: There was gross negligence in applying the standard of audit SA 315 "Identifying and Assessing the risk of material misstatement" through understanding the Company and its environment, which is mandatory from 1st April 2008. Had the auditors applied the procedure given in the standard on auditing, the fraud perpetrated by the Company could had come to the knowledge of the lenders and debenture holder. Thus, the Respondent Firm failed in their duties as auditor in not complying with the stated standard of auditing.

(viii) Eighth Charge: The Respondent firm resigned from the position and had stated that the certificates for the year ended 31st March 2013 and four quarters ending 30.06.2012, 30.09.2012, 31.12.2012 and 30.06.2013 issued by them should no

longer be relied upon. When the Complainant sought the information about the circumstances under which such advise was issued by the Respondent Firm, since no adverse remarks or qualification were reported in their audit report, it was alleged that the Respondent disowned his responsibility by stating that on account of subsequent events such action was initiated.

The Committee noted that the Complainant in his complaint had raised 8 (eight) charges against the Respondent Firm, out of which the Director (Discipline) in his prima facie opinion dated 12th December 2017 held the Respondent guilty of 7 (seven) charges and exonerated him of third charge. Accordingly, the erstwhile Committee held the enquiry on remaining seven charges in its findings.

8. The Committee further noted that the Respondent in his written representation dated 27th March 2025 had submitted that his certain submissions were not considered by the Committee at hearing stage. He further enclosed certain documents. In this regard, the Committee noted that the Respondent failed to establish the correlation of these documents vis-à-vis findings of the Committee. The Committee further noted that the Respondent chose not to appear before the Committee on merits of the matter despite he was given specific opportunity by adjourning hearing on 9th July 2025. The Committee noted that the Respondent in his written representation dated 27th March 2025 raised certain aspects on merits of the instant case which are dealt as under:

   a. Regarding first, second and fourth charge with respect to Recognition of Income at inflated amount and interest on re-finance loans were fictitious entries; Foreclosure of Lease directly accounted as Income and corresponding write off of assets not accounted; and violation of Section 269SS of the Income Tax Act 1961, the Respondent submitted that details shown in support of the said allegations by the Complainant did not pertain to his audit period. Further, the Complainant did not produce any direct evidence before the Committee in support of the charges alleged. The Complainant just relied on an un-testified report viz. Forensic Audit Report.

      The Committee, in this regard, observed that the then Committee held the Respondent guilty by appraising various documents on record including Forensic Audit Report, Financial statements issued by the Respondent Firm, submissions of both the parties and other documentary evidences brought on record. The Respondent submission that the said details did not pertain to his period of audit cannot sustain. The Committee noted that the Respondent was declared member answerable on behalf of Respondent Firm under the provisions of CA Rules, 2007 and the said aspect was duly dealt by the erstwhile Disciplinary Committee in para 5 and 5.1 of its findings. The Respondent Firm was Statutory Auditor of the Company i.e. M/s. First Leasing Company of India Limited for the Financial Years 2002-2003 till 2012-2013 i.e. continuously auditing the

financial statements for about 10 years. Further, the Respondent Firm was required to consider materiality of transactions and its bearing on Financial Statement to determine the nature, timing and extent of audit procedures to be adopted by them. In the extant case, the value of assets as well as liabilities i.e. Debentures held against such agreements were significant and the auditor omitted to consider them to determine the nature of audit procedures to be adopted for verification which led to multiple mis-statements in the Financial Statements such as non-recognition of losses against such lease agreements and recognition of non-existing hire purchase loan. Further, the erstwhile Disciplinary Committee observed that the Respondent failed to obtain sufficient appropriate audit evidence. Accordingly, the professional misconduct on the part of the Respondent is clearly observed by the erstwhile Disciplinary Committee in its findings dated 11th February 2021.

b. Regarding fifth charge of related party transactions, the Respondent stated that under CARO issued under Section 227(4A) of Companies Act, 1956, Statutory Auditors are required to report about contracts for purchase/sales of goods, materials and services entered into by the company with directors/relatives/entities in which directors are interested in terms of section 297 of the Companies Act 1956. Section 299 of the said Act laid down the procedure that disclosure of interest must be made every year in Form 24AA and or at the time when contract comes for approval before the Board of Directors. In both the situations it is the duty of the directors concerned to make the disclosure under section 299 of the Act for compliance of section 297 or 300 of the Act.

The Committee, in this regard, observed that the responsibility of examination of transactions and reporting lies upon the Statutory Auditor. The auditor's duty is to verify compliance of applicable provisions and reporting any deviation under CARO. It includes identification of related parties, verification of prior approval for contracts, disclosure of interest by directors, abstention from voting and checking of supporting documents including Form 24AA, Board meeting agenda and minutes, copy of contracts, related party register, management representation letter etc. Had the audit been conducted properly, the Respondent would have detected the linkage between the rent payments, lease agreement, and the related entities of the Managing Director of the Company. Moreover, the Respondent did not comply with requirements of Para 15 of SA-550 on 'Related Parties' which provides for the alertness to be maintained by the auditor for related party information when reviewing the records or documents. Hence, the charge against the Respondent stands established and accordingly, the Respondent was held Guilty for professional misconduct regarding the extant charge.

c. Regarding sixth charge with respect to Certification of Balance Sheet and Profit and Loss Account, the Respondent stated that he had no reason to suspect anything untoward about the accounting system, methodology and entries made in the books

of account. The Internal Auditors had also done a detailed transaction audit every year but did not report any lapses. The Respondent had conducted the Audit of the books of account by adopting proper audit program with utmost care and took all possible steps to adhere to the directions issued by Non-Banking Finance Companies Auditors Report (Reserve Bank) Directions, 2008, in letter and spirit. The Respondent further submitted copy of statement of Sh. B. Ravichandran, former Chief Accountant of the Company recorded on 21.01.2020 under Section 164 of Code of Criminal Procedure to substantiate his stand. The Respondent further stated that it was a well-orchestrated management fraud perpetrated over a long period of time which any auditor would have found it difficult to unravel unless an investigation was done and not a regular statutory audit. Hence, the Respondent pleaded that he failed to detect the fraud as it was done in a systematic manner.

The Committee observed that the Respondent Firm was auditor of the Company since long and for a substantial period. The Committee observed that the Respondent cannot shift his burden of responsibility on the shoulders of internal auditor, RBI officials and the Management. The Committee observed that various SAs viz SA 500 (Audit Evidence), SA 505 (External Confirmation), SA 610 and SA 620 (Using Work of Internal Auditor/ Auditor's Expert) put onus on the auditor to design his audit procedures, test checks in such a way that he may be able to draw reasonable conclusion and reduce the audit risk which the Respondent failed to do. Further, the charge against the Respondent is duly covered in para 11.1 to 11.3 of the findings report issued to the Respondent and accordingly the Respondent was held Guilty for the said misconduct for professional misconduct regarding the extant charge.

d. Regarding seventh charge with respect to non-compliance with SA 315 (Identifying and assessing the risk of material misstatement through understanding the entity and its environment), the Respondent submitted that RBI was regular in examination of records of the subject Company for past two decades and had not raised any red flags / adverse findings since the year 1998. Even the RBI had unearthed the entire fraud based on disgruntled insider's information and the RBI had given Solvency Report on the worth of the Company for various years.

The Committee in this regard observed that Special auditor and the forensic auditor observed serious lapses in the statutory audit reports issued by the Respondent Firm over several financial years. The reports of special auditor and the forensic auditor established that the Respondent failed to obtain sufficient information for expression of opinion. The Committee also noted that the charge against the Respondent was found to be established in paragraph 12.2 of the findings report, wherein he was held guilty of professional misconduct concerning the extant charge.

e. Regarding eighth charge with respect to withdrawal of Audit Report for the year 2012-13 and subsequent resignation of Respondent firm, the Respondent submitted that the Committee rightly noted that he was not the statutory auditor for the Company for the year 2012-13 and the attesting statutory auditor of the subject Company for the year 2012-13 was his partner deceased CA. NR Sridharan. The said withdrawal was done pursuant to mandatory requirement under SA 560.

The Committee, in this regard, already considered the contentions of the Respondent in its findings report. The Committee further viewed that the defence adopted that such a withdrawal is permitted under SA 560 was not found sufficient in light of serious irregularities in the audit procedures adopted. Thus, in the considered opinion of the Committee, the Respondent was held guilty of professional misconduct regarding the extant charge too.

