# 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-II (2026-2027)]**
**[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.**

**File No.: [PR/128/2019-DD/174/2019-DC/1417/2021]**
**In the matter of:**
**CA. Nitin Shridhar Khandekar (M.No. 034543)**
M/s Khire Khandekar & Kirloskar (FRN 105148W)
1051, Madhav Nagar Road,
North Shivaji Nagar
**Sangli – 416416** **.....Complainant**

**Versus**

**CA. Gopal Subhashchandra Saboo (M. No. 178747)**

| Present Address | Address in Prima Facie Opinion |
|---|---|
| B-502, Yashodhan Society<br>Hagwane Nagar, Near VIIT College<br>Kondhawa Badruk<br>Pune – 411048 | E-501, Yashodhan Society<br>Hagwane Nagar, Near VIIT College<br>Kondhawa Badruk<br>Pune – 411048 |

**.....Respondent**

**MEMBERS PRESENT:**
1. **CA. Prasanna Kumar D, Presiding Officer.**
2. **CA. Mahesh Shah, Government Nominee**
3. **CA. Satish Kumar Gupta, Member**
4. **CA. Hans Raj Chugh, Member**

**DATE OF HEARING: 03rd October 2026**
**DATE OF PRONOUNCEMENT OF ORDER: 03rd October 2026**
**DATE OF ORDER: 03rd October 2026**

1. That vide Findings dated 29th August 2026 under Rule 18(17) of the Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007, the Disciplinary Committee was, inter-alia, of the opinion that **CA. Gopal Subhashchandra Saboo (M. No. 178747), Pune** (hereinafter referred to as the **Respondent**) is **GUILTY** of Professional and Other Misconduct falling within the meaning of Items (8) & (9) of Part I of First Schedule, Item (8) of Part I and Item (1) of Part II of Second Schedule and Item (2) of Part-IV of the First Schedule to the Chartered Accountants Act, 1949.

2. That pursuant to the said Findings, an action under Section 21B (3) of the Chartered Accountants (Amendment) Act, 2006 was contemplated against the Respondent and

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 03rd October 2026.

3. The Committee noted that on the date of hearing on 03rd October 2026, the Respondent was present through VC. During the hearing, the Respondent admitted his mistake and prayed for leniency in the matter. The Committee noted that the Respondent has submitted his written representation dated 21st September 2026 and 29th September 2026 on the Findings of the Committee, which, inter alia, are as under: -

(i) That the grounds stated for rejecting the preliminary objections raised by the Respondent in the findings are not appropriate and are not in accordance with the provisions of law.
(ii) That the declaration made by the Director of the Company, dated 18.06.2021, was not considered while arriving at the findings.
(iii) That the Respondent cannot be held guilty for failing to ascertain compliance with Sections 139 and 140 of the Companies Act, 2013, when Clause (9) of the First Schedule to the Chartered Accountants Act, 1949, refers to the requirements of Section 225 of the Companies Act, 1956.
(iv) That the Guidance Note on Independence of Auditors is an advisory publication of the Institute and does not, in itself, constitute a "Guideline" issued by the Council within the meaning of Clause (1) of Part II of the Second Schedule to the Chartered Accountants Act, 1949.
(v) That the Respondent prayed before the Committee for leniency while deciding the quantum of punishment.

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

5. Thus, keeping in view the facts and circumstances of the case, material on record, the Complainant was appointed as the statutory auditor of the Santosh Pack Aging Private Limited for the financial year 2014-15 to 2018-19. During the financial year 2017-18, the Respondent was also appointed as the Statutory and tax auditor of the Company.

6. As regards the charge that the Respondent accepted the appointment as the statutory auditor without communicating with the previous auditor, the Committee noted that the Respondent relied upon the Director of the Company for obtaining the NOC from the previous auditor (i.e., Complainant) and did not make any independent efforts to communicate with the previous auditor. Therefore, the Committee was of the view that the requirement of Clause (8) of Part I of First Schedule of the Chartered Accountants Act, 1949 read with the Code of ethics 2009 casts responsibility on the incoming auditor to communicate with the previous auditor which was not complied with by the Respondent.

7. As regards the charge that the Respondent accepted the appointment as auditor without complying with the provisions of the Companies Act, 2013 related to removal of the auditor, the Committee noted that the Complainant was appointed as the statutory auditor of the Company for the period of five years for the period 2013-14 to 2018-19. Further, upon perusal of records, it was observed that the Respondent had signed statements and tax audit report of the Company of financial year 2017-18 on 03.09.2018 and 29.10.2018 respectively. Further, it was also observed that the Complainant had resigned from the audit engagement on 30.03.2019 which was subsequent to the completion of audit by the Respondent. Therefore, the Committee was of the view that the Respondent has not complied upon with the provisions of Clause (9) of Part I of the First Schedule to the Chartered Accountants Act, 1949.

8. As regards the contention of the Respondent that he cannot be held guilty for failing to ascertain compliance with Sections 139 and 140 of the Companies Act, 2013, when Clause (9) of the First Schedule to the Chartered Accountants Act, 1949, refers to the requirements of Section 225 of the Companies Act, 1956, the Committee noted that the earlier sections 224 and 225 of the Companies Act, 1956 were replaced with new Section 139 and Section 140 respectively of the Companies Act, 2013 w.e.f. 01.04.2014. Thus, the Respondent was required to exercise due diligence and satisfy himself that all requisite legal and procedural formalities relating to his appointment had been duly complied with before accepting and undertaking the audit engagement. Therefore, the plea of Respondent that Clause (9) of Part I of the first Schedule to Chartered Accountants Act, 1949 is not acceptable.

9. As regards the charge that the Respondent was himself handling the accounts of the Company and therefore, was not eligible to accept the appointment of statutory auditor of the Company, the Committee observed that the Respondent's attribution of the accounting and taxation work to third-party agencies was wholly unsupported by cogent documentary evidence and, in fact, contradicted by his own statements and admissions on record. In the absence of credible material supporting his explanation, the Committee was unable to accept the same. Having regard to the evidence on record, the Committee was of the view that the Respondent failed to maintain the requisite independence expected of a statutory auditor and acted inconsistently with the fundamental ethical principles governing the profession.

10. As regards the contention of the Respondent that the Guidance Note on Independence of Auditors is an advisory publication of the Institute and does not, in itself, constitute a "Guideline" issued by the Council within the meaning of Clause (1) of Part II of the Second Schedule to the Chartered Accountants Act, 1949, the Committee noted that the independence of an auditor is a substantive professional requirement arising from the Standard of Auditing (SA) 200 and the Code of Ethics of ICAI which are mandatorily applicable on the members of ICAI/auditors. It is noted that the Code of Ethics-2009 specifically discusses the threat to a statutory auditor's independence in case his relative is associated with the accounting of his auditee client. The auditor is required to evaluate such threats and, where applicable under the relevant provisions, apply appropriate safeguards so that the threats are eliminated or reduced to an acceptable level. Further, the member is expected to interpret the requirement regarding independence much more strictly than what the law required, and he should not place himself in

a compromising situation or in that which jeopardised his independence. Pertinently, Hence, the contention of the Respondent is not tenable.

11. As regards the charge that Respondent also failed to disclose in his report that the audit was conducted without verification of the supporting documents, as the entire records of the Company for FY 2017–18 had been lost, the Committee noted that the responsibility for maintaining sufficient and appropriate audit documentation rests upon the auditor. In the absence of credible documentary evidence evidencing compliance with the prescribed auditing requirements, the Respondent cannot be said to have discharged this obligation. The Respondent's explanations also fail to rebut the material on record indicating that the audit reports were issued without adequate examination of the books of account and without obtaining sufficient appropriate audit evidence. Accordingly, the Committee concluded that the Respondent failed to exercise the requisite professional competence, due diligence, and professional skepticism in conducting the audit and tax audit engagements.

12. Hence, the Professional and Other Misconduct on the part of the Respondent is clearly established as spelt out in the Committee's Findings dated 29th August 2026 which is to be read in consonance with the instant Order being passed in the case.

