



THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA
(Set up by an Act of Parliament)

CONFIDENTIAL

DISCIPLINARY COMMITTEE [BENCH – IV (2022-2023)]
[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 INVESTIGATION OF
PROFESSIONAL AND OTHER MISCONDUCT AND CONDUCT OF CASES) RULES, 2007.

In the matter of:

CA. Anil Mittal (M.No. 088204), in Re:

Office No. 37-38, C-Block, DDA Market,
SURAJMAL VIHAR, DELHI – 110 092

File No. PPR/NP/076/18/DD/204/INF/18/DC/1375/2020

Date of Meeting : 26th August, 2022

Place of Meeting : ICAI, New Delhi

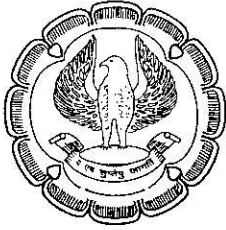
Party Present:

CA. Anil Mittal : Respondent (Through VC)

MEMBERS PRESENT:

1. CA. (Dr.) Debashis Mitra, Presiding Officer (In person)
2. Shri Jiresh Nandan, IAS (Retd.) (In person)
3. Ms. Dakshita Das, IRAS (Retd.) (In person)
4. CA. Mangesh P. Kinare (In person)
5. CA. Sripriya Kumar (In person)

1. That vide findings dated 11th February, 2022 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 of the opinion that **CA. Anil Mittal (M. No. 088204), New Delhi** (hereinafter referred to as the “Respondent”) was **GUILTY** of Professional and Other Misconduct falling within the meaning of Items (5), (6), (7) and (8) of Part I of Second Schedule



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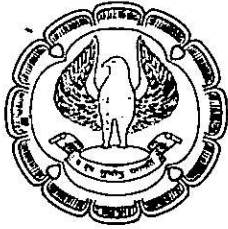
and Item (2) of Part IV of the First Schedule to the Chartered Accountants Act, 1949, read with Section 22 of the said Act.

2. That pursuant to the said findings, an action under Section 21B(3) of the Chartered Accountants (Amendment) Act, 2006 read with Rule 19(1) of the Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007, was contemplated against the Respondent and a communication dated 12th August 2022 was addressed to him thereby granting an opportunity of being heard in person/or through video conferencing and/or to make a written representation before the Committee in its meeting fixed on 26th August, 2022.

3. The Committee noted that the Respondent was present before it for hearing through video conferencing from his personal location. Thereafter, he gave a declaration that there was nobody except him in room from where he was appearing and that he would neither record nor store the proceedings of the Committee in any form.

4. On being asked by the Committee whether the Respondent 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 instant hearing was to afford him an opportunity of hearing before passing order for punishment in terms of Section 21B(3) of the Chartered Accountants (Amendment) Act, 2006 read with Rule 19(1) of the Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007.

5. The Respondent had submitted written representations dated 27.05.2022 (vide e-mail dated 28.05.2022) on the findings dated 11.02.2022 of the Committee and made oral submissions before the Committee on 26.08.2022. The Respondent inter alia submitted that whatever he had done was according to his best professional abilities and that all documents/



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papers were taken away pursuant to the Order of Hon'ble Supreme Court and there was nothing further on his part to submit. He apologized for any mistake conducted on his part.

5.1. The Committee noted that the Respondent had filed a detailed written statement on 10th January, 2021 and another reply was filed on 16th April, 2021. The Committee further noted that the Respondent submitted in his written statement that opportunity was not given to summon the Forensic Auditor (FA) as witness and to allow the respondent to cross examine the witness; instead Respondent was asked to submit questions to be asked from the FA. The first list of 33 questions to be raised to Forensic Auditor was submitted by the Respondent on 25th January, 2021 followed by second set of 19 questions vide letter dated 2nd July, 2021 which were not responded to by the Forensic Auditor. The Respondent had submitted that the Forensic Auditor be summoned as witness and an opportunity may be given to him to cross-examine the Forensic Auditor, which was earlier not provided, without which the proceedings held by the Committee would be reduced to mere formality.