9. The Committee noted that three separate complaints, against the same Respondent Firm in respect of audit of M/s. First Leasing Company of India Limited, were filed by viz., Shri Trideep Raj Bhandari, Jodhpur (vide Form I dated 16th September 2014), the Deputy General Manager, SBI, Commercial Branch, Chennai (vide Form I dated 23rd May, 2014) and Shri Haricharan Reddy/ Shri Rajesh Iyer, the Deputy General Manager/Chief Manager, ICICI Bank Ltd., Chennai (vide Form I dated 17th April, 2015). Incidentally, it was noted that the charges in Case ref no. DC/651/2017 and DC/993/2019 were dealt with separately by the Committee and separate Findings Report(s) were also issued under Rule 18(17) of the Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007 to the Respondent.

10. The Committee noted that the Respondent failed to disclose material facts in financial statements, failed to exercise due diligence in conduct of his professional duties and failed to obtain sufficient information for expressing an opinion. The said conduct of the Respondent constitutes Professional Misconduct under Item (5), (7) and (8) of Part I of the Second Schedule to the Chartered Accountants Act, 1949.

11. Hence, the Professional Misconduct on the part of the Respondent is clearly established as spelt out in the Committee's findings dated 11th February 2021 which is to be read in conjunction with the instant Order being passed in the case.

12. The Committee, hence, viewed that the ends of justice will be met if appropriate punishment commensurate with his professional misconduct is given to him.

13. Accordingly, the Committee, upon considering the nature of charge and the gravity of the matter ordered that the name of **CA. V Balasubramanyan (M. No. 018444) be removed from Register of Members for a period of 2 (Two) years and a fine of Rs. 1,50,000/-**

(Rupees One Lakh Fifty Thousand only) be imposed upon him, to be paid within 90 days of the receipt of the order and in case of failure in payment of fine as stipulated, the name of the Respondent be removed for a further period of three (3) months. The said punishment of removal of name from register of members (including removal for further period in lieu of non-payment of fine) in this case shall run concurrently with the punishment given in case no. PR/230/2014/DD/305/2014/DC/651/2017 and PR/120/2015/DD/08/2016/ DC/993/2019. It is further clarified that the fine of ₹1,50,000/- (Rupees One Lakh Fifty Thousand only) is imposed separately in each of the above-mentioned cases.

Sd/-
(CA. CHARANJOT SINGH NANDA)
PRESIDING OFFICER

Sd/-
(SHRI JIWESH NANDAN)
GOVERNMENT NOMINEE

Sd/-
(DR. K. RAJESWARA RAO)
GOVERNMENT NOMINEE

Sd/-
(CA. PIYUSH S CHHAJED)
MEMBER

Sd/-
(CA. ABHAY CHHAJED)
MEMBER

सत्यापित होने के लिए प्रमाणित / Certified to be True Copy
गीता अनिरुद्ध कुमार / Geetha Aniruddha Kumar
कार्यकारी अधिकारी / Executive Officer
अनुशासनात्मक निदेशालय / Disciplinary Directorate
भारतीय सनदी लेखाकार संस्थान
The Institute of Chartered Accountants of India
आई.सी.ए.आई. भवन, सी–1, सेक्टर–1, नोएडा–201301 (उ.प्र.)
ICAI Bhawan, C-1, Sector-1, Noida-201301 (U.P.)

CONFIDENTIAL

DISCIPLINARY COMMITTEE [BENCH – III (2020-21)]
[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-132/2014-DD/203/2014/DC/764/2018]

In the matter of:

The Deputy General Manager,
State Bank of India,
Commercial Branch,
232, N.S.C. Bose Road
Chennai – 600 001 .....Complainant

Versus

CA. V Balasubramanyan (M. No. 018444) .....Respondent No. 1
CA. N R Sridharan (M. No. 015527) .....Respondent No. 2
M/s Sarathy & Balu,
No. 6 (Old No. 27) 11th Avenue,
Ashok Nagar
Chennai - 600 083

MEMBERS PRESENT:

CA. Atul Kumar Gupta, Presiding Officer (in person)
Smt. Anita Kapur, Member (Govt. Nominee)
Shri Ajay Mittal, Member (Govt. Nominee)
CA. Chandrashekhar Vasant Chitale, Member

Date of Final Hearing: 28th December, 2020 through Video Conferencing

The following were also present:

(i) **Smt. Sumy Antony, Chief Manager Law, SBI, Complainant's Representative**
(ii) **Shri Nagesh, Chief Manager, SBI, Complainant's Representative**
(iii) **Shri Satish Babu, Manager, SBI, Complainant's Representative**
(iv) **CA. Ramesh Kumar – Counsel for the Complainant**
(v) **CA. V. Balasubramanyam (M. No. 018444) – Respondent No. 1**
(vi) **CA. R. G. Rajan – Counsel for the Respondent No. 1**

Charges in Brief:

1. The Committee noted that in the Prima Facie Opinion formed by Director (Discipline) in terms of Rule 9 of the Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules,

2007, the Respondent was *prima facie* held guilty of Professional Misconduct falling within the meaning of Clauses (5), (7) and (8) of Part I of the Second Schedule to the Chartered Accountants Act, 1949.

The said Clauses to the Schedule states as under:-

"(5) fails to report a material fact known to him to appear in a financial statement with which he is concerned in a professional capacity;

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

"(8) fails to obtain sufficient information which is necessary for expression of an opinion or its exceptions are sufficiently material to negate the expression of an opinion"

Brief Background and Allegations against the Respondent:

2. **The Deputy General Manager, State Bank of India, Chennai** (hereinafter referred to as the **"Complainant"**) had filed a Complaint on 23rd May, 2014 **(C- 1 to C-438)** against **M/s Sarathy & Balu, (FRN No. 3621S)** (hereinafter referred to as the **"Respondent Firm"**) which in turn vide its letter dated 11th August 2014 **(W-4)** disclosed the name of **CA. V Balasubramanyan** (M. No. 018444) and **CA. N R Sridharan** (M. No. 015527) Chennai (hereinafter referred to as the **'Respondent No1'** and **'Respondent No 2'** respectively) as members answerable to the allegations. The Complainant in his complaint stated that First Leasing Company of India Ltd (hereinafter referred to as the **'Company'**) had availed credit facilities under consortium arrangement, RBI came out with a press release dated 13.09.2013 directing the Company until further orders, not to

a. Sell, transfer, create charge or mortgage or deal in any manner with its property and assets without prior written permission of RBI.
b. Declare or distribute any dividend
c. Transact any business or
d. Incur any further liabilities.

2.1 It was observed that there was substantial mismatch in asset-liability position of the Company. The audited financials of the Company did not reflect correct position of assets and receivables. Hence on behalf of consortium of banks, forensic audit was entrusted to M/s Maharaj N.R. Suresh and Company to verify books and restatement of accounts for previous years and to investigate and find out how the huge gap between assets and liabilities had arisen. Meanwhile, the Respondents who were the statutory auditors of the Company resigned from the position and stated that the certificates for the year ended 31st March 2013 and limited review reports of four quarters ending 30.06.2012, 30.09.2012, 31.12.2012 and 30.06.2013 issued by them should no longer be

relied upon. A letter was written to the statutory auditors asking them to advise the circumstances under which they had advised the Company that the above reports were not reliable since there were no adverse remarks / qualifications in the auditor's report, in earlier financial statements audited by the firm. In response, the Respondent firm disowned its responsibility when it replied that *"Based on certain subsequent events since issuing our Audit Report/ Limited review reports on the Financial Statements of the company and further relying on Standard of Accounting (SA) 560, issued by the Institute of Chartered Accountants of India, such an action was initiated from our end".*

2.2 In this connection, it was mentioned that the consortium of banks had taken substantial exposure on the Company based on the audited financials of the Company. The forensic audit report finds serious lapses / negligence in conduct of audit of the Company by statutory auditors who had audited the accounts since 2002 onwards. It was alleged that the revenue and profitability parameters were highly inflated to show profit, while the Company was actually incurring huge losses. It was observed that the following matters were not properly dealt with and the statutory auditors failed to record the deficiencies in the following fields:

a. Revenue recognition of income,
b. Income-hire purchade/lease rentals/interest,
c. Proper provisioning of NPAs,
d. Reconciliation of turnover reported in sales tax/VAT returns, Service Tax returns with the turnover reported in financial statements,
e. Inflow and outflow of funds in bank statements,
f. Related party transactions,
g. Compliance with TDS provisions.

3. Against the aforesaid background, the allegations as reported in the preliminary forensic audit report and listed in Annexure-I **(C6-C8)** are mentioned as below:

a) **Allegation No 1:**

Income Recognition

The Company had recognized following income:

a. Finance charges on hire purchase loan
b. Lease rentals
c. Interest on re-finance loan
d. Penal interest and service charges.