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

**14. Thus, the Committee, keeping in view the facts and circumstances of the case, material on record and representation of the Respondent before it, ordered that CA. Gopal Subhashchandra Saboo (M. No. 178747), Pune be Reprimanded and also imposed a fine of Rs. 2,00,000/- (Rupees two lakhs only) upon him, which shall be paid within a period of 60 (sixty) days from the date of receipt of the order.**

**Sd/-**
**(CA. PRASANNA KUMAR D)**
**PRESIDING OFFICER**

**Sd/-**
**(CA. MAHESH SHAH)**
**GOVERNMENT NOMINEE**

**Sd/-**
**(CA. SATISH KUMAR GUPTA)**
**MEMBER**

**Sd/-**
**(CA. HANS RAJ CHUGH)**
**MEMBER**

सत्यापित होने के लिए प्रमाणित / Certified to be True Copy
मीनू गुप्ता / Meenu Gupta
वरिष्ठ कार्यकारी अधिकारी / Sr. 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 – II (2026-2027)]**
**[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/128/2019-DD/174/2019-DC/1417/2021]**
**In the matter of:**

**CA. Nitin Shridhar Khandekar (M.No. 034543)**
M/s Khire Khandekar & Kirloskar (FRN 105148W)
1051, Madhav Nagar Road,
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**Sangli – 416416** **.....Complainant**

**Versus**

**CA. Gopal Subhashchandra Saboo (M. No. 178747)**

| **Present Address** | **Address in Prima Facie Opinion** |
|---|---|
| B-502, Yashodhan Society<br>Hagwane Nagar, Near VIIT College<br>Kondhawa Badruk<br>**Pune – 411048** | E-501, Yashodhan Society<br>Hagwane Nagar, Near VIIT College<br>Kondhawa Badruk<br>**Pune – 411048** |

**.....Respondent**

**MEMBERS PRESENT:**
**CA. Prasanna Kumar D, Presiding Officer** (In person)
**CMA Chandra Wadhwa, Government Nominee** (In person)
**CA. Mahesh Shah, Government Nominee** (In person)
**CA. Satish Kumar Gupta, Member** (In person)
**CA. Hans Raj Chugh, Member** (In person)

**DATE OF FINAL HEARING : 08th April 2026**
**DATE OF DECISION TAKEN : 25th July 2026**
**DATE OF PRONOUNCEMENT OF DECISION : 29th August 2026**

**PARTY PRESENT:**
**Respondent** : CA. Gopal Subhashchandra Saboo (Through VC)
**Counsel for the Respondent** : CA.Shashikant Vasudeo Barve (Through VC)

1. **Background of the Case:**

1.1 In the present case, the Complainant Firm was appointed as the Statutory Auditor of Santosh Packaging Private Limited (hereinafter referred to as the "Company") for the financial years 2014–15 to 2018–19. During the financial year 2017–18, the Respondent was also appointed as the Statutory Auditor and Tax Auditor of the Company.

2. **Charges in brief:**

2.1 The Respondent accepted the appointment as auditor without communicating with previous auditor.

2.2 The Respondent accepted the appointment as auditor without complying with the provisions of the Companies Act, 2013 relating to removal of auditors.

2.3 The Respondent was himself handling the accounts of the Company and, therefore, was not eligible to accept the appointment of statutory auditor of the Company.

2.4 The Respondent also failed to disclose in his report that the audit was conducted without verification of the supporting documents, as the entire records of the Company for FY 2017–18 had been lost.

3. **The relevant issues discussed in the Prima facie opinion dated 28th December 2020 formulated by the Director (Discipline) in the matter in brief, are given below:**

3.1 As regards the **first charge** as mentioned in para 2.1 above, the following relevant provision of Clause (8) of Part I of the First Schedule of the Chartered Accountants Act, 1949, which states that, the incoming auditor was required to communicate with the previous auditor in writing. Further, as per Code of Ethics 2009, Members of ICAI were required to communicate with a retiring auditor in such a manner as to retain in their hands positive evidence of the delivery of the communication to the addressee. In the opinion of the Council, communication by a letter sent "Registered Acknowledgement due" or by hand against a written acknowledgement would have, in the normal course, provided such evidence.

3.2 On the perusal of the documents and information available on record with regard to the allegation of communication with the previous auditor, it was noted at the stage of Rule 8(5), the Respondent had himself mentioned that he was not able to obtain NOC from the Complainant. In this regard, it was further noted that the Respondent had merely submitted a declaration dated 28th December, 2019 regarding a promise of acceptance of NOC from the Complainant from one of the Director Mr. Swapnil Sunil Sethiya wherein he had mentioned that due to personal issues and difficulties he was not able to take NOC from the Complainant inspite of several reminders by the Respondent in this regard. It thereby appeared that the Respondent in the instant case had only relied upon one of the Director of the Company for the collection of NOC from the previous auditor. It was also noted that the Complainant had submitted an e-mail dated 21st November, 2019 for the signature of the Complainant on the NOC for the appointment of his auditor in the Company.

3.3 It was pertinent to note here that as per the requirements of Code of Ethics, 2009, the incoming auditor should have accepted a position as auditor by first communicating with the retiring auditor in writing by a letter sent "Registered Acknowledgement due" or by hand against a written acknowledgement. However, in the instant case, firstly the Respondent had communicated with the Complainant by e-mail which was not the eligible mode of communication and secondly the said communication was made by the Respondent after conducting audit and signing of the financial statements of the Company for the FY 2017-18 on 3rd September, 2018 and completing the tax audit of the Company for the said financial year. Thus, it was viewed that the Respondent had failed to communicate with the previous auditor, i.e., the Complainant before acceptance of the statutory audit and tax audit of the Company for the FY 2017-18 in the manner as envisaged in the provisions of Clause (8) of Part I of First Schedule of the Chartered Accountants Act, 1949 read with Code of Ethics 2009 and was thus Prima Facie **GUILTY** of Professional Misconduct falling within the meaning of Clause (8) of Part I of the First Schedule to the Chartered Accountants Act, 1949.

3.4 As regards the **second charge** in Para 2.2 above, accepting the position of auditor without ensuring that the provisions of Companies Act were fulfilled with respect to the removal of auditors, it was noted from Form No ADT-1 (Information to the Registrar by Company for appointment of Auditor) that the Complainant Firm was

appointed as the statutory auditor of the Company from the FY 2013-14 to 2018-19. It was further noted from the financial statements of the Company for the FY 2017-18 that the Respondent had audited the financial statements of the Company for the FY 2017-18 and had also conducted the tax audit under section 44AB of the Income Tax Act, 1961 thereby giving its report in Form No 3CA and filing the statement of particulars in Form No 3CD dated 29th October, 2018.

3.5 Further, on inspection of the documents from the MCA website, it was noted that the Complainant Firm had resigned from conducting the statutory audit of the Company for the FY 2017-18 on 27th March, 2019 due to the reason of non-availability of the Company's financial data to the Complainant Firm and also in this regard, the relevant Form ADT-3 (Notice of resignation by auditor) was filed by the Complainant Firm. It was further noted while calling of the appointment letter received by the Respondent from the Company under Rule 8(5), the Respondent had submitted the certified true copy of the resolution passed at the extra ordinary general meeting held on 28th March, 2019 and certified true copy of the resolution passed at the annual general meeting held on 30th March, 2019 for the appointment of the Respondent as statutory auditor for the FY 2017-18. In view of the above, it was pertinent to note here that how the Respondent had conducted the audit of the Company for the FY 2017-18 and had signed the financial statements on 3rd September, 2018 in advance before the resignation of the previous auditor, i.e., the Complainant Firm on 27th March, 2019 and even before the date of his appointment as auditor in the Company on 30th March, 2019.

3.6 In light of the above, it was well established that the Respondent had failed to ensure that the requirements of the Companies Act, 2013 had been duly complied with respect to his appointment as statutory auditor of the Company for the FY 2017-18. He had also failed to ascertain the fact that proper procedure for the resignation of the previous auditor, i.e., Complainant Firm was carried out by the Company before his appointment. Thus, it was viewed that the Respondent was Prima Facie **GUILTY** of professional misconduct falling within the meaning of Clause (9) of Part I of the First Schedule to the Chartered Accountants Act, 1949.

3.7 As regards the **third charge** that the Respondent was himself handling the accounts of the Company and thus, he was not eligible to accept the appointment of statutory auditor of the Company, it was noted that the Respondent had admitted the fact that

his brother was rendering accounting service to the Company. However, on the perusal of the e-mail dated 27th November, 2018 which was addressed to the Complainant by the Respondent, it was noted that in the said e-mail the Respondent had himself admitted that he was involved in the accounting/ book keeping service of the Company. In this regard, it was pertinent to note that para 3.4.14 of the Guidance Note on "Independence of Auditors" provided that "The Members are not allowed to write the books of accounts of their auditee clients." Thus, it was evidently clear that the Respondent while being the auditor of the Company was prohibited from doing the book keeping service of the Company. In view of the same, it raised serious doubt on the conduct of the Respondent in the instant case.

3.8 Further, even for the sake of arguments, in case it was assumed that the accounting/ book keeping services of the Company were done by the Respondent's brother (as claimed by the Respondent in his submissions dated 23rd October, 2019), in this regard, it was important to refer to the provisions of section 144 read with Section 2 (77) of the Companies Act, 2013 and Rule 4 of Companies (Specification of definitions details) Rules, 2014.