6. The charges levelled against the Respondent and decisions thereon are contained in the findings dated 11.02.2022 of the Committee arrived under Rule 18(17) of the Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007; and the present Order under Section 21B (3) of the Chartered Accountant Act, 1949 be read along with the said findings dated 11.02.2022.

7. The Committee considered the oral as well as written submissions made by the Respondent, facts of the case and various documents on record with the findings of the earlier Committee holding the Respondent guilty of professional and other misconduct.

8. The Committee in this regard further noted the following:-

8.1 The Hon'ble Supreme Court vide Order dated 24.10.2018 observed that :

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"The Forensic Auditors were heard at extensive length. It was stated by them that it appears from various documents that amount of more than rupees one hundred crore had been diverted to a firm known as Gaurisuta Infrastructures Pvt. Ltd. ,in which Ashish Jain and Vivek Mittal were the Directors. They are stated to be relatives of the statutory auditors. It is also stated that there are various malfunctioning of the statutory auditors and they have totally failed in their duties which statutory auditors are supposed to perform."

8.2 The Hon'ble Supreme Court vide Order dated 23.07.2019 directed the Institute for disciplinary action against the Respondent when its ordered as follows:-

"It has been found in the Forensic Audit Report that there are several recoverable from various companies as well as from individuals, Directors and other incumbents. We direct that as per the findings recorded by the Forensic Auditors, the money be deposited in this Court on a time-bound basis and other needful be done as observed by the Auditors. As we have approved the report, let the concerned companies/ Directors/ individuals take steps in compliance with the observations and findings made by Auditors to refund the amount and or to do needful as suggested within one month."

Resultantly, we order as follows:

We direct the Institute of Chartered Accountants of India to initiate the appropriate disciplinary action against Mr. Anil Mittal, CA for his conduct as reflected in various transactions and the findings recorded in the order and his overall conduct as found on Forensic Audit".

8.3 The gravity of the Respondent's involvement in the entire episode could be felt when the Hon'ble Supreme Court observed as follows:

"4. In the circumstances, we give one last opportunity to the Amrapali Group of Companies, particularly to all the Directors of the company and also those who have filed a reply in the Suo



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Motu Contempt. They have to file their further affidavits in compliance with the aforesaid directions as to what they have done and to make the disclosure as envisaged in various orders." We had also directed that any non-cooperation with the Forensic Auditors shall be viewed seriously. Statements of accounts of banks were also ordered to be issued by the banks. In order dated 5.12.2018 this Court observed that let the Amrapali group of companies and their Directors Mr. Chander Wadhwa, CFO and Mr. Anil Mittal to explain as to why criminal action be not initiated against them on the basis of affidavits, various documents and the statements made in this Court on various dates and why their conduct as projected in the case be not reported to the ICAI to inquire. We directed the production of details of immovable properties as well as the movables etc. This Court also noted that DRT has pointed out that there was non-cooperation and non-compliance on the part of Amrapali group of companies. It was also pointed out to this Court that certain buyers/companies who have booked the flats by making payment of a paltry amount for the purchase of several flats/plots, did not appear to be genuine buyers. We have directed the Forensic Auditors to look into this issue. We also directed all the Directors of companies, their relatives, family members, Mr.Chander Wadhwa, CFO and statutory auditors who were in receipt of money of home buyers, to deposit the same in this Court. The last opportunity was given to do so."

9. The Committee noted that the Hon'ble Supreme Court had observed that if builders were diverting money invested by a person in a particular housing project to complete other projects; it prima facie amounted to criminal breach of trust. The Committee further noted that Rs. 2765 crores out of six projects was diverted/transferred by the Amrapali Group for carrying out work in its other projects. The Forensic Auditors in their report have clearly mentioned that some group Companies were used only for the purpose of money laundering.