It was alleged that income was inflated for last eleven years as given below:

Financial Year	Amount (Rs. in Crore)
2002-03	64.46
2003-04	67.99

2004-05	66.15
2005-06	74.59
2006-07	122.86
2007-08	105.24
2008-09	99.10
2009-10	113.73
2010-11	165.05
2011-12	172.13
2012-13	198.34

In case of non-performing assets, as the receipt of interest itself was in doubt, the Company had charged penal interest which was not as per RBI guidelines. Other finance charges were debited to borrower account without concurrence of the borrower. Interest on Re-finance loans were mostly fictitious entries. The Respondents being the auditors failed to verify loan assets, documents, legal rights to receive the interest and more importantly had not checked for constructive receipt in the bank account.

b) **Allegation No. 2:**

Foreclosure of lease had been directly accounted as income and corresponding write off of assets was not accounted and lease on such transactions was not properly verified by the Respondents.

Financial Year	Amount (Rs. in Crore)
2003-04	20.33
2009-10	22.65

The Company had falsified records since 1999-2000 by showing arbitrary disbursement by creating unsubstantiated entries in the books of account. The Company was inflating income and assets. Stock on hire, re-finance loan and leasing assets were at a higher amount. Thus, it was alleged that the Respondents being the auditors should have verified:-

a. Loan documents
b. Sanction process
c. End use of funds
d. Verifications of Bank Statement
e. Confirmation from borrower/lessee
f. Various statutory returns like service tax & VAT

c) **Allegation No.3:**

It was alleged that depreciation on lease assets for disbursements made up to 2001 (as per AS-6) was made. In respect of lease assets (including pre closed leases) accounting standard AS – 19 was not been followed properly. In the year 2009-10, depreciation amounting to Rs. 2216 lacs was provided (which included

earlier years depreciation). Thus depreciation not charged correctly in earlier years resulted in overstatement of Income.

d) Allegation No.4: Violation of section 269SS of the Income Tax Act 1961 and payment of interest (without deduction of tax at source), cash expenses and reimbursement of expenses.

It was alleged that Loans were received in cash and repaid in cash to an account called "factors". Interest was paid in cash without deduction of tax at source. This was neither reported in tax audit nor disclosed under CARO. These expenses in cash violating section 40A (3) of the Income Tax Act were not reported. Managing Director and other key personnels were paid certain allowances in cash on which tax at source was not deducted. No permission from Board was on record. Such payments to MD were also not disclosed in the notes to accounts.

e) Allegation No.5:

The Respondents being the auditor failed to report that the Companies directly/ indirectly controlled by the Managing Director in the financial statement in Violation of CARO)

f) Allegation No.6:

The Respondents failed to properly audit and certify the profit and loss account for the financial year 2002-03 to 2011-12. The balance sheet was not certified properly, income was inflated, dividend and MD remuneration was paid on non-existent profits and current assets were inflated.

The details are furnished below:

Year	As per B/S	Inflated income	Loss	Dividend payout	MD commission
2002-03	1910.95	6446.05	4535.10	478	33
2003-04	2157.50	6799.78	4642.28	479	36
2004-05	2410.26	6615.92	4205.66	585	36
2005-06	2710.84	7459.37	4748.53	585	59
2006-07	2536.06	12286.19	9750.13	600	88
2007-08	3095.80	10524.01	7428.21	600	116
2008-09	3354.91	9910.70	6555.79	480	126
2009-10	3487.03	11373.68	7886.65	480	16
2010-11	7086.56	16505.01	9418.45	532	103
2011-12	3161.84	17213.49	14051.65	477	16
2012-13	3472.91	19834.74	16361.83	480	16

Based on the rosy picture of income statement and asset position (inflated assets under current assets) the banks had financed more than Rs. 1300 Cr. to the Company.

g) Allegation No.7:

There was gross negligence in applying the standard of audit SA 315 – "Identifying and Assessing the risk of material misstatement" through understanding the Company and its environment, which is mandatory from 1st April 2008. Had the Respondents while acting as the statutory auditors applied the procedure given in the standard on auditing, the fraud perpetrated by the Company could had come to the knowledge of the lenders and debenture holder. Thus, the Respondents had failed in their duties as auditor in not complying with the stated standard of auditing. This had resulted in a loss of Rs. 1212.36 cr. to the banks.

h) Allegation No 8:

The last allegation of the Complainant in the instant complaint was that the Respondents had resigned from the position and had stated that the certificates for the year ended 31st March 2013 and four quarters ending 30.06.2012, 30.09.2012, 31.12.2012 and 30.06.2013 issued by them should no longer be relied upon. When the Complainant sought the information about the circumstances under which such advise was issued by the Respondents, since no adverse remarks or qualification were reported in their audit report, it was alleged that the Respondent disowned his responsibility by stating that on account of subsequent events such action was initiated.

Proceedings:

4. At the time of hearing on 28th December 2020, the Committee noted that both the Complainant's Represenative(s) along and the Respondent no. 1 along with their respective Counsels were present for hearing from their respective locations through video-conferencing. At the outset, they all gave a declaration that there was nobody present except them in their respective room from where they were appearing and that they would neither record nor store the proceedings of the Committee in any form. Before proceeding further in the matter, the Committee noted that there was change in the constitution of the Committee since its last hearing and informed the parties that in the interest of natural justice, the submissions of both the parties would be heard and that the matter heard till them had been noted by the Committee including the objections raised by it. It was noted that during previous hearing held on 5th June, 2019, the Counsel for the Respondent argued that the extant case as well as Case No. DC/993/2019 and DC/651/2017 held against the same Respondents involving allegations pertaining to same entity i.e. First Leasing Co. India Ltd. and as per him the only difference was in the years of auditing being alleged. Accordingly, the Counsel had requested the then Committee that hearing in three cases be clubbed together.

Thereafter, the Committee had enquired from the Complainant(s) that whether they have any objection on the same. The Counsel/representative for the Complainants agreed for the same. Therefore, to come to a logical conclusion in

the referred matters, the Committee agreed with the views of the parties to have combined hearing of all above three matters for the sake of saving time and to avoid duplication of arguments.

In view of the above, the Counsel for the Respondent was asked to make his submissions in the matter. The Committee , thereafter, examined the Counsel for the Complainant in the matter. The Counsel for the Respondent as well as the Respondent made their further submissions on the allegations and was examined by the Committee on the facts of the case. Thereafter, the Committee examined the Respondent in the matter and considered the submissions received from both the parties. The Counsel for the Respondent, thereafter, made his final submissions in the matter. The Committee, thereafter, also sought from the Complaint the information relating to internal investigation of the Bank in respect of the matter about involvement of the Bank Staff, if any and also the status of the pending CBI case within next seven days.

Thereafter, based on the documents available on record and after considering the oral and written submissions made by both parties before it, the Committee concluded hearing in the matter.

Findings of the Committee:

5. At the outset, the Committee noted that the instant complaint was filed against the Respondent Firm, M/s Sarathy & Balu , Chennai, by the Complainant Bank which vide its letter dated 11th August 2014 **(W-4)** disclosed the name of CA. V Balasubramanyan (M. No. 018444) and CA. N R Sridharan (M. No. 015527) Chennai (hereinafter referred to as the **'Respondent No1'** and **Respondent No 2'** respectively) as members answerable to the allegations who, thereafter, filed their joint duly verified Written Statements. However, it was brought to the notice of the Committee at the time of hearing that the Respondent No 2, CA N.R. Sridharan had passed away during August 2018. Since, the other co-Respondent had deceased, therefore in the interest of natural justice, the Respondent No. 1 requested that he might be discharged in respect of allegations relating to years of audits not signed/done by him and be permitted to reply only in respect of the audit reports signed by him. The Committee pertinently noted specific submissions made by the Respondent, in this respect, stating that other Respondent, CA. N R Sridharan (M. No. 015527) who had deceased was a co-respondent to the extant case and in light of the audit rotation adopted in view of the RBI directions, CA. N R Sridharan had carried out the audit of the Company for the F.Y. 2005-06, 2006-07, 2007-08, 2011-12 and 2012-13 and he himself had acted as the statutory auditor of the Company for the F.Y. 2002-03, 2003-04, 2004-05, 2008-09, 2009-10 and 2010-11.

5.1 The Committee, in this regard, noted that firstly, the Complaint was filed against the Respondent Firm, M/s Sarathy & Balu , Chennai, which had declared both the Respondents as member answerable to the allegations. Although, the Respondent No. 2 had signed the audit report and certified the financial statements concerned for certain specific years but the nature of allegations were such that they would be also applicable in respect of financial year when the Respondent had signed the audit report and certified the financial statements concerned. Accordingly, the Committee viewed that the allegations against the Respondent would be considered in view of the audit conducted by him because an auditor is expected to conduct audit independently in respect of the figures shown in the balance sheet or income statement. It was, therefore, viewed that although the extant case had become infructuous in respect of Respondent No. 2 but still the conduct of Respondent No 1 CA V. Balasubramanyan would be examined in respect of all allegations in view of the audit conducted by him.