3.9 From the Section 144 of Companies Act, 2013, it was amply clear that the Respondent who had rendered the service of statutory audit for the FY 2017-18 to the Company was also indirectly providing the book-keeping / accounting services to the Company through his brother being his relative as prohibited under section 144 of the Companies Act, 2013. Thus, the Respondent was prohibited from providing such services to the Company and hence, had violated the provisions of Section 144 and Section 141 of Companies Act, 2013.

3.10 Thus, from the above facts and keeping in view the various paragraphs of the Guidance Note on Independence of Auditors, it was viewed that the independence of the Respondent was compromised in the extant case and accordingly, the Respondent was prima-facie **GUILTY** of other misconduct falling within the meaning of Clause (2) of Part IV of the First Schedule and Professional Misconduct falling within the meaning of Clause (1) of Part II of Second Schedule to the Chartered Accountants Act, 1949.

3.11 As regards the **Fourth charge** regarding non-disclosure of the material fact in his report that the entire records of the Company for the FY 2017-18 were lost, it was

noted from the correspondence exchanged between the Respondent and the Complainant vide e-mail dated 27th November, 2018 that the Respondent in the said e-mail had mentioned that the Directors of the Company had informed him that they had lost all the records relating to the Company's account and the Directors were not able to provide the physical data of accounts.

3.12 Further, the Respondent in his defence had submitted that as his brother was involved in the accounting services of the Company, his brother had shown him the relevant documents so that he could carry out the test check of the records of the Company for the FY 2017-18. In the prevailing circumstances, it appeared that the Respondent was not able to collect the books of accounts of the Company for his due verification in conducting statutory audit of the Company for the FY 2017-18 from the management of the Company which were of utmost importance for expression of an audit opinion by any auditor. Accordingly, in the instant case, it was not clear as to how the Respondent could satisfy himself about the true and fair view of state of affairs of the Company as being reflected in its financial statement for the FY 2017-18 before signing such statements. Accordingly, the Respondent was held Prima Facie **GUILTY** of Professional Misconduct falling within the meaning of Clause (8) of Part I of Second Schedule to the Chartered Accountants Act, 1949.

3.13 Accordingly, the Director (Discipline) in his Prima Facie Opinion dated 28th December 2020 held the Respondent Prima Facie **GUILTY** of Professional and Other Misconduct falling within the meaning of Clause (2) of Part-IV of the First Schedule, Clause (8) & (9) of Part I of First Schedule, Clause (8) of Part I and Clause (1) of Part II of Second Schedule to the Chartered Accountants Act, 1949.The said Clauses of the Schedule to the Act, states as under:

***Clause (2) of Part IV of the First Schedule***

*"A member of the Institute, whether in practice or not, shall be deemed to be guilty of professional misconduct, if he—*

*x x x x x x*

*"(2) in the opinion of the Council, brings disrepute to the profession or the Institute as a result of his action whether or not related to his professional work."*

***Clause (8) of Part I of First Schedule***

*"A chartered accountant in practice shall be deemed to be guilty of professional misconduct, if he—*

*x x x x x x*

*(8) accepts a position as auditor previously held by another chartered accountant or a certified auditor who has been issued certificate under the Restricted Certificate Rules, 1932 without first communicating with him in writing;"*

***Clause (9) of Part I of First Schedule***

*"A chartered accountant in practice shall be deemed to be guilty of professional misconduct, if he—*

*x x x x x x*

*"(9) accepts an appointment as auditor of a company without first ascertaining from it whether the requirements of section 225 of the Companies Act, 1956 in respect of such appointment have been duly complied with;"*

***Clause (8) of Part I of Second Schedule***

*"A chartered accountant in practice shall be deemed to be guilty of professional misconduct, if he—*

*x x x x x x*

*"(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;"*

***Clause (1) of Part II of Second Schedule***

*"A member of the Institute, whether in practice or not, shall be deemed to be guilty of professional misconduct, if he—*

*x x x x x x*

*"(1) contravenes any of the provisions of this Act or the regulations made thereunder or any guidelines issued by the Council;"*

3.14 The Prima Facie Opinion formed by the Director (Discipline) was considered by the Disciplinary Committee in its meeting held on 27th January 2021. The Committee on consideration of the same, concurred with the reasons given against the charges and thus, agreed with the Prima Facie Opinion of the Director (Discipline) that the Respondent is **Guilty** of Professional and Other Misconduct falling within the meaning of Clause (2) of Part-IV of the First Schedule, Clause (8) & (9) of Part I of First Schedule, Clause (8) of Part I and Clause (1) of Part II of Second Schedule to the Chartered Accountants Act, 1949.and accordingly, decided to proceed further under Chapter V of the Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007.

4. **Date(s) of Written Submissions/Pleadings by parties:**

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

| S. No. | Particulars | Dated |
|---|---|---|
| 1. | Date of Complaint in Form 'I' filed by the Complainant | 30th April 2019 |
| 2. | Date of Written Statement filed by the Respondent | 23rd October 2019 |
| 3. | Date of Rejoinder filed by the Complainant | 29th November 2019 |
| 4. | Date of Prima Facie Opinion formed by Director (Discipline) | 28th December 2020 |
| 5. | Written Submissions filed by the Respondent after PFO | 23rd June 2021 |
| 6. | Written Submissions filed by the Complainant after PFO | 06th July 2021 |

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

The Respondent vide his letter dated 23.06.2021, inter-alia, made the submissions which are given as under: -

5.1. That Clause (2) of Part IV of the First Schedule begins with the words, "In the opinion of the Council." Therefore, obtaining the opinion of the Council is a prerequisite for initiating proceedings under the said clause. However, no reference has been made to the existence or obtaining of any such opinion from the Council.

5.2. That the Prima Facie Opinion has held the Respondent guilty under Clause (2) of Part IV of the First Schedule and Clause (1) of Part II of the Second Schedule to the Chartered Accountants Act whereas these clauses were not mentioned in the Complaint.

5.3. That as regards the **first charge**, the Respondent stated that no Guideline has been issued in terms of Clause (1) of Part II of the Second Schedule with respect to communication by "Registered Acknowledgement Due" or by hand against a written acknowledgement.

5.4. That the written communication addressed by the Respondent to the Complainant dated 01/07/2018 was handed over to the Company Director to deliver to the Complainant. The Company Director confirmed that the same had been delivered,

and that an oral commitment regarding the No Objection had been given by the Complainant. Further, oral confirmation regarding the NOC was also received by the Respondent from one of the Complainant Firm.

5.5. That there is no requirement for obtaining any reply in writing with respect to the NOC.

5.6. That as regards the **second charge**, he submitted that prior to commencement of audit work and before issuance of Audit Report, the Company had vide letters dated 03rd July, 2018 and 30th August, 2018 assured him that all secretarial compliances relating to change in auditor would be completed after obtaining resignation letter from the Complainant. The Respondent stated that drafts of notices, resolutions and related correspondence were also prepared and shown to him. Considering the urgency of issuance of Auditor's Report for AGM, he relied upon the assurances given by the Company and proceeded with completion of audit work.

5.7. That the Complainant did not provide resignation letter in time and delayed submission of the same till March 2019. Thereafter, the necessary compliances including filing of ADT-3 Form and conduct of AGM were completed during March 2019. The Respondent stated that there is no specific Guideline issued under Clause (1) of Part II of the Second Schedule regarding reliance by an auditor upon assurances given by the Company in respect of secretarial compliances. He further stated that Clause (8) of Part I of the First Schedule casts responsibility upon the Company for such compliances.

5.8. That the Clause (9) of Part I of the First Schedule refers to compliance with Section 225 of the Companies Act, 1956 and no amendment or notification has been issued to substitute the same with Sections 139 and 140 of the Companies Act, 2013. He further stated that no Guideline has been issued by the Council in this regard. According to the Respondent, since the year under consideration was FY 2017-18, Section 225 of the Companies Act, 1956 was not applicable and therefore he cannot be held guilty under Clause (9) of Part I of the First Schedule.

5.9. That as regards the **third charge**, the Respondent submitted that there has been misinterpretation of the correspondence relating to Statutory Audit, Tax Audit, Accounting Work and the role of CA Vinod S Sabu.

5.10. That during FY 2017-18, being the first year in which major operations were shifted from Sangli to Pune, the accounting work was temporarily looked after by a family member of the Company Director.

5.11. That the accounting assistance was obtained from Mr. S M Dolare, M.Com., an independent person.

5.12. That CA Vinod S Sabu, brother of the Respondent, was rendering only Tax Consultancy services relating to TDS matters for the Company. According to the Respondent, the Tally accounting records prepared by Mr. S M Dolare were referred to CA Vinod S Sabu only for review of TDS related matters and he was not involved in rendering accounting services to the Company.