9.1 The Committee further noted that the Respondent was part of fraudulent activities as has been found in the Forensic Audit Report which has been accepted and approved by the Hon'ble Supreme Court and he had failed to discharge the duty cast upon him being the statutory

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auditor. Further, the Respondent did not report his interest or disclosed about his relatives of Director and junior employee in some of the Group Companies.

10. As regards the submissions of the Respondent that the opportunity to cross-examine the Forensic Auditors as witness was not provided to him, the Committee noted that in its meeting held on 26th July 2021, the Committee had summoned the Forensic Auditors as its witness; and the witness was present in the hearing on 26.07.2021, however, the Respondent was not available to cross-examine the witness despite its directions to be available for the said hearing. The Respondent sought adjournment with no valid reason and that the information about rejection of his adjournment request was duly communicated to him stating that the Respondent had already been granted adjournment as envisaged under Rule 18(18) of CA Rules, 2007 with the direction that the Respondent be present before the Committee. Hence, the Committee was of the view that sufficient opportunity was given to the Respondent for cross examination of the forensic auditor.

11. The Committee noted the submissions of the Respondent. On perusal of documents on record and submissions of the Respondent, the Committee further noted that the Respondent in his professional capacity being statutory auditor as well as being involved in the scam of Amrapali Group of Companies controlling affairs of many companies. Pursuant to the direction given by the Hon'ble Supreme Court vide its Order dated 23.07.2019, ICAI initiated disciplinary action against the Respondent for his conduct as reflected in various transactions and the findings recorded in the order and his overall conduct as found on Forensic Audit. Some of the observations of the Disciplinary Committee and the Hon'ble Supreme Court are enumerated as under:-

- *for his professional works as Statutory Auditor in respect of thirty four companies of Amrapali Group wherein various lapses were observed which the Respondent failed to report in his audit report. There were several Companies that were indulged in only*



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transferring funds but the Respondent failed to inform about such companies instead claimed them to be strategic Companies.

- *the Registered office of certain Amrapali Group Companies being the premises of the Respondent.*
- *his office boy cum assistant who was working only as an office boy cum office assistant for more than 10 years as well as his brother - Mr. Sushil Mittal and distant relative who shared the same addresses as that of the Respondent - Shri Vivek Mittal, Shri Atul Mittal, Shri Ashish Jain etc. were the directors of many Group companies. Some of the companies had even paid money to the certain entities in which the Respondent was interested.*
- *the Respondent along with CFO of Amrapali Group of Companies were partner in Saffron Consultants*
- *When there are defaults galore, creation of fake and dummy companies in an unbridled manner, it passes comprehension that how the Statutory Auditor has failed to discharge the duty cast upon him and the officials of the Amrapali Group also shared hard earned money of homebuyers in an illegal manner by siphoning it off.*
- *The FEMA rules prohibited the kind of transactions which were entered into with J.P. Morgan. Rule 4 of FEMA has been clearly violated. Master Circular No.8/2010-2011 of July 1, 2010, dealing with external commercial borrowings and trade credits clearly provides that external commercial borrowings are not permitted to be utilised for real estate business under the automatic route.*
- *The transactions of Amrapali Zodiac Developers Pvt. Ltd. with J.P. Morgan were clearly in order to avoid the provisions of the Companies Act. It is apparent that Mr. Anil Mittal, Statutory Auditor, did not report his interest and disclosed about his relatives and junior employee as Director and shareholders.*
- *The forensic auditors have disclosed as to diversion of funds of more than Rs.100 crores to a firm known as Gauri Suta Infrastructures Pvt. Ltd. in which Ashish Jain and Vivek Mittal were the Directors. They are stated to be the relatives of the Statutory Auditors.*
- *The Forensic Auditors' report makes it apparent that Bankers have failed to ensure and oversee that the money was invested in the projects. It was diverted elsewhere as rightly*



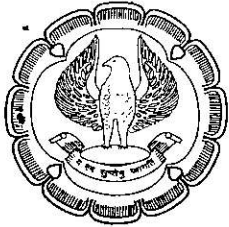
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found by the Forensic Auditors. Thus, no charge can be said to have been created by bank loans on the projects as the money, in fact, it has not been used in the projects as such home buyers cannot be saddled with liability and also the projects. Even what was paid by the home buyers, had not been used in the projects and stands diverted.