6. The Committee also noted that the Respondent No.1 vide his letter dated 31st May 2019 had, interalia, raised certain preliminary objections in the extant case which have been dealt with as under:-

6.1 The first objection was on grounds of maintainability of the extant complaint, as according to him, the requirement in terms of explanation to Rule 3(4) of the (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007 had not been complied with by the Complainant which provides as under:-

"Explanation- In case of bank or financial institutions, the general resolution or power of attorney authorizing an officer holding a particular position to file complaints on behalf of the bank or financial institutions, shall be deemed to be the specific resolution passes by the bank or financial institutions concerned, for the purposes of these rules".

6.1.1 The Committee noted that after initial scrutiny of the instant complaint, the Directorate had pointed out to the Complainant Bank the said requirement of explanation to the Rule 3(4) regarding authorization and vide letter dated 7th July 2014, the DGM, State Bank of India submitted the reply in this regard. The content of the said letter is reproduced as below:

"In terms of the Gazette Notification public under Regulation 76(1) of the State Bank of India,, General Regulations 1955 framed under Section 50 of the State Bank of India Act, 1955 regarding the authorisation of the officials of SBI to sign documents on behalf of the Bank, all the officers in the Grades of SMGS-IV and above can sign all the documents, instruments, accounts, receipts, letters and advices etc. connected with the current or authorised business of the Bank in respect of all matters coming in discharge of functions of the post held for the time being (copy of the Gazette notification is enclosed). Accordingly, the Deputy General Manager of

the Commercial Branch, Chennai who is of TEGS-VI grade, has filed the complaint on behalf of the State Bank of India."

In light of same, the Committee viewed that the provision of the said Rule was complied with while registering the extant case by the Director (Discipline) and accordingly ruled out the said objection of the Respondent.

6.2 The Committee noted that the second objection of the Respondent that the extant complaint ought not to have been entertained by the Director (Discipline) and that in terms of provisions of Rule 5(4)(a) of the (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007, it was required to be closed. As per the Respondent, the said Rule provides that if subject matter of a complaint, in the opinion of the Director, was substantially the same with the previous complaint under his examination then the new complaint might be clubbed with the previous complaint.

6.2.1 The Committee in this regard noted that there were three separate complaint cases filed by three different Complainants namely, Shri Trideep Raj Bhandari, Jodhpur (vide Form I dated 16th September 2014), the Deputy General Manager, SBI, Commercial Branch, Chennai (vide Form I dated 23rd May, 2014) and Shri Haricharan Reddy/ Shri Rajesh Iyer, the Deputy General Manager/Chief Manager, ICICI Bank Ltd., Chennai (vide Form I dated 17th April, 2015) against the Respondent Firm. It was noted that the Director (Discipline) had on receipt of Complaint from ICICI Bank against the Respondent Firm M/s Sarathy & Balu , considered all the three aforestated cases and after considering the allegations raised in each case, viewed that the charges might relate to a common entity but specific charges had been raised in each case based on different sets of information as available with them and accordingly, decided to register the complaint separately instead of clubbing it with the then existing complaint.

6.3 The Committee noted that the third objection was in relation of Rule 12 of the said Rules. As per the Respondent, the allegations were related to the period as early as 2002-03. Further, CBI (BS&FS) Bangalore had seized their working papers and accordingly, that the Director (Discipline) should have refuse to entertain the said complaints as there was difficulty in securing proper evidences.

6.3.1 The Committee noted that the provision stated in the said rule relating to 'Time limit on entertaining complaint or information' would be applicable when the Director(Discipline) would be convinced that the Respondent would face difficulty in securing proper evidence to defend himself but in extant case, firstly the Respondent did not make any such reference before the Director(Discipline) while filing his Written Statement in terms of Rule 8 of the Chartered

Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007 and secondly, the Respondent had indeed submitted various documents including his working papers maintained in course of his audit while submitting his written statement. In any case, it was noted that the Respondent firm had resigned as Statutory Auditors of the Company after RBI had exercised its powers under section 45JA and 45L of Reserve Bank of India Act, 1934 against the Company on September 13, 2013, whereas CBI had seized its working papers in October 2015 while the Director (Discipline) had forwarded the Complaint and documents thereof in July 2014, May, 2015 and July 2015. Hence, there was sufficient time available with the Respondent to arrange copies of necessary documents with him for producing them in his defence. Hence, the Committee also ruled out the said objection.

In view of above, the Committee ruled out the preliminary objections as raised by the Respondent and decided to proceed further on merits of the case.

7 It was further noted that the Complainant in his complaint had raised 8 (eight) allegations against the Respondent Firm out of which the Director (Discipline) in his prima facie opinion dated 12th December 2017 held the Respondent No.1 guilty of 7(seven) allegations as enumerated in Para no 3 under sub points (a), (b), (d), (e), (f), (g) and (h) and exonerated him of allegation no. 3. Accordingly, the Committee held the enquiry on the date of hearing on said seven allegations only as discussed above.

7.1 The Committee noted that the **first allegation** alleged against the Respondent no 1 was that the interest income recognised was inflated and that interest on Re-finance loans were mostly fictitious entries which the Respondent No1 being the statutory auditors failed to report as he failed to verify loan assets, documents, legal rights to receive the interest and more importantly had not checked for constructive receipt in the Bank account. The Committee also noted the reply of the Respondent brought on record vide his written submissions dated 31st May 2019 wherein he inter alia submitted that the Complainant Bank had merely chosen to raise allegation on basis of certain 'Forensic Audit' report without investigation of individual facts/records. Further, during the process of audit, he never came across any income accounted as Re-finance Loan income. The income was broadly classified under three categories viz. EMI from Hire Purchase, Lease Rentals and Interest on Loans. In the absence of such income, he was unable to offer their explanations to the allegations made by the Bank with respect to Re-finance loan. **(W-52)**

7.2 The Committee, however on perusal of the Forensic Report made available on record by the Complainant Bank, noted the following: **(C-378 to C-379)**

"It was observed from records produced and from the financial statements produced to us from 2002-03, the company is in the habit of showing arbitrary disbursements by creating unsubstantiated entries in the books of account. The company was inflating income and assets. The result of this exercise is that the stock on hire has been shown at a higher figure and the income from operations has been shown at a higher amount. The loan sanctioning process was never followed in case of fictitious / fraudulent loans. Most of the fraudulent loans were in the nature of refinancing for which there was no cash out flow (no debit entry in the bank statement).

Entries have been passed by various employees whose limit, responsibility, accessibility, powers etc., were not defined properly. Entries have been passed without proper supporting documents. From some of the records produced before us, camouflaging of accounting and finance has stated prior to 1998.

The methodology implemented by the Company was as follows:

- *Identify non-performing assets; make false receipt for the same.*
- *Record a payment (Without actual cash flow) and treat it as a new loan under refinancing of hire purchase agreement.*
- *On this asset create repayment schedules and over a period of time treat these instalments as receipt in the books.*
- *Such receipts are again matched by equal amount of payment and assets are inflated. For example an entry for Rs. 100 lakhs is created as a receipt of recovery of loan account (NPA Account) and on the same day the entry for Rs. 100 lakhs is shown as payment (Stock on hire) on the payment side.These two entries are put in the same bank account. On the receipt entry, interest component is recognized as income. On the payment side, a new asset is created. This asset is added to asset module and a repayment schedule, say for 36 instalments is created. Every year, 12 instalments are accounted as instalment received. Though there are no receipts, these 12 instalments are again shown as payment and 12 different assets are created. Like these bad debts/non existing loans were accounted for instalments from non-existing loans got accounted, income was inflated and new assets were created with a ballooning effect(**C-378-C-379**)."*

7.3 The Committee noted that the Complainant in the Rejoinder had explained that interest on refinance loan was accounted as income under head 'Interest and Finance charges' **(R-8)** and such loans were explained to be the loans that had been recorded to be disbursed and/ or receipts which were recorded to have been given or received through banks in the books of accounts but no such payment or receipt were actually transacted and this inflated such income. The Complainant on record produced **Annexure- A (R-15 to R-212)** wherein it was explained for instance, that on 26th March, 2013, the Company provided details of its findings from April 2012 onwards stating that

"First Leasing has been adopting similar fictitious/bogus accounting methodology in the past also. The illustration given only for the Financial year 2012-13."