5.13. That the Tally records were sent to the Complainant only because the Company Director wanted to ascertain whether the Complainant intended to conduct the Tax Audit and therefore was withholding the NOC and resignation letter.

5.14. That the references in the correspondence related only to Statutory Audit and Tax Audit and had no connection with maintenance of accounting records. Accordingly, the Respondent stated that neither he nor his brother had rendered accounting services to the Company and therefore there was no violation of Sections 141 and 144 of the Companies Act. The Respondent further submitted that the Guidance Note on Independence of Auditor is not a Guideline under Clause (1) of Part II of the Second Schedule and is not relevant in the instant case.

5.15. As regards the **fourth charge**, there is no evidence to suggest that the Respondent failed to examine the necessary records before issuing the Audit Reports. An incorrect inference has been drawn based on the Respondent's e-mails. Only a few sentences from the Respondent's e-mails are being misinterpreted and used against the Respondent, instead of relying on any concrete independent evidence to support

the allegations. Hence, there is no question of the Audit Reports having been issued without examining the Accounting Records.

6. **Written Submissions filed by the Complainant**

The Complainant vide his letter dated 06th July 2021, inter-alia, made the submissions which are given as under: -

6.1. That The Respondent has further attempted to produce certain invoices of accountants and tax consultants which appeared to be an afterthought.

6.2. That the invoices brought on record by the Respondent appeared to be an afterthought.

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

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

| S.No. | Date of meeting(s) | Status |
|---|---|---|
| 1 | 25th July 2024 | Part heard and adjourned. Oath taken by Respondent. |
| 2 | 08th April 2026 | Hearing concluded and judgement reserved. |
| 3 | 25th July 2026 | Decision Taken |

7.2. On the day of first hearing on 25th July 2024, the Committee noted that the Respondent along with his Counsel were present before it through video conferencing. However, there was no representation from the Complainant firm. The Committee noted from the member records of ICAI that the Complainant had expired. Since the complaint in Form 'I" had been filed by the Complainant on behalf of his firm, the Committee directed the office to send a communication to the Complainant firm that if they wish to authorize any other partner of their firm to represent their case before it, they may do so and also file a copy of the Complainant firm's resolution in that behalf. Thereafter, the Respondent was administered on Oath. Thereafter, the Committee enquired from the Respondent as to whether he was aware of the charges against him and whether he pleads guilty. The charges as

contained in prima facie opinion were also read out. On the same, the Respondent replied that he is aware of the charges and pleaded 'Not Guilty' to the charges levelled against him. The Committee, looking into the fact that this was the first hearing, decided to adjourn the hearing in the case to a future date.

7.3. On the day of hearing on 08th April 2026, the Committee noted that Respondent along with his Counsel were present through VC and appeared before it. The office apprised the Committee that the partner of the Complainant's firm vide email dated 07.04.2026 submitted that information/written submissions submitted by the deceased partner Late CA Nitin Shridhar Khandekar may be treated as their final submissions and the case shall be decided on the basis of documents on record. Further it has been stated that they do not wish to add anything further to the written submissions.

Thereafter, the Committee noted that the case was part heard and the Respondent was already on oath. The Committee enquired from the Respondent that since the composition of the Committee had changed subsequent to the last hearing held on 25.07.2024 in this case, whether he wished to have a de-novo hearing by taking all submissions/representations already on record or may continue from the stage it was last heard. The Respondent submitted that the proceedings in the instant matter(s) be continued from the stage these were last heard. The Counsel for Respondent refuted the allegations, providing detailed explanations and evidence to support their defense.

Regarding the first charge, the Counsel for Respondent argued that communication was made in writing and cited a precedent case to assert that the methodology of communication is not relevant under the relevant clause. For the second charge, the Counsel contended that Section 225 of the Companies Act was not applicable during the financial year in question, as it had been amended in 2013, and the alleged non-compliance was rectified in March 2019. On the third charge, the Counsel for Respondent clarified that the accounting work was conducted by independent agencies, and the Respondent's brother was only involved in taxation services, for which supported bills were submitted. The Counsel argued that there was no factual evidence to prove the allegation of non-independence. Regarding the fourth charge, the Counsel for Respondent stated that the audit was completed based on available

books of accounts and vouchers, and the claim of missing records was unsubstantiated. The Counsel emphasized that inefficiency in work does not equate to misconduct unless there is evidence of dishonest behavior.

Based on the documents and material available on record and after considering the oral and written submissions made by both the parties, the Committee concluded the hearing in the matter and findings were reserved.

7.4. At the meeting held on 25th July 2026, the Committee noted that the subject case was heard by it at length in the presence of the Respondent and the hearing was concluded at its meeting held on 08th April 2026 and the Findings was reserved. The Committee considered the material on record including submissions of the parties. The Committee deliberated in detail on the said case and took decision on the conduct of the Respondent.

8. **Findings of the Committee: -**

8.1. The Committee in its meeting dated 25th July 2024, noted from the member records of ICAI that CA. Nitin Shridhar Khandekar (M No. 034543) (i.e. the Complainant) had expired. In this regard, the Committee directed the office to send a communication to the Complainant firm whether they wish to authorise any other partner of their firm to represent their case before it, they may do so and file a copy of the Complainant's firm resolution in that behalf. Pursuant to the directions of the Committee, an email dated 21st February 2025, followed by a reminder dated 07th April 2026, was sent to the Complainant firm seeking authorisation in favour of any other partner of the firm to represent the matter before the Committee, along with a copy of the resolution of the Complainant firm in this regard.

8.2. In response, an email dated 07th April 2026 was received from the Senior Partner of the Complainant firm, wherein it was submitted that information/written submissions submitted by the deceased partner Late CA Nitin Shridhar Khandekar may be treated as their final submissions and the case shall be decided on the basis of documents on record. Further it has been stated that they do not wish to add anything further to the written submissions. The Committee noted the same and proceeded to consider the matter on merits.

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

8.3. The Committee noted the first **preliminary objection** raised by the Respondent that Clause (2) of Part IV of the First Schedule begins with the words, "In the opinion of the Council." Therefore, obtaining the opinion of the Council is a prerequisite for initiating proceedings under the said clause. However, no reference has been made to the existence or obtaining of any such opinion from the Council.

8.4. In this regard, the Committee noted that this issue is no longer res integra. The Appellate Authority, in a series of decisions including *Gyan Prakash Agarwal v. ICAI'* has examined the effect of the amendments introduced to the Chartered Accountants Act, 1949 and has recognized the amended disciplinary mechanism with effect from the 2006 amendments. The relevant portion extracted from the Order of Appellate Authority in the year 201 7 is reproduced hereunder:-

*"15.Based on the above and by taking note of the written submissions made on behalf of the Institute of Company Secretaries of India, the Institute of Cost Accountants of India and the Institute of Chartered Accountants of India containing the detailed analysis of the issue in question, we are of the considered view that the proper and correct interpretation which can be given to Clause (2) of Part-IV of the First Schedule to the respective Acts, in the light of the principles laid down and having regard to the case laws of various courts and further considering the basic objects, reasons and purpose of the amendment brought in the statutes as quoted above is that, 'Prima facie Opinion (PFO)' formed by the Director (Discipline) in all such complaints / information cases serves the purpose for proceeding further for taking disciplinary action against the errant members as in terms of the amended mechanism for conduct of cases, it is the Director (Discipline) who has to form the first Prima Facie Opinion for the disciplinary proceedings to be initiated. Therefore, the opinion of council as is mentioned in the clause (2) of Part-IV of the First Schedule to the Act has to be given a purposive meaning*

*and has to be read in consonance with the letter and scheme of the enactment."*

8.5. Under the amended framework, the functions that were earlier discharged by the Council at the preliminary stage now stand vested in the Director (Discipline), the Board of Discipline and the Disciplinary Committee, as the case may be. Consequently, the expression "Council" occurring in Clause (2) of Part IV of the First Schedule cannot be interpreted in a manner divorced from the statutory changes subsequently introduced by Parliament. The Committee is of the considered opinion that a purposive and harmonious construction of the provision requires the expression "Council" appearing in the said clause to be understood in the context of the present disciplinary framework. The formation of a Prima Facie Opinion by the Director (Discipline), followed by consideration by the competent disciplinary forum constituted under the Act, sufficiently satisfies the statutory requirement contemplated under the provision.