12. In view of the above, the Committee viewed that the Respondent had failed to act independently while conducting audit of the Amrapali Group of Companies. He had failed to disclose material facts, and he also failed to report the material misstatement that existed in the financial statements. In the absence of working papers, it is also evident that the Respondent had failed to obtain sufficient audit evidence to express opinion on financial statements., Moreover, the Respondent had connived with the management of Amrapali Group in manipulation of accounts and was controlling many Group Companies, which were founded only for the purpose of transferring funds. Such acts were highly unbecoming of Chartered Accountant and such a person was not fit to be a member of the Institute.

13. The Committee noted that the extent of damage and the turmoil caused to large number of home-buyers in the instant matter had invited public attention; and the role of the auditor was called into question, and presented in a contrasting perspective marring the image of a Chartered Accountant. Public interest cannot be allowed to fall victim to the irresponsible conduct of auditor; and the present context imbues them with magnified significance. To put it tersely, the acts of omission and commission of statutory auditor in discharge of his professional duties also contributed to the damage and complexity of this large magnitude. The acceptance of the findings of Forensic Auditors by the Hon'ble Supreme Court which inter-alia talks about the role of auditor and his failure in discharge of professional duties, is also a resounding endorsement of the culpability of the auditor which makes it enormously high. The Committee opined that failure of the statutory auditor in reporting wrongdoings and mismanagement in the affairs of these entities, of this magnitude and gravity has to be dealt with sternly; and therefore this is a case deserving of severe punishment.

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14. Looking into the above facts and circumstances of the case, the Committee was of the considered view that the Respondent had actively colluded with the management, perpetuated this fraud and the hard-earned money of thousands of homebuyers was diverted to other means, instead of construction of houses in earmarked projects. The Committee viewed that the misconduct on the part of the Respondent has been established within the meaning of Professional and Other Misconduct as defined in Sections 21 and 22 of the Chartered Accountant Act 1949.

15. Accordingly, the Committee was of the view that ends of justice can be met if severe punishment is given to him in commensurate with his professional misconduct.

16. Thus, keeping in view the facts and circumstances of the case as aforesaid, material on record including forensic audit report and Order of Hon'ble Supreme Court of India dated 23rd July, 2019 and submissions of the Respondent and after due deliberations on its findings, the Committee ordered that the name of the Respondent i.e., CA. Anil Mittal (M. No. 088204) be removed from the register of members PERMANENTLY and also imposed a fine of Rs. 5,00,000/- (Rs. Five Lakhs) upon him which shall be paid within a period of 03(Three) Months from the date of receipt of this Order.

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Sd/-

(CA. (DR.) DEBASHIS MITRA)
PRESIDING OFFICER

Sd/-

(SHRI JIWESH NANDAN, IAS (RETD.))
GOVERNMENT NOMINEE

Sd/-

(MS. DAKSHITA DAS, IRAS (RETD.))
GOVERNMENT NOMINEE

Sd/-

(CA. MANGESH P KINARE)
MEMBER

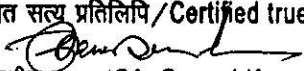
Sd/-

(CA. SRIPRIYA KUMAR)
MEMBER

DATE: 18th October, 2022

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प्रमाणित सत्य प्रतिलिपि / Certified true copy


सीए. सुनील कुमार / CA. Suneel Kumar
सहायक सचिव / Assistant Secretary
अनुशासनात्मक निदेशालय / Disciplinary Directorate
इंस्टीट्यूट ऑफ चार्टर्ड एकाउंटेंट्स ऑफ इंडिया
The Institute of Chartered Accountants of India
आईसीएआई भवन, विष्णु नगर, शाहदरा, दिल्ली-110032
ICAI Bhawan, Vishwas Nagar, Shahdara, Delhi-110032