The Complainant had also provided below the tabulated details as regard the quantum of such fraudulent loans as well as income there upon pertaining only to FY 12-13 **(R-10)**:

Particulars	**Rs. In Lakhs**
Real (genuine) loan disbursed during the Financial Year 2012-13. Details are given in Annexure-C. **(R-219 to R-230)**	4273.46
Total Loan disbursed during the year including fake loan	61677.00
Real (genuine) loan	4273.00
Percentage of genuine Loan	7%
Percentage of fraudulent loan	93%
In Annexure-D **(R-231 to R-239)** details of income recognized under refinance loan (non existing loan merely book entries) in given. It can be observed that interest recognized on such refinance loan amounts to.	18299.00
Apart from this company had incorrectly recognized income by passing unsubstantiated entries under leasing income head to the tune of	1534
Total inflated income	19833.00
Total interest and loan income earned during the year as per books/ audit.	23143.00
Genuine/real income	3310.00
Percentage of genuine income	7%
Percentage of fraudulent income	93 %

7.4 The Committee also noted from the Rejoinder of the Complainant that the Company had filed VAT and Service Tax in respect of genuine hire purchase and leasing transactions. In respect of such loans, the Company had neither paid sales tax nor service tax on the grounds that the same was a pure loan and interest earned on such loans are not liable for VAT or Service Tax. It further noted that inspection from Statutory Authority like Commercial Tax Department and Service Tax Department had taken place. Such Departments had issued show cause notices on issues pertaining to interest component in respect of such

loans. Therefore, the question of no information about non-existence of such loans did not arise. It was difficult to understand that if no charge was being created against such loans, most of the borrowers of the Company were Corporates which were required to deduct tax at source while paying interest on loans and if no such deduction was being made against interest on such loans, there were enough basis for raising doubt for the statutory auditors.

7.5 The Committee on perusal of above, noted that the Company had adopted fictitious/bogus accounting methodology in respect of loans disbursed and interest accounted thereupon due to which income from operations was shown at a higher figure. It was noted that in extant case, the Respondent had failed to bring on record the documents based on which income and the assets from where they were being generated were verified by him during the periods audited by him. He failed to bring the bank statements based on which such an exercise was done even if done on test basis. Under such conditions, it was clear that the Respondent No1 being the statutory auditors had failed to discharge his duties while conducting audit of the Company as per the produced records/statements whereby he not only failed to exercise due diligence but also failed to gather sufficient evidences to form an audit opinion as he failed to report such misstatement in the Financial Statements. Thus, in light of the same, in the considered opinion of the Committee, the Respondent no1 is held Guilty of professional misconduct falling within the meaning of under Clauses (7) and (8) of Part I of Second Schedule Chartered Accountants Act, 1949 for this allegation.

8. The Committee noted that in the **second allegation** it was alleged that the foreclosure of lease was directly accounted as income whereas corresponding write off of assets was not accounted and lease agreements on such transactions had not been properly verified by the Respondent No 1 who acted as statutory auditors of the Company for the periods stated below:

Financial Year	**Amount (Rs in Cr)**
2003-04	20.33
2009-10	22.65

8.1. The Committee in this regard perused the Forensic Report, wherein it was inter-alia reported as under: - **(C-380 to C-381)**

"FLCI entered into two major leasing transactions in 1999-2000 with approval of the Board. i.e., (a) with IRFC amounting to Rs. 7,500 Lakhs for purchase of railway wagons and (B) with TNEB for Rs. 4044 Lakhs towards installation of meters.

In respect of lease asset pertaining to IRFC, secured debentures amounting to Rs. 7500 lakhs were issued in favour of four banks / Institution lead by UTI. Average rate of interest on such debentures was around 11.5%. As per the agreement,

debentures would be redeemed in half yearly instalments. The instalments amount was matched to half yearly lease rentals due to be received from IRFC.

The Lessee namely IRFC pre closed the lease by paying Rs. 3840 Lakhs in February 2003 and Rs. 1828 Lakhs in April 2003. While Rs. 1828 Lakhs was directly accounted as income, Rs. 3840 Lakhs was kept in debtors suspense account. There is no mention in the Board minutes about the Pre-closure. Normally when the lease is preclosed, leased asset in books should have been written off along with losses if any in financial transactions. Instead Rs. 1828 Lakhs was accounted as income. In respect of other receipt, Lease repayment schedule was allowed to run as per original schedule and notional rental incomes including financial charges were taken into profit and loss account. Thirteen Demand Drafts amounting to Rs. 41,49,41,772/- from the year 2005 to 2008 were taken from State Bank of Saurashtra (now State Bank of India). These payments were recorded as HP loan in books (Stock on hire). In the payment voucher, it was mentioned as HP loan to different parties like Victory Iron Works, Asian Electronics, Solar Busi-Forms Ltd, Indo-fil Chemicals Ltd, etc. Actually these drafts were drawn from FLCI A/c in State Bank of Saurashtra favouring "FLCI A/c UTI Bank". These drafts were deposited in UTI Bank and receipts were accounted in books as money received from IRFC on due dates. This was done to adjust lease rental bills (since the lease was not pre closed in the Books) and to honour half yearly redemption of debentures. Actually, debentures should have been pre closed in 2003 itself but was delayed as pre closure receipts were diverted.

The other Lessee TNEB pre closed leasing transaction in two tranches viz., one in April 2002 by depositing Rs. 3,838 lakhs and another in October 2002 by depositing Rs. 714.81 lakhs. Total loss incurred was around Rs. 1132 lakhs which was not accounted. Instead lease rentals were allowed to run as per the original tenure and income was recognized. Receipt of lease rental on due dates were manipulated as usual through pair of receipts and payment of equal amount. The company was not providing depreciation as per Companies Act in a consistent manner. The major portion of depreciation (ie the WDV) in respect of assets leased and foreclosed were charged to Profit & Loss account of the financial Year 2009-10 Vide Annexure 5. Abnormal charge off depreciation in books of accounts was neither doubted/questioned by audit committee nor by statutory auditors. No specific note as required by accounting standards was also furnished in annual accounts."

8.2. The Committee further noted the submission of Respondent No 1 in this context wherein he had submitted that proper accounting treatment was given in the books of accounts wherever there were pre-closure of leases and with regard to the two lease transactions referred to in the complaint, he neither came across any document on record to suggest foreclosure nor was there any specific

observation in the internal audit report for the respective years about any pre-closure.

8.3. The Committee on perusal of documents on record noted that the two major leasing transactions of Rs. 7500 lakhs and Rs. 4044 lakhs were alleged to be foreclosed in financial years 2003 and 2004.However, the Respondent denied to have any knowledge of such development in such transactions. It was viewed that the similar value of debentures had been issued against the stated size of the leased asset which were significant. It further noted that paragraphs 5 and 8 of AAS 13, Audit materiality, then applicable states as follows:

"5. the concept of materiality recognises that some matters, either individually or in the aggregate, are relatively important for true and fair presentation of financial information in conformity with recognised accounting policies and practices. The auditor considers materiality at both the overall financial information level and in relation to individual account balances and classes of transactions. Materiality may also be influenced by other considerations, such as the legal and regulatory requirements, non-compliance with which may have a significant bearing on the financial information, and considerations relating to individual account balances and relationships. This process may result in different levels of materiality depending on the matter being audited.

8. Materiality should be considered by the auditor when -

(a) Determining the nature, timing and extent of audit procedures"

8.4 The Committee noted from the above, that an auditor is required to consider materiality of transactions and its bearing on Financial Statement to determine the nature, timing and extent of audit procedures to be adopted by him. In the extant case, it was observed that value of assets as well as liabilities i.e. Debentures held against such agreements were significant, hence, omitting to consider them to determine the nature of audit procedures to be adopted for verification has led to multiple mis-statements in the Financial Statements such as non-recognition of losses against such lease agreements and recognition of non-existing hire purchase loan. Thus, the Committee was of the considered opinion that the Respondent No 1 had not only failed to obtain sufficient information to detect material mis-statement appearing in the financial statements but also failed to exercise due diligence in performing his professional duties while failing to gather sufficient information to form an opinion Accordingly, in light of the same , the Committee held the Respondent No1 guilty of professional misconduct falling within the meaning of Clauses (5), (7) and (8) of Part I of Second Schedule to the Chartered Accountants Act, 1949 with respect to the charge.

9. The Committee noted the **fourth charge** was related to statutory violation of Section 269SS of the Income Tax Act 1961 and payment of interest (without deduction of tax at source), cash expenses and reimbursement of expenses, and that during the period under review from 2002-03 to 2012-13, loans were received in cash and repaid in cash to an account called "factors". Interest was paid in cash without deduction of tax at source. This account was controlled and operated by Managing Director / Relatives. This was neither reported in Tax Audit Report nor disclosed under CARO Report .Further, expenses paid in cash, violating section 40A (3) of the Income Tax Act, 1961 were also not reported. Managing Director and other key personnel were paid certain allowances in cash on which tax at source was not deducted. No permission from Board was on record. Such payments to MD were also not disclosed in the notes to accounts.