8.6. In respect of **second preliminary objection** raised by the Respondent regarding non-mentioning of clauses, the Committee noted that although there is column in form I for mentioning of particulars of allegations together with corresponding clause/part of the relevant schedule(s) under which the alleged acts of commissions — or omissions or both would fall, but non-mentioning of such clauses or wrong mentioning them in the complaint does not make the complaint defective as being claimed by the Respondent. It is also pertinent here to mention that Respondent is required to submit his Written Statement on the allegations on merit and it is the allegation which is required to be substantiated/defended in a complaint case and not the clauses. A Complainant is required to state the allegations which forms factual foundation for the Authority to exercise jurisdiction over the matter. It is now a well settled principle of law that non-mentioning or wrong mentioning of provision(s) of law would not be of any relevance, if the authority/Court had the requisite jurisdiction to pass an order. Further, mere non-mentioning or wrong mentioning of clause(s) by the Complainant in the prescribed Form-I does not absolve the Respondent from charges levelled against him. Accordingly, the objection raised by the Respondent in this regard is not maintainable. The preliminary objections are, therefore, rejected and the matter is proceeded with for consideration on merits.

8.7. As regards the objections raised by the Complainant that Clause (9) of Part I of the First Schedule refers to compliance with Section 225 of the Companies Act, 1956 and no amendment or notification has been issued to substitute the same with Sections 139 and 140 of the Companies Act, 2013. He further stated that no Guideline has been issued by the Council in this regard. According to the Respondent, since the year under consideration was FY 2017-18, Section 225 of the Companies Act, 1956 was not applicable and therefore he cannot be held guilty under Clause (9) of Part I of the First Schedule. In this regard, the Committee noted that the Respondent has contended that Clause (9) of Part I of the First Schedule to the Chartered Accountants Act, 1949 specifically refers to Section 225 of the Companies Act, 1956 and, since the enactment of the Companies Act, 2013, the corresponding provisions are contained in Section 139 respectively. It has further been argued that as Clause (9) has not been formally amended to substitute the references to Sections 225 of the Companies Act, 1956 with Section 139 of the Companies Act, 2013, the alleged misconduct under the said Clause cannot be attracted. The Committee is unable to accept the aforesaid contention. Clause (9) of Part I of the Second Schedule was enacted with the object of ensuring compliance by a chartered accountant with the statutory requirements governing appointment, re-appointment and removal of auditors under the company law in force. The mere repeal of the Companies Act, 1956 and its replacement by the Companies Act, 2013 does not render the disciplinary provision otiose, particularly when the corresponding subject matter continues to be governed under the amended Act and the act of omission/commission continue to be treated as professional misconduct.

8.8. The Committee noted that Section 8 of the General Clauses Act, 1897 incorporates the principle of statutory continuity and provides that where a provision of an enactment is repealed and re-enacted, references to the repealed provision in any other enactment shall, unless a contrary intention appears, be construed as references to the corresponding re-enacted provision. Applying the said principle, the Committee observed that the subject matter of Section 225 of the Companies Act, 1956 relating to the appointment, re-appointment and eligibility of auditors stands substantially covered under the corresponding provisions of Section 139 of the Companies Act, 2013. Consequently, the reference to Sections 225 in Clause (9) of Part I of the Second Schedule to the Chartered Accountants Act, 1949 is required to be read as reference to the corresponding provisions of the Companies Act, 2013.

8.9. The Committee further observed that any interpretation to the contrary would defeat the legislative intent underlying Clause (9) and lead to an anomalous consequence whereby violations of the statutory provisions governing auditor appointments under the Companies Act, 2013 would fall outside the disciplinary framework merely on account of the absence of a consequential renumbering amendment. Such an interpretation is impermissible in law, being contrary to the settled principles of statutory construction which require a provision to be construed in a manner that advances its object and preserves its effectiveness. The objection raised by the Respondent is therefore rejected.

The Committee noted that there are four charges against the Respondent, as explained in paragraphs 2.1 to 2.4 above.

8.10. As regards the **first charge** that the Respondent has accepted the audit of the Company without communicating with the previous auditor, the Committee noted that the Complainant's firm had been appointed as the statutory auditor of the Company for the financial years commencing from 01.04.2014 to 31.03.2019, for which Form ADT-1 had been duly filed with the MCA. The Committee further noted that the issue in the present case is that the Respondent conducted the statutory audit and tax audit of the Company for the financial year 2017–18 on 03.09.2018 and 29.10.2018, respectively, without prior communication with the Complainant.

In this regard, the Committee noted the submissions of the Respondent which are stated as under:-

(a) The written communication addressed by the Respondent to the Complainant dated 01/07/2018 was handed over to the Company Director to deliver to the Complainant.
(b) The Company Director confirmed that the same had been delivered, and that an oral commitment regarding the No Objection had been given by the Complainant.
(c) Further, oral confirmation regarding the NOC was also received by the Respondent from one of the Complainant Firm.
(d) To complete the statutory audit within the timeline, the Respondent had accepted the appointment.
(e) No Guideline has been issued in terms of Clause (1) of Part II of the Second Schedule with respect to communication by "Registered Acknowledgement Due" or by hand against a written acknowledgement.

(f) There is no requirement for obtaining any reply in writing with respect to the NOC.

(g) The dispute was only about the methodology of communication (registered post/hand delivery), not absence of communication itself.

8.11. In respect of above charge related to communication with the previous auditor before acceptance of audit by the Incoming auditor, the Committee noted that Clause (8) of Part I of First Schedule to the Chartered Accountants stipulates as under:-

*"A Chartered Accountant in practice shall be deemed to be guilty of professional misconduct:-*

*x x x x x x x*

*if he accepts a position as auditor previously held by another Chartered Accountant or a certified auditor who has been issued certificate under the Restricted Certificate Rules 1932 without first communicating with him in writing"*

8.12. Thus, as per the Chartered Accountants Act, 1949 there is clear requirement for the incoming auditor to communicate with the previous auditor of the Company in writing before he accepts the audit of a Company. Besides, the "Code of Ethics" (2009 edition) for the Chartered Accountants too emphasizes in this regard in following manner:

*'It must be pointed out that professional courtesy alone is not the major reason for requiring a member to communicate with the existing accountant who is member of the Institute or a certified auditor. The underlying objective is that the member may have an opportunity to know the reasons for the change in order to be able to safeguard his own interest, the legitimate interest of the public and the independence of the existing accountant. It is not intended, in any way, to prevent or obstruct the change. When making the enquiry from the retiring auditor, the one proposed to be appointed or already appointed should primarily find out whether there are any professional or other reasons why he should not accept the appointment. The object of the incoming auditor, in communicating with the retiring auditor is to ascertain from him whether there are any circumstances which warrant him not to accept the appointment.*

*Further, as per Code of Ethics (Edition 2009) a members of ICAI should therefore communicate with a retiring auditor in such a manner as to retain in their hands positive evidence of the delivery of the communication to the addressee. In the opinion of the Council, communication by a letter sent "Registered Acknowledgement due" or by hand against a written acknowledgement would in the normal course provide such evidence."*

8.13. In view of the above, as per Clause (8) of Part I of the First Schedule to the Chartered Accountants Act, 1949 read with Code of Ethics issued by ICAI, it is clear that the incoming Auditor should accept the position as an auditor which was previously held by another auditor by first communicating with the previous auditor in writing in such a manner so as to retain in his hand positive evidence of delivery and letter sent through registered post with acknowledgement due or by hand against a written acknowledgement would in the normal course provide such an evidence.

8.14. On perusal of the material available on record and the submissions made by the Respondent, the Committee noted that the Respondent had placed on record a copy of the letter dated 01.07.2018 addressed to the Complainant seeking a No Objection Certificate (NOC). However, the said letter was neither sent to the Complainant through registered post nor delivered by hand himself by the Respondent.

8.15. The Committee observed that the Respondent merely relied upon the client for obtaining the NOC from the previous auditor and did not make any independent effort to communicate with the previous auditor. This fact was also admitted by the Respondent, who stated that he had specifically requested the client to obtain the NOC and, in order to complete the statutory audit within the prescribed time, he accepted the audit assignment. Moreover, upon perusal of the declaration dated 28.12.2019 made by the Director of the Company and placed on record by the Respondent, it was noted that the Director of the Company himself admitted that the Respondent had accepted the appointment on the basis of his assurance and that, owing to personal issues and difficulties, he was unable to obtain the NOC from the Complainant. The Respondent has not produced any evidence showing that the said letter has been delivered to the Complainant.

8.16. The Committee further noted that the submissions of the Respondent's Counsel that the communication regarding acceptance of the audit assignment had been made in writing, though not through registered post or personal delivery, and that the guidance relating to the mode and methodology of such communication does not constitute a specifically notified Guideline enforceable under Part II, Clause (1) of the Second Schedule to the Chartered Accountants Act, 1949. The Committee, however, observed that the underlying objective of the requirement is to ensure clear, unequivocal, and verifiable communication with the previous auditor, thereby

safeguarding transparency and maintaining the integrity of the audit process. In the present case, the Respondent's reliance upon oral assurances and informal means of communication does not meet the degree of diligence and professional care expected of a Chartered Accountant in the discharge of professional responsibilities.