[PPR/NP/076/18/DD/204/INF/18/DC/1375/2020]

CONFIDENTIAL

DISCIPLINARY COMMITTEE [BENCH – IV (2021-2022)]

[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

Ref. No. PPR/NP/076/18/DD/204/INF/18/DC/1375/2020

In the matter of:

CA. Anil Mittal (M.No. 088204),

M/s. Anil Ajay & Co.,
Chartered Accountants,
Office No. 37-38,
C-Block, DDA Market,
Surajmal Vihar,
Delhi – 110 092

.... Respondent

MEMBERS PRESENT:

CA. Nihar N Jambusaria, Presiding Officer
Ms. Nita Chowdhury, Member (Govt. Nominee)
Shri Arun Kumar, Member (Govt. Nominee)
CA. G.Sekar, Member
CA. Manu Agrawal, Member

DATE OF FINAL HEARING: 26.07.2021 through Video Conferencing

PARTIES PRESENT:

- (i) **CA. Ravi Bhatia: Committee witness**

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, that the

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Respondent was held prima facie guilty of Professional and 'Other' Misconduct falling within the meaning of Items (5), (6), (7) and (8) of Part-I of Second Schedule and Item (2) of Part IV of the First Schedule to the Chartered Accountants Act, 1949, read with Section 22 of the Chartered Accountants, Act, 1949 . The said Items to the Schedule state as under:-

Second Schedule

Part I

"(5) fails to disclose a material fact known to him which is not disclosed in a financial statement, but disclosure of which is necessary in making such financial statement where he is concerned with that financial statement in a professional capacity;

(6) fails to report a material misstatement 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;"

First Schedule

Part IV

"(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"

2. It was noted that the matter pertains to funds of Amrapali Group of Companies reported to be diverted to shell companies as reported in Newspaper Article published in 'Times of India', New Delhi dated 25th October, 2018 under the title '**Amrapali group diverted buyers money to shell firms**' (A4 to A9) containing allegations against **CA. Anil Mittal (M.No. 088204)** of **M/s Anil Ajay & Company, Delhi** (hereinafter referred to as the '**Respondent**').

- 2.1 On receiving the aforesaid newspaper article, Director (Discipline) observed that as per the forensic auditors appointed by the Hon'ble Supreme Court, preliminary investigations revealed that the funds of Amrapali Group of Companies were diverted to at least 20 shell companies. It was further reported that forensic auditors had quoted certain specific instances of siphoning off of funds which came to light during their initial probe. Further, it was observed by the Director (Discipline) that the news report also quoted the remarks of Hon'ble Court as under:

"The bench asked the auditors (Forensic Auditors) to file a status report on the probe done by them so far and also give details with respect to the role of the group's auditors and their involvement in the scam. "It means that auditors

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were also involved in the bungling. This is professional misconduct... These people have done a big fraud. It is a big racket and it has to be unearthed. How to catch the person and send them to jail is the question (A-6)."

Further to above, Director (Discipline) also noted that Hon'ble Court vide its order dated 24.10.2018(A-10 to A-19) had observed as under:

"The Forensic Auditors were heard at extensive length. It was stated by them that it appears from various documents that amount of more than rupees one hundred crore had been diverted to a firm known as Gaurisuta Infrastructures Pvt. Ltd., in which Ashish Jain and Vivek Mittal were the Directors. They are stated to be relatives of the statutory auditors. It is also stated that there are various malfunctioning of the statutory auditors and they have totally failed in their duties which statutory auditors are supposed to perform."

And that the Hon'ble Supreme Court had also expressed its displeasure in its order dated 26.09.2018 (A-70) on the conduct of statutory auditor regarding violation of its direction given to them and had stated as under:

"With respect to the handling over the documents by the statutory auditors as well as by the Amrapali Group of companies we note it regrettably that order passed by this Court has been violated and the documents have not been handed over inspite of clear and categorical direction to handover the documents to forensic auditors within ten days."