9.1 The Committee noted the submissions made by the Respondent No1 wherein he had inter-alia submitted that his working papers did not contain any details of interest paid to Managing Director and random verification of expenses account did not reveal specific instances of rate of interest being debited to other heads of expenses. No specific reporting by Internal Auditors was seen in this regard. Furthermore, the allegation stated "this account was controlled and operated by Managing Director/relatives" but as far as the audit conducted by the Respondent no 1 was concerned, he did not come across instances of cash payments/receipts in violation of section 40A (3)/269 SS of the Income Tax Act 1961 as his audit process did not reveal any details of accounts controlled and operated by Managing Director/relatives.

9.2 The Committee in this regard noted the relevant extracts of forensic audit reporting the allegations made are read as under **(C-385)**:

"Observations on payments / Receipts Vouchers:

Accounts department of the Company have prepared payment vouchers purporting to be made through account payee cheque. Following discrepancies were noted.

(a) Beneficiary as per voucher is different from the one appearing in Bank statement.

(b) Cash withdrawals through various persons (under different account heads) were noticed.

(c) In some cases there was no debit (outflow of funds) in bank statement but mere entries in books of accounts. The cheque numbers mentioned in such transactions were unused cheques.

(d) In case of cash withdrawals actual beneficiary could not be identified/ determined.

Details of our observations are presented below:

Expenses were accounted for which no supporting documents were available. We are informed that some of these amounts had been paid towards incidental expenses. ***Annexure 10****, Copies of such vouchers have been enclosed.*

Transactions has been recorded under various heads of accounts though they are stated to be related to salaries and wages, the amount has been withdrawn from the bank through Self Cheque and disbursed to Employees in cash. ***Annexure 11***

Certain expenditure incurred in cash have been accounted as bank payment (with payee's name). But cheques were issued as bearer cheques (cash were withdrawn) ***Annexure 12***

Brokerage on Fixed deposits were paid through branch imprest pretty cash for which no supporting is available ***Annexure 13***

On comparison of bank book maintained by the company and bank statement, certain payment have been recorded as payment to branch imprest in books whereas bank statement shows such payments as payment to Instant Consumer Credit (P) ltd. Greyhound Finance (P) Ltd. ***Annexure 14". (C-385)***

9.3 The Committee further noted that immediate previous statutory auditors for the period 1999-2002 had certain audit issues with management **(2nd Para C-387)** that inter alia include 'Non-availability of debits and credits in Bank statements'. In the year 2002, they resigned from the position of statutory auditors. Forensic Audit Report further states in this regard as under **(C-406)**:-.

"(iii) Current Account Transactions

Under this transaction, there are certain ad-hoc receipts/payments made by/to Mr. Farouk Irani and/ or his relatives. Such transactions are treated like current account transaction and interest is being calculated on daily balance. A monthly Journal Voucher is passed for the balances lying in such account and TDS is deducted only for this type of journal voucher passed.

01/04/2012	*Bank A/c Dr.*	*100000*	
	To Factors A/c Cr		*100000*
01/07/2012	*Interest A/c Dr.*	*3000*	
	To Factors A/c Cr		*3000*

The actual beneficiary could not be identified / ascertained as the withdrawals were made by self/cash cheques.

List of Cash/self cheques issued through Factors Accounts is quantified in ***Annexure 29***

The listed payments violated the provisions of Section 269SS and 269I (Acceptance and repayment of loans and deposits) of the Income tax Act. The Form 3CD for the reporting period does not refer to these exceptions. ***(C-406)***

General Suspense Account:

"A suspense account is maintained by the Company under the GL Code: 162851 GL Description: General Suspense Account. We have been informed by the company officials that the above ledgers are used for payments made to former MD for meeting his personal expense. This account is also in the nature of Loans and Advances and this account shows nil balance at every year end. Since it also comes under purview of Loans and advances, it also attracts the provisions under Section 269SS and Section 269T of Income Tax Act, and it requires reporting under Section 301 register. In certain cases even though the general suspense ledger shows corresponding receipts, the above receipts could not be found with bank statements. On further perusal of bank book it has been found that the above receipts are book entries and nullified by way of another receipt entry in factors accounts in bank book." ***(C-408).***

9.4 The Committee also noted that similar allegation was made with respect to interest paid to Mr. Farouk Irani & family members under paragraph 5.4.2 of Forensic audit Report **(C-412 to 413)** and thus found the submissions of the Respondent No 1 that no instances of cash payment/receipts in violation of Income Tax Act 1961 were noted by him was in conflict to the findings of the forensic audit report which has revealed number of instances relating to violation of the said statutory regulation. The plea of the Respondent no 1 that he being the statutory auditor did not come across such instance was not found acceptable as numerous instances were mentioned in preceding paras which established beyond doubt that the Respondent No 1 failed to obtain sufficient information to express opinion as well as to exercise due diligence in discharging their duties. It was further viewed that the Respondent should have at least bring on record the figures that were certified by him and the degree of verification conducted by him in respect of the same to establish his bonafide. However, the Respondent failed to bring any such defence on record. Accordingly, in light of the same , the Committee held the Respondent No1 guilty of professional misconduct falling within the meaning of Clauses (7) and (8) of Part I of Second Schedule to the Chartered Accountants Act, 1949 with respect to this charge.

10. The Committee noted that in the **fifth allegation,** it was alleged that the Respondent No 1 being the auditor had failed to report that the Companies directly/indirectly controlled by Managing Director were not reported in the

Financial Statements as transactions with related parties. It also noted the submissions of the Respondent no 1 wherein he had submitted that in terms of requirements of CARO issued under Section 227 (4A) of Companies Act, 1956, statutory auditors were required to report contracts for purchase/sales of goods, materials and services entered into by the Company with directors/relatives/entities in which directors were interested in terms of Section 297 of the Companies Act 1956. Section 299 laid down the procedure that such disclosure must be made every year in Form 24AA or in Board Meeting. Further, it was the duty of the Directors to make the disclosure under Section 299 of the Act for compliance of Section 297 or 300 of the Act. Therefore in order to report the same, the Statutory Auditors relied upon (i) the annual disclosures made by the directors pursuant to the provisions of Section 299 of the Companies Act, 1956 in Form 24AA that was placed by the respective director before the Board at the beginning of every financial year (ii) minutes of the board of directors and (iii) the entries made by the Company in Part I and II of the Register of Contracts maintained as per the provisions of Section 301 of the Companies Act, 1956. He had also stated that former MD Mr. Farouk M Irani had disclosed only his interest, hence, he could not track his family member's interested concerns being associated with this Company. The Respondent no. 1 reproduced the abstract of SA 550, 'Related Parties', in order to defend while stating the role as statutory auditors.

10.1 The Committee further noted that the forensic report had stated in this context as below: **(C-413 to C-415)**

"Rentals paid to Bombay Properties of Mr. Farouk Irani

The Rentals Paid to Mr. Farouk Irani, the Managing Director through Instant Consumer Credit Ltd., Chennai-600002 (One of the Satellite Companies of FLCI) for the premises at No. 103, Rustom Court, Dr. A.B. Road, Worli, Mumbai-400025, is annexed in ***Annexure 39****, which works out to Rs.3,21,05,053/-. These Rental Payments have been accounted in FLCI as Service Charges paid to Instant Consumer Credit Ltd from 01.10.2003. Up to 30.09.2003, it was directly paid to First Business Centre.*

FLCI rented a premise in Worli, Mumbai for its operations which is a portion of the residence of Mr. Farouk Irani and rent was paid from FLCI from 1998 to 2004. However, this fact was not disclosed to the Board of Directors even though he was a related party to this transaction and an exorbitant rent was paid. "

Post Year 2004, when the requirement as per financial reporting insisted upon the reporting of amount paid to MD under various activities, MD instructed that the payment of rent to route through Instant consumer credit private limited was paid through the satellite company for which a service agreement was entered with First Business Centre, a propriety company of Mr. Farouk Irani.

5.4.4 Deals with first Business Centre & Instant Consumer Credit P. Ltd. Chennai (C-414)

On 01.12.2010, First Business Centre (reportedly a Proprietary Concern of Mr. Farouk Irani, the Managing Director of FLCI) entered into a lease agreement with Instant Consumer Credit Ltd for the premises. The aforesaid Lease Deed was signed for First Business Centre with the following reference.