8.17. The Committee noted that the Council of ICAI has taken the view that a mere posting of a letter under certificate of posting is not sufficient to establish communication with the retiring auditor unless there is some evidence to show that the letter has in fact reached the person communicated with. A Chartered Accountant who relies solely upon a letter posted under certificate of posting therefore does so at his own risk. The view taken by the Council has been confirmed in a decision by the Rajasthan High Court in J.S. Bhati vs. The Council of the Institute of the Chartered Accountants of India and another. The following observations of the Court are relevant in this context:-

*"Mere obtaining a certificate of posting in my opinion does not fulfill the requirements of clause (8) of Schedule I as the presumption under Section 114 of the Evidence Act that the letter in due course reached the addressee cannot replace that positive degree of proof of the delivery of the letter to the addressee which the letters of the law in this case require. The expression 'in communication with' when read in the light of the instructions contained in the booklet 'Code of Conduct' cannot be interpreted in any other manner but to mean that there should be positive evidence of the fact that the communication addressed to the outgoing auditor by the incoming auditor reached his hands. Certificate of posting of a letter cannot, in the circumstances, be taken as positive evidence of its delivery to the addressee."*

8.18. The Committee noted that the Code of Ethics does not create new obligations; it only elucidates and operationalizes existing statutory duties. The requirement regarding proper modes of communication does not emanate from the Code of Ethics per se, but from the statutory mandate embedded in Clause 8. The Code of Ethics merely clarifies the manner in which such statutory obligations are expected to be discharged. The Committee is of the view that the Respondent's contention proceeds on an incorrect premise that only 'notified guidelines' can inform professional conduct. The professional obligations cast upon a Chartered

Accountant must be interpreted in light of the object and purpose of the regulatory framework.

8.19. In the light of the above, the Committee was of the view that the requirement of Clause (8) of Part I of the First Schedule to the Chartered Accountant Act read with Code of ethics 2009 as discussed in preceding paras which casts clear responsibility on the incoming auditor to communicate with the previous auditor has not been complied with by the Respondent. Further, there is no circumstance mentioned in the Chartered Accountants Act, 1949 under which the requirement of such communication can be delegated to client / auditee. Hence the contention of the Respondent that he had requested the Client to obtain NOC from the previous auditor is not acceptable. On overall consideration, the Committee concluded that the Respondent's conduct, viewed in this context and observation of Hon'ble Rajasthan Hight Court, falls short of the standards of professional diligence and conduct expected of a member of the Institute. Accordingly, the Respondent ***Guilty*** of Professional Misconduct falling within the meaning of Clause (8) of Part I of First Schedule to the Chartered Accountants Act, 1949.

8.20. As regards the **second charge**, relating to accepting the position of auditor by the Respondent without ensuring that the provisions of Companies Act were fulfilled with respect to the removal of auditors, the Committee noted the sequence of events as given here under:-

| **Date** | **Events** |
|---|---|
| For Financial years 2013-14 to 2018-19, the Complainant firm was appointed as the statutory auditor of the Company. | |
| **Financial year 2017-18** | |
| 03.09.2018 | Date of signing of financial statements for the financial year 2017-18 by the Respondent |
| 29.10.2018 | Date of filing of tax audit report for the financial year 2017-18 of the Company |
| 27.03.2019 | Date of resignation of the previous auditor i.e. Complainant |

| | |
|---|---|
| 28.03.2019 | Form ADT-3 filed by the Complainant for the resignation as the statutory auditor of the Company. |
| 28.03.2019 | Date of resolution of annual general meeting for appointing the Respondent as the statutory auditor of the Company for the financial year 2017-18. |

8.21. The Committee noted the submissions of the Respondent as follows:

(a) The Company had vide letters dated 03rd July 2018 and 30th August, 2018 assured him that all secretarial compliances relating to change in auditor would be completed after obtaining resignation letter from the Complainant.

(b) The Respondent stated that drafts of notices, resolutions and related correspondence were also prepared and shown to him.

(c) Considering the urgency of issuance of Auditor's Report for AGM, he relied upon the assurances given by the Company and proceeded with completion of audit work.

(d) That the Complainant did not provide resignation letter in time and delayed submission of the same till March 2019. Thereafter, the necessary compliances including filing of ADT-3 Form and conduct of AGM were completed during March 2019.

(e) That Clause (9) of Part I of the First Schedule refers to compliance with Section 225 of the Companies Act, 1956 and no amendment or notification has been issued to substitute the same with Sections 139 and 140 of the Companies Act, 2013. He further stated that no Guideline has been issued by the Council in this regard.

(f) According to the Respondent, since the year under consideration was FY 2017-18, Section 225 of the Companies Act, 1956 was not applicable and therefore he cannot be held guilty under Clause (9) of Part I of the First Schedule.

(g) That though the procedural lapse existed, it was later rectified in March 2019 through resignation, EGM/AGM compliances and related secretarial actions.

8.22. In this regard, relevant provisions of Section 140 are noted as under:-

**Section 140. Removal, resignation of auditor and giving of special notice. —**

*(1) The auditor appointed under section 139 may be removed from his office before the expiry of his term only by a special resolution of the company, after obtaining the previous approval of the Central Government in that behalf in the prescribed manner:*

*Provided that before taking any action under this sub-section, the auditor concerned shall be given a reasonable opportunity of being heard.*

*(2) The auditor who has resigned from the company shall file within a period of thirty days from the date of resignation, a statement in the prescribed form with the company and the Registrar, and in case of companies referred to in sub-section (5) of section 139, the auditor shall also file such statement with the Comptroller and Auditor-General of India, indicating the reasons and other facts as may be relevant with regard to his resignation.*

*(3) If the auditor does not comply with sub-section (2), he or it shall be punishable with fine which shall not be less than fifty thousand rupees but which may extend to five lakh rupees.*

*(4) (i) Special notice shall be required for a resolution at an annual general meeting appointing as auditor a person other than a retiring auditor, or providing expressly that a retiring auditor shall not be reappointed, except where the retiring auditor has completed a consecutive tenure of five years or, as the case may be, ten years, as provided under sub-section (2) of section 139.*

*(ii) On receipt of notice of such a resolution, the company shall forthwith send a copy thereof to the retiring auditor.*

8.23. From the above provision, the Committee noted that the Company shall require prior approval of Central Government to remove the statutory auditor appointed under section 139 before the expiry of his term and also a special resolution shall be required to be passed by the Company in its AGM after obtaining the approval of the Central Government. In case where the Auditor has completed his tenure of 5 or 10 years, there is no need for special resolution.

8.24. In the extant case, the Committee noted that it is a matter of fact that the Complainant was appointed as Statutory Auditor of the Company for 5 years for the period 2013-14 to 2018-19 and the same was evident from copy of ADT-1. Further, upon perusal of the financial statements and the tax audit report of the Company for the financial year 2017–18, it was observed that the Respondent had signed the said documents on 03.09.2018 and 29.10.2018 respectively. The Committee noted that the Complainant firm resigned from the audit engagement of the Company on 30.03.2019, which was subsequent to the completion of the audit by the Respondent.

8.25. The Committee further noted that the Respondent himself had placed on record that the formalities pertaining to his appointment as the statutory auditor had not been completed prior to the commencement of the statutory audit and were subsequently completed in March 2020. In this regard, the Committee noted that the Respondent, at the stage of Rule 8(5) brought on record copy of the Resolution passed at the Extra Ordinary General meeting dated 28.03.2019 and copy of the resolutions passed in Annual General Meeting held on 30.03.2019. The contents of these resolutions read as under:-

**Resolution passed in the Extra Ordinary General meeting of the Company held on 28.03.2019:-**

*"Pursuant to the provision of Section 139(g) (1) and other applicable provisions of the Companies Act, 2013 read with Companies (Audit & Auditors) Rules, 2014 consent of the members of the Company be and hereby accorded to appoint Mr. Gopal Saboo (M.No. 178747) Chartered Accountants, Pune as a Statutory Auditor of the Company to fill the casual vacancy caused by resignation tendered by the Companies earlier Auditor M/s. Khire Khandekar & Kirioskar (FRN: 105148W) due to unwillingness to continue as a statutory auditor, to hold office from the conclusion of this Extra Ordinary general Meeting till the Conclusion of upcoming Annual General Meeting* ***for the audit of the Financial year 2017-18*** *as per the terms and conditions mutually agreed"*

**Resolution passed in the Annual General meeting of the Company held on 30.03.2019:-**

*"RESOLVED THAT, pursuant to the provisions of Section 139, 142 and other applicable provisions, if any, of the Companies Act, 2013 read with Companies (Audit. & Auditors ) Rules, 2014 consent of the Shareholders of the Company be and is hereby accorded to re-appoint Mr. Gopal Saboo (M.No. 178747) Chartered Accountants, Pune as the statutory auditor of the Company to hold office from conclusion of this Annual General Meeting (i.e. 5"' AGM) till the conclusion of 10th Annual General Meeting."*

8.26. Upon perusal of the resolution passed at the Extra Ordinary General Meeting of the Company held on 28.03.2019, it was observed that the Respondent was appointed as the statutory auditor of the Company for the financial year 2017–18 on 28.03.2019, Further, it is relevant to mention here that the Respondent has signed the financial statement of the Company and issued tax audit report for the financial year 2017-18 even before the approval of his appointment in EGM. Hence, the Committee observed that the Respondent failed to ensure compliance of the requirement of Section 139 of the Companies Act, 2013 before his appointment.