"Signed and delivered by the within named First Business Centre, a Proprietorship company by its Authorised Signatory Mr. Farouk Irani"

Observation on lease deed (C-415)

"All the Rental payments to Instant Consumer Credit Ltd are with Service Tax. The Invoice is on a A-4 Plain Paper. The Rental invoice raised by Instant Consumer Credit Ltd. had been signed by Mr. Sivasubramaniam, who had signed with a designation of Manager- Accounts. The same person had signed the voucher for FLCI as Maker. He is an employee of FLCI with a designation of Manager – Accounts and had been handling all the accounts and finance related activities of these Satellite companies. He was making the voucher for FLCI and the voucher had been authorized by R. Srinath and L.Sivaramakrishnan. No Board Resolutions and no Related Party Disclosure have been made".

10.2 The Committee further noted that the Company had paid Interest on these to the concerned parties as mentioned below. Summary of Total selected parties transactions between 2002-03 and 2012-13 are furnished below **(C-430)**:-

Sl No.	**Name of the Person/Institution**	**Amount**
1.	Dr. A.C . MUTHIAH	62,94,278
2.	MAC PUBLIC CHARITABLE TRUST	2,35,00,000
3.	BALAKRISHNA TRUST	12,30,111
4.	BALAVINAYAGA TRUST	12,62,029
5.	MAC EDUCATIONAL FOUNDATION	2,13,403
6.	MAM SUBRAMANIA CHETTIAR EDUCATIONAL TRUST	22,930
7.	DEVAKI MUTHIAH	86 ,57,192
8.	VALLI ARUN	23,34,462
9.	ABIRAMI JAWAHAR	4,48,117
10.	ARUN A.R.M	4,28,398
11.	ASHWIN C. MUTHIAH	8,711
12.	M.A. CHIDAMBARAM	55,281
13.	VIKRAM ARUN	1,80,250
14.	VILASHINI ARUN	2,04,000
15.	BRAINWAVE BIOSOLUTIONS LTD	49,28,726
16.	VALLINGRO EXPONENTA LIMITED	5,00,000
17.	JAWAHAR VADIVELU	35,86,961
18.	NATIONAL TRUST HOUSING FINANCE LIMITED	1,35,13,244
19.	VISHWANATH TUMU	20,96,247
20.	MAHARAJ JAI SING	28,04,228

21.	V.S.DHANSEKAR	92,000

10.3 In this regard, considering the submission made by the Respondents No1, the Committee was of the view that the plea of the Respondent that onus of declaration of related party transactions rests upon the declaration made by directors of the Company was not found to be acceptable in the context of other irregularities in the financial statements being pointed out. It further noted that from paragraph 11 to paragraph 17 of SA 550, Related parties which requires the auditor to perform audit procedures and related activities for identifying risk of material misstatement due to fraud or error that resulted from related party relationships and transactions. It was viewed that if the amounts were paid as interest on FDs or debentures held by related party, rent paid on properties held by the Company whose proprietor was MD of the Company and the Respondent No1 merely relied on Form 24AA which was for the purpose to comply with sec 301 of Companies Act, 1956 and not for complete verification in relation to disclosures required under AS 18. This indicated that Respondent No1 did not comply with requirements of Para 15 of SA-550 on 'Related Parties' which provides for the alertness to be maintained by the auditor for related party information when reviewing the records or documents when it states as follows:

"During the audit, the auditor shall remain alert, when inspecting records or documents, for arrangements or other information that may indicates the existence of related party relationships or transactions that management has not previously identified or disclosed to the auditor. (Ref Para A22-A23)

In particular, the auditor shall inspect the following for indication of the existence of related party relationships or transactions that management has not previously identified or disclosed to the auditor.

(a) Bank, legal and third party confirmations obtained as part of the auditor's procedures,

(b) Minutes of meetings of shareholders and of those charged with governance, and

(c) Such other records or documents as the auditor considers necessary in the circumstances of the entity.

If the auditor identifies significant transactions outside the entity's normal course of business when performing the audit procedures required by paragraph 15 or through other audit procedures, the auditor shall inquire of management about, (Ref Para A24-A25)

(a) The nature of these transactions and (Ref Para A26)

(b) Whether related parties could be involve (Ref Para A27)"

10.3 The Committee also noted that in the notes to accounts forming part of the Audited financial statements, the particulars of transactions held with the related parties are required to be disclosed as per the requirements of Accounting Standard 18. However, it was observed from the financial statements of various years including periods wherein the Respondent No. 1 had conducted audit **(C-325,144,175,207,239,271,305,337)** that the remuneration and / or interest paid to former MD Mr. Farouk Irani was disclosed but neither Mr. A C Muthiah, a former chairman, his family members (wife, son, daughter-in-law, daughters, sons-in-law), relatives and their interested concerns were disclosed as related parties nor any transactions held with them during the period 2002-03 and 2012-13 were disclosed under related party disclosures. Further, the Special Audit Report of M/s N.C. Rajagopal & Co which was submitted by the RBI was also considered. From the executive summary of the report, it was noted that the then Managing Director, Mr. Farouk Irani and his relatives had also invested in the Company through an account termed as "FACTORS" wherein transactions in the nature of bills re-discounting, Investment certificates and current account transactions had been taken to earn return on funds infused by them. It was reported that the total of such returns earned by Mr. Farouk Irani and his relative amounted to Rs. 14.89 Crores over last 11 years commencing from F.Y.2002-2003**(D-203)**.In other words, there were related parties (apart from the Managing Director) viz. his relatives and the transactions were taking place with them during the span of 11 years. However, neither such parties nor the transactions that took place with them were disclosed in the financial statements.

10.4 Thus, the Committee was of the view that the Respondent No1 being the statutory auditor of the Company for the F.Y. 2002-03, 2003-04, 2004-05, 2008-09, 2009-10 and 2010-11 had failed to exercise his professional scepticism to identify the information that would have indicated the existence of related party relationship or transactions held with them as disclosed in the forensic audit report. Accordingly, in light of the same , the Committee held the Respondent No1 guilty of professional misconduct falling within the meaning of Clauses (7) and (8) of Part I of Second Schedule to the Chartered Accountants Act, 1949 with respect to this charge.

11. The Committee noted that in the **sixth allegation**, it was alleged that the Respondent No1 had failed to properly audit and certify the Profit and Loss account as the balance sheet of the said periods was not certified properly, income was inflated, dividend and MD remuneration was paid on non-existent profits and current assets were inflated. Further, it was alleged that based on the rosy picture of income statement and asset position (inflated assets under current assets) the banks including the Complainant had financed more than Rs.

1300 Cr to the Company. The details for the periods when the Respondent No. 1 had conducted audit was highlighted in bold letters in the table furnished below: **(C-8)** (RS. In lacs)

Year	As per B/S	Inflated income	Loss	Dividend payout	MD Commission
2002-03	**1910.95**	**6446.05**	**4535.10**	**478**	**33**
2003-04	**2157.50**	**6799.78**	**4642.28**	**479**	**36**
2004-05	**2410.26**	**6615.92**	**4205.56**	**585**	**36**
2005-06	2710.84	7459.37	4748.53	585	59
2006-07	2536.06	12286.19	9750.13	600	88
2007-08	3095.80	10524.01	7428.21	600	116
2008-09	**3354.91**	**9910.70**	**6555.79**	**480**	**126**
2009-10	**3487.03**	**11373.68**	**7886.65**	**480**	**16**
2010-11	**7086.56**	**16505.01**	**9418.45**	**532**	**103**
2011-12	3161.84	17213.49	14051.65	477	16
2012-13	3472.91	19834.74	16361.83	480	16

11.1 The Committee noted the submissions of the Respondent no.1 whereby he had submitted that there were no reportable issues on which any concern came to their knowledge during the course of his audit which was done on test check basis. He had no reason to suspect anything about the accounting system methodology and the entries made in the books of accounts and relied upon the representation of the Management received in all the years of audit, internal audit report as well as Form 8 signed by the Company lenders and Company Secretary. He did sample checks of Hire Purchase, Lease and loan transactions since it was not practicable to review each and every transaction.

11.2 The Committee noted that various SAs viz SA 500, audit evidence, SA 505-External confirmation, SA610 and 620 Using Work of Internal Auditor Or Auditor's Expert together put onus on the auditor to design his audit procedures, test checks in such a way that he may be able to draw reasonable conclusion and reduce the audit risk . It was noted that in extant case, there were allegedly fictitious loans, fictitious entries-despite foreclosure of lease agreements, receipts being shown although corresponding bank entries not available, and so on. Non detection of inflated assets and income hints upon the fact that the audit was not conducted diligently though the Respondent no 1 was auditing the Company for several years continuously including quarterly reviews but there existed large gap between the assets shown in the balance sheet and the actual position as pointed out in forensic audit report and which was also substantiated by Special Audit report **(C-199)**. The Committee further noted that the reply of the Respondent no. 1 that he had relied upon written representation by the Management of the Company while conducting audit was not found wholly acceptable as the same was although an important source of audit evidences but could not be treated as

conclusive evidence and he was required to gather evidences from independent sources as well before forming his audit opinion.

11.3 The Committee, on perusal of the report of the Special Audit Report conducted by M/s N.C. Rajagopal & Co and submitted on record by the RBI, observed that the Financial Statements for the F.Y. 2009-2010 to F.Y. 2012-2013 had been drawn up/ recasted to ascertain the actual financial position of the Company as required by RBI and it was noted that the report stated that the difference between the published financials and recasted financials were primarily on account of **(D-212)** :

a) Unsubstantiated transactions/entries relating to receivables under lease and hire rentals, loans and advances and their corresponding income.

b) Erroneous method of accounting adopted for certain high value lease transactions

It was also stated in the report that the Company had passed unsubstantiated entries in the books of accounts thereby boosting its disbursements, collections, asset base, profitability and net worth **(D-201)**. Further every fictitious disbursement entry made was supported by a cheque number which on verification was reported to be in most of the cases pertaining to unused/blank cheques which were in the custody of the Company **(D-201 and D-224).** On comparison arrived at in the report between the published financial and the recasted financials, it was observed that the difference between the two financials was quite enormous. The difference arrived at under various heads is as below **(D-199)**:

(Rs. In lakhs)

Particulars	2009-10	2010-11	2011-12	2012-13
Receivables from HP	(104,378)	(118,436)	(138,397)	(155,783)
Net lease Investments	(4,732)	(4,527)	(3,943)	(6,180)
HP Finance charges	(9,669)	(11,591)	(15,740)	(18,299)
Lease Rentals	(6,150)	(2,713)	(1,106)	(1,497)
Profit after Tax(PAT)	(110,932)	(14,443)	(18,780)	(10,798)
Net Worth	(1,10,232)	(123,261)	(1,41,408)	(151,031)

It was noted that the above table included information relating to F.Y. 2009-10 and 2010-11, when the Respondent No. 1 had conducted audit. Thus it was viewed that the above observations also support various allegations /conclusions arrived at in the Forensic Audit Report. Thus in light of the above reasoning, the Committee was of the considered opinion that the Respondent No. 1 had failed to obtain sufficient information and he had not discharged his duties diligently and accordingly he was held guilty of professional misconduct falling within the meaning of clauses (7) and (8) of Part I of the Second Schedule to the Chartered Accountants Act, 1949 in respect of this allegation.

12. The Committee noted as regard the **seventh allegation** that it was alleged that there had been gross negligence on the part of the Respondent no 1 in applying the standard of audit "SA 315" – Identifying and assessing the risk of material misstatement through understanding the entity and its environment, which is mandatory from 1st April 2008 as he failed in his duties in not complying with the 'Standard on auditing which has resulted in a loss of Rs. 1212.36 Cr. to the banks. Had he applied the procedure given in the standard on auditing, the fraud perpetrated by the Company could have come to the knowledge of the lenders and debenture holders, even at an earlier stage.

12.1 The Committee noted the submissions of the Respondent no.1 whereby he had submitted that the subject Company had computerized its whole operations which contained voluminous day-to-day transactions with number of branches. He had assessed the risk of maintaining the accounts entirely on computers with or without the possibility of manual intervention. However, their procedure performed to assess the risk did not throw any suspicion in this regard.

12.2 In this regard, the Committee was of the view that though the Respondent no.1 had conducted the statutory audit of the Company for over a long period but yet he failed to bring out the fraud which had occurred by way of inflating the assets and the income. It was noted that RBI had been able to unearth entire fraud based on its examination of records from August 26, 2013 to September 10, 2013 **(D-191).** It was viewed that if the Respondent no. 1 while acting as the statutory auditor had applied due and relevant audit procedures properly, the fraud perpetrated by the Company could have been unearthed and the loss to the banks to a tune of Rs. 1212.36 crore could have been avoided. Thus, in the considered opinion of the Committee, the Respondent No. 1 had failed to obtain sufficient information for expression of opinion whereby he also failed to exercise due diligence and was accordingly held guilty of professional misconduct falling within the meaning of clauses (7) and (8) of Part I of the Second Schedule to the Chartered Accountants Act, 1949 for this allegation.

13. The Committee noted that the **eighth allegation** was that the member of the Respondent Firm had resigned from the position and had stated that the

certificates for the year ended 31st March 2013 and four quarters ending 30.06.2012, 30.09.2012, 31.12.2012 and 30.06.2013 issued by him should no longer be relied upon. A letter was written to the Respondent Firm asking to narrate the circumstances under which the Company was advised that the above reports were not reliable as there were no adverse remarks / qualifications in the auditor's report, in earlier financial statements audited by the firm. In response, the Respondents had disowned their responsibility and replied that based on certain subsequent events since issuing their Audit Report/Limited review reports on the Financial Statements of the Company and further relying on Standard of Accounting (SA) 560, issued by the Institute of Chartered Accountants of India, such an action was initiated from their end **(W-179 to W-183).**

13.1 The Committee noted the submissions of the Respondent no1 whereby he had submitted that as soon as the RBI issued prohibitory Order, after following the mandatory procedure, audit report was withdrawn which was issued earlier for the year 2012-13 along with the four quarterly limited review reports up to the quarter ended 30/6/13. It was also noted that the Respondent No. 1 had submitted that the audit reports withdrawn were that audited by the deceased partner. However, at the outset, it was noted that communication in relation to the same was undertaken by the Respondent No. 1 himself (W-14). Further, it was viewed that although the latest audit report could only be withdrawn based on the then prevailing circumstances, still the situation had been reached based on negligence exercised over a long period when the Respondent No.1 had also conducted audit.

13.2 It was noted that the Complainant vide his letter dated 30th December 2020 had submitted the information about internal investigation as sought alongwith status of pending CBI case. It was stated that as per the internal investigation report of the Complainant Bank, the Company had inflated its income and assets by creating falsified entries in its books of accounts and it was concluded by the investigating official that there were no malafide intention on part of any of the staff members who had handled the account of the Company. With respect to status of case filed by CBI (BS&FC), Bangalore during December 2015 against various individuals relating to the Company which inter-alia include both the Respondents of the Respondent Firm M/s Sarathy and Balu and FIR was also registered on 8th January 2016. It was further reported that the CBI had conducted investigation and final report was filed before the Honourable Court of Additional Chief Metropolitan Magistrate, Egmore Chennai and as per the final report there were 26 accused persons who were charge sheeted including the Company, its officials and statutory auditors where in Respondent No.1 was arrayed as 6th accused in the Charge Sheet.

13.3 The Committee in this regard was of the view that even if the contention of the Respondent with respect to Respondent No. 2 be considered, then also the role of Respondent no 1 in earlier years i.e. from 2002-03 onwards till year 2011-12 and lapses on his part could not be ruled out especially in the light of the detailed Forensic Audit report as being brought on record by the Complainant which mentioned various serious violations on the part of the Company which the Respondent no 1 as Statutory Auditor, failed to point out during the periods when he had conducted audit of the Company. Therefore, the action on behalf of the Respondent Firm in trying to withdraw the Audit Reports as soon as the matters took a turn for the worse was nothing but an after thought. The defence adopted that such a withdrawal is permitted under SA 560 was not found sufficient by the Committee in the light of serious irregularities in the audit procedures adopted coming to light as per reasoning above. Thus, in the considered opinion of the Committee, the Respondent is held guilty of professional misconduct falling within the meaning of clauses (7) and (8) of Part I of the Second Schedule to the Chartered Accountants Act, 1949 for this allegation.

Conclusion:

14. Thus in conclusion, in the considered opinion of the Committee, the Respondent is held guilty of professional misconduct falling within the meaning of Clauses (5), (7) and (8) of Part I of the Second Schedule to the Chartered Accountants Act, 1949.

Sd/-
[CA. Atul Kumar Gupta]
Presiding Officer

Sd/-
[Smt. Anita Kapur]
Member, (Govt. Nominee)

Sd/-
[Shri Ajay Mittal]
Member, (Govt. Nominee)
(approved & confirmed through e-mail)

Sd/-
[CA. Chandrashekhar Vasant Chitale]
Member

DATE: 11th February, 2021
PLACE: New Delhi

Certified to be True Copy
Mohita Khanna
(Mohita Khanna)
Assistant Secretary
Disciplinary Directorate
The Institute of Chartered Accountants of India