8.27. Further, with regard to the plea of the Respondent that, since the year under consideration pertained to FY 2017–18, Section 225 of the Companies Act, 1956 was not applicable and, therefore, he could not be held guilty under Clause (9) of Part I of the First Schedule to the Chartered Accountants Act, 1949, the Committee noted the provisions of Clause (9) of Part I of the First Schedule to the Chartered Accountants Act, 1949, which reads as under:-

A Chartered Accountant in practice shall be deemed to be guilty of professional misconduct, if he-

*"accepts an appointment as auditor of a company without first ascertaining from it whether the requirements of Section 225 of Companies Act, 1956 (1 of 1956), in respect of such appointment have been duly complied with"*

8.28. The Committee noted that the earlier Section 224 and Section 225 of the Companies Act, 1956 were replaced with the new Section 139 and 140 respectively of the Companies Act, 2013 w.e.f. 01.04.2014. Further, in view of the above, as per Item (9) of the Part I of the First Schedule to the Chartered Accountants Act, 1949, it is evident that the incoming auditor should not accept a position as an auditor which was previously held by another auditor before ensuring the Compliance of Section 139 and Section 140 of the Companies Act, 2013. The Committee noted that irrespective of the specific statutory provision applicable, the fundamental obligation cast upon a Chartered Accountant is to exercise due diligence and to satisfy himself that all requisite legal and procedural formalities relating to his appointment have been duly complied with before accepting and undertaking the audit engagement. Therefore, the plea of the Respondent that Clause (9) of Part I of the First Schedule to the Chartered Accountants Act, 1949 is not acceptable.

8.29. In the present case, the material on record indicates that, at the time of acceptance of the audit assignment and signing of the financial statements, neither a formal 'No Objection Certificate' nor a documented resignation from the outgoing auditor was available. The absence of such essential documentation ought to have alerted the Respondent to the possibility that the process relating to the cessation of the previous auditor and his own appointment had not attained finality. The Committee is, therefore, of the view that the Respondent failed to exercise the degree of

professional diligence and care expected of a member of the Institute in verifying compliance with the applicable statutory and professional requirements prior to accepting the audit engagement.

8.30. The Committee further observed that the subsequent completion or rectification of the procedural deficiencies cannot operate retrospectively so as to cure the lapse that existed at the material time when the audit assignment was accepted, and the audit report was issued. The Committee concluded that compliance with statutory and professional requirements must be established at the relevant point of time, and subsequent corrective actions do not absolve a professional of responsibility for an earlier failure to exercise due diligence. Accordingly, the Committee held the Respondent **GUILTY** of professional misconduct falling within the meaning of Item (9) of Part I of the First Schedule to the Chartered Accountants Act, 1949.

8.31. As regards the **third charge** that the Respondent was himself handling the accounts of the Company and, therefore, was not eligible to accept the appointment of statutory auditor of the Company, the Committee considered the different statements made by the Respondent in following correspondence/ submissions of the Respondent which is tabulated as under: -

| Correspondence addressed by the Respondent to the Complainant vide email dated 27.11.2018 (C-66) | Written submissions of the Respondent dated 23rd October 2019 addressed to the Disciplinary Directorate; (W-9) | Written submissions of the Respondent dated 23rd June 2021 addressed to the Disciplinary Directorate of ICAI. |
|---|---|---|
| *"I had completed accounting in the month of September and mailed the tally data to you and handed over the documents to the Directors of the company to get accounts audited from you."* | *"As stated earlier, the accounting services were rendered by my brother who is an independent chartered accountant. He had earlier completed the accounting and handed over all the accounting record with vouchers, etc. to the director Mr. Swapnil Sethiya."* | *Accounting assistance was obtained from Mr. S M Dolare, M.Com., an independent person.* |

8.32. The Committee noted that the Respondent's stand on this issue has not remained consistent and is marked by material contradictions. In particular, the documents placed on record, including the Respondent's own admissions (contained in documents marked C-66 and W-9), indicate that either the Respondent himself or his

brother, who is closely associated with him professionally, was involved in rendering accounting and taxation-related services to the auditee company during the relevant period.

8.33. The Committee noted that, in his defence, the Respondent has also placed on record copies of two invoices issued by Mr. S. M. Dolare to the Company for rendering accounting services for the financial years 2017–18 and 2018–19.

8.34. The Committee noted the provisions of **section 144 read with Section 2 (77) of the Companies Act, 2013 and Rule 4 of Companies (Specification of definitions details) Rules, 2014** which states as under:

> ***144. Auditor not to render certain services***
>
> *"An auditor appointed under this Act shall provide to the company only such other services as are approved by the Board of Directors or the audit committee, as the case may be, but which **shall not include any of the following services (whether such services are rendered directly or indirectly to the company)**, or its holding company or subsidiary company, namely:- "*
>
> ***(a) Accounting and book keeping services;***
> *(b) Internal audit;*
> *(c) Design and implementation of any financial information system;*
> *(d) Actuarial services;*
> *(e) Investment advisory services;*
> *(f) Investment banking services;*
> *(g) Rendering of outsourced financial services;*
> *(h) Management services; and*
> *(i) Any other kind of services as may be prescribed:"*
>
> *Provided that an auditor or audit firm who or which has been performing any non-audit services on or before the commencement of this Act shall comply with the provisions of this section before the closure of the first financial year after the date of such commencement.*
>
> ***Explanation.—For the purposes of this sub-section, the term "directly or indirectly" shall include rendering of services by the auditor,—***
>
> *(i) **in case of auditor being an individual, either himself or through his relative** or any other person connected or associated with such individual or through any other entity, whatsoever, in which such individual has significant influence or control, or whose name or trade mark or brand is used by such individual;*
>
> *(ii) in case of auditor being a firm, either itself or through any of its partners or through its parent, subsidiary or associate entity or through any other entity, whatsoever, in which the firm or any partner of the firm has significant influence or control, or whose name or trade mark or brand is used by the firm or any of its partners. **(emphasis added)***

**Section 2 (77) of Companies Act, 2013**

*2 (77) **"relative", with reference to any person, means any one who is related to another, if—***

*(i) they are members of a Hindu Undivided Family;*

*(ii) they are husband and wife; or*

*(iii) one person is related to the other in such manner **as may be prescribed; (emphasis added)***

**Rule 4 of Companies (Specification of definitions details) Rules, 2014**

***4 List of Relatives in Terms of Clause (77) of** section 2*

*A person shall be deemed to be the relative of another, if he or she is related to another in the following manner, namely:-*

*(1) Father:*

*Provided that the term "Father" includes step-father.*

*(2) Mother:*

*Provided that the term "Mother" includes the step-mother.*

*(3) Son:*

*Provided that the term "Son" includes the step-son.*

*(4) Son's wife.*

*(5) Daughter.*

*(6) Daughter's husband.*

***(7) Brother***

*Provided that the term "Brother" includes the step-brother;*

*(8) Sister:*

*Provided that the term "Sister" includes the step-sister." **(emphasis added)***

8.35. The Committee further noted that ICAI has issued **Guidance Note on Independence of Auditors** which aims to clarify the meaning of independence while performing their duties as Auditors. Some of the relevant paragraphs of the Guidance Note are reproduced as under:

***Para 1.3 of the Guidance Note:***

*There are perspectives of independence of two interlinked auditors, one, independence of mind; and two, independence in appearance.*

*The Code of Ethics for Professional Accountants, issued by International Federation of Accountants (IFAC) defines the term 'Independence' as follows:*

*"Independence is:*

a. ***Independence of mind** - **the state of mind that permits the provision of an opinion without being affected by influences that compromise professional judgment, allowing an individual to act with integrity, and exercise objectivity and professional skepticism**; and*

b. ***Independence in appearance** - the avoidance of facts and circumstances that are so significant a reasonable and informed third party, having knowledge of all relevant information, including any safeguards applied, would reasonably conclude a firm's, or a member of the assurance team's, integrity, objectivity or professional skepticism had been compromised."**(emphasis added)***

***Para 1.4 of the Guidance Note**:*

***Independence of the auditor has not only to exist in fact, but also appear to so exist to all reasonable persons. The relationship between the auditor and his client should be that firstly, he is himself satisfied about his independence and secondly, no unbiased person would be forced to the conclusion that, on an objective assessment of the circumstances, there is likely to be an abridgement of the auditors independence. (emphasis added)***

***Para 1.5 of the Guidance Note**:*

***In all phases of a Chartered Accountant's work, he is expected to be independent,** but **in particular in his work as auditor, independence has a special meaning and significance**. Not only the client but also the stakeholders, prospective investors, bankers and government agencies rely upon the accounts of an enterprise when they are audited by a Chartered Accountant. As statutory auditor of a limited company, for example, the Chartered Accountant would cease to perform any useful function if the persons who rely upon the accounts of the company do not have any faith in the independence and integrity of the Chartered Accountant. In such cases **he is expected to be objective in his approach, fearless, and capable of expressing an honest opinion based upon the performance of work such as his training and experience enables him to do so. (emphasis added)***

***Para 1.9 of the Guidance Note**:*
*The auditor should be straight-forward, honest and sincere in his approach to his professional work. He must be fair and must not allow prejudice or bias to override his objectivity. He should maintain an impartial attitude and both be and appear to be **free of any Interest which might be regarded, whatever its actual effect, as being incompatible with integrity and objectivity**. This is not self-evident in the exercise of the reporting function but also applies to all other professional work. In determining whether a member in practice is or is not seen to be free of any interest which is incompatible with objectivity, the criterion should be whether a reasonable person, having knowledge of relevant facts and taking into account the conduct of the member and the member's behaviour under the circumstances, could conclude that the member has placed himself in a Position where his objectivity would or could be impaired. **(emphasis added)***

***Para 2.1 of the Guidance Note:***

*The Code of Ethics for Professional Accountants, prepared by the International Federation of Accountants (IFAC) identifies five types of threats. These are:*

1. ***Self-interest threats**, **which occur when an auditing firm, its partner or associate could benefit from a financial interest in an audit client.** Examples include: (i) direct financial interest or materially significant indirect financial interest in a client,(ii) loan or guarantee to or from the concerned client,(iii) undue dependence on a client's fees and, hence, concerns about losing the engagement, (iv) close business relationship with an audit client,(v) potential employment with the client, and(vi) contingent fees for the audit engagement.*

2. ***Self-review threats**, which occur when during a review of any judgment or conclusion reached in a previous audit or non-audit engagement, or when a member of the audit team was previously a director or senior employee of the client. Instances where such threats come into play are (i) when an auditor having recently been a director or senior officer of the company, and(ii) when auditors perform services that are themselves subject matters of audit.*

3. ***Advocacy threats**, which occur when the auditor promotes, or is perceived to promote, a client's opinion to a point where people may believe that objectivity is getting compromised, e.g. when an auditor deals with shares or securities of the audited company, or becomes the client's advocate in litigation and third party disputes.*

4. ***Familiarity threats** are self-evident, and occur when auditors form relationships with the client where they end up being too sympathetic to the client's interests. This can occur in many ways:(i) close relative of the audit team working in a senior position in the client company,(ii) former partner of the audit firm being a director or senior employee of the client,(iii) long association between specific auditors and their specific client counterparts, and(iv) acceptance of significant gifts or hospitality from the client company, its directors or employees.*
5. ***Intimidation threats**, which occur when auditors are deterred from acting objectively with an adequate degree of professional skepticism. Basically, these could happen because of threat of replacement over disagreements with the application of accounting principles, or pressure to disproportionately reduce work in response to reduced audit fees.**(emphasis added)***

8.36. The Committee was of the view that such involvement, whether undertaken directly by the Respondent or indirectly through a closely related and associated person, gives rise to a clear conflict with the fundamental principle of auditor independence. The Committee observed that the requirement of independence is not merely a matter of form but constitutes the very foundation of the credibility and objectivity of the audit function. The Guidance Note on Independence of Auditors and the applicable provisions of the Code of Ethics unequivocally require an auditor to

remain free from circumstances that may impair, or reasonably appear to impair, his independence and objectivity.

8.37. The Committee further observed that the Respondent's attempt to attribute the accounting and taxation work to certain third-party agencies remains wholly unsubstantiated by any other cogent documentary evidence. On the contrary, such a defence stands contradicted by the Respondent's own statements and admissions appearing on record. In the absence of any credible material supporting the Respondent's explanation, the Committee is unable to accept the same. Accordingly, having regard to the entirety of the evidence on record, the Committee concluded that the Respondent failed to maintain the requisite degree of independence expected of a statutory auditor and that his conduct was inconsistent with the fundamental ethical principles governing the profession. Accordingly, the Respondent was held **GUILTY** of Professional and Other Misconduct falling within the meaning of Clause (2) of Part IV of the First Schedule and Clause (1) of Part II of Second Schedule to the Chartered Accountants Act, 1949.

8.38. The Committee noted the **fourth charge** against the Respondent that Respondent has also not disclosed the fact in his report that he has done the audit without verifying the supporting documents as the entire record of the Company for FY 2017-18 was lost.

8.39. On perusal of the email of the Respondent dated 27.11.2018 addressed to the Complainant, the Committee noted that the Respondent has stated that the directors informed him that they have lost all the records relating to the Company's account and the Directors was unable to provide the physical data of accounts.

8.40. The Committee considered the submissions made by the Respondent and the material available on record. The Committee observed that the Respondent failed to place on record any satisfactory evidence demonstrating that the statutory audit and tax audit were conducted after obtaining proper access to, and carrying out an adequate examination of, the books of account and underlying records of the auditee entity. The explanations furnished by the Respondent are general in nature and do not establish, through contemporaneous documentation or audit evidence, that the audit procedures necessary to support the audit opinion and tax audit report were in fact performed.

8.41. The Committee is of the view that the responsibility to maintain sufficient and appropriate audit documentation rests squarely upon the auditor. Such documentation constitutes the primary evidence of the work performed, the procedures applied, and the basis on which professional conclusions have been reached. In the absence of credible documentary evidence demonstrating compliance with the prescribed auditing requirements, the Respondent cannot be said to have discharged this responsibility.

8.42. The Committee further noted that the explanations advanced by the Respondent do not satisfactorily rebut the inference arising from the record that the audit reports were issued without adequate examination of the books of account and without obtaining sufficient appropriate audit evidence. Such conduct strikes at the very core of the audit function and is contrary to the fundamental principles embodied in the Standards on Auditing and the professional duties expected of a Chartered Accountant.

8.43. Accordingly, the Committee concluded that the Respondent failed to exercise the requisite degree of professional competence, due diligence, and professional scepticism in the conduct of the audit and tax audit engagements. The Committee held the Respondent **GUILTY** of Professional Misconduct falling within the meaning of Clause (8) of Part I of Second Schedule to the Chartered Accountants Act, 1949.

9. **Conclusion:**

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

| **Charges (as per PFO)** | **Findings** | **Decision of the Committee** |
|---|---|---|
| Para 2.1 as above | Para 8.10 to 8.19 as above | **GUILTY-** Clause (8) of Part I of the First Schedule |
| Para 2.2 as above | Para 8.20 to 8.30 as above | **GUILTY-** Clause (9) of Part I of the First Schedule |
| Para 2.3 as above | Para 8.31 to 8.37 as above | **GUILTY-**Clause (1) of Part II of Second Schedule and Clause (2) of Part IV of the First Schedule |
| Para 2.4 as above | Para 8.38 to 8.43 as above | **GUILTY-** Clause (8) of Part I of Second Schedule |

10. In view of the above observations, considering the material on record including verbal and written submissions of the parties, the Committee held the Respondent **GUILTY** of Professional and Other Misconduct falling within the meaning of Clause (8) & (9) of Part I of First Schedule, Clause (8) of Part I and Clause (1) of Part II of Second Schedule and clause (2) of Part-IV of the First Schedule to the Chartered Accountants Act, 1949.

**Sd/-**
**(CA. PRASANNA KUMAR D)**
**PRESIDING OFFICER**

**Sd/-**
**(CMA CHANDRA WADHWA)**
**GOVERNMENT NOMINEE**

**Sd/-**
**(CA. MAHESH SHAH)**
**GOVERNMENT NOMINEE**

**Sd/-**
**(CA. SATISH KUMAR GUPTA)**
**MEMBER**

**Sd/-**
**(CA. HANS RAJ CHUGH)**
**MEMBER**

**DATE: 29.08.2026**

**PLACE: Noida**

सत्यापित होने के लिए प्रमाणित/Certified to be True Copy
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