2.2 On perusal of various news reports highlighting information about Amrapali Group, Director (Discipline) noted that the Hon'ble Supreme Court had directed for conducting a forensic audit to find diversion of funds to shell companies. Considering the negative impact of such news reports which brought to focus the quality of checks adopted by then management of the alleged group companies and also the role of auditors in such a scenario as projected in public domain at various levels, in the interest of the profession, Director (Discipline) noted that since news reports were based on preliminary examination of the matter by the Apex of the Country, the matter was treated as "information case" in relation to performance of the Respondent as statutory auditor of various Amrapali Group Companies.

2.3 Meantime, Hon'ble Supreme Court in its order dated 23rd July, 2019 in the Writ Petition (Civil) no. 940/2017 in para no. 154(vii) directed the Institute for disciplinary action against the Respondent when it ordered as follows:

"154. Resultantly, we order as follows:

(vii) *We direct the Institute of Chartered Accountants of India to initiate the appropriate disciplinary action against Mr. Anil Mittal, CA for his conduct as reflected*

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in various transactions and the findings recorded in the order and his overall conduct as found on Forensic Audit. Let appropriate proceedings be initiated and concluded as early as possible within 6 months and a report of action taken to be submitted to this Court."

It was noted that in terms of the directions of Hon'ble Supreme Court Order, the Forensic Audit Report of the matter was obtained by the Director (Discipline) and the findings of the Forensic Audit Report were also considered as part of 'Information' treated against the Respondent as communicated to him vide letter dated 04th October, 2019 along with Forensic Audit Report and its annexures thereon.

3. It was noted that the Director (Discipline) had in his prima facie opinion had held the Respondent guilty of various allegations raised in respect of following 32 Amrapali Group companies as well as other entity(ies), incorporated primarily from 2009 onwards barring a few entities wherein the Respondent acted as statutory auditor for the period(s) tabulated as hereunder:

Table I

S.No.	Name of Company	Date of Incorporation	Period when the Respondent was Statutory Auditor of the Company
1	M/s Amrapali Zodiac Developers Private Limited,	18 th December 2009	F.Y-2014-15 to 2016-17
2	M/s. Neelkanth Buildcraft Pvt Ltd,	01 st July 2013	F.Y-2014-15 to 2016-17
3	M/s. Rudraksh Infracity Pvt Ltd	29 th May 2013	F.Y-2014-15 to 2016-17
4	M/s. Mannat Buildcraft Pvt Ltd	02 nd March 2013	F.Y-2014-15 to 2016-17
5	M/s Amrapali Smart City Private Limited (A-491)	26 th March 2010	F.Y- 2009-10 to 2014-15
6	M/s Gaurisuta Infrastructure Private Limited (A-504)	4 th June 2010	F.Y- 2010-11 to 2016-17
7	M/s Amrapali Spring Valley Private Limited (A-520)	16 th September 2010	F.Y- 2010-11 to 2014-15
8	M/s Amrapali Healthcare Private Limited (A-525)	27 th November 2012	F.Y- 2012-13 to 2016-17
9	M/s Amrapali Magadh Developers Private Limited (A-535)	11 th February 2014	F.Y- 2013-14 to 2014-15
10	M/s Amrapali Centurian Park Private Limited (A-537)	10 th September 2010	F.Y- 2010-11 to 2015-16
11	M/s Amrapali Homes (A-557), it was reported to be a Joint Venture of Ultra Home Construction Private Limited (95% share) and Mauria Udyog Limited (5% share)	Joint Venture	F.Y- 2008-09 to 2014-15

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12	M/s Amrapali Mahi Developers Private Limited (A-564)	22 nd December 2011	F.Y- 2011-12 to 2013-14
13	M/s Amrapali Homes Projects Private Limited (A-582)	27 th September 2004	F.Y- 2007-08 to 2014-15
14	M/s Amrapali Leisure Valley Private Limited (A-549)	11 th May 2010	F.Y- 2010-11 to 2015-16
15	M/s Ultra Home Construction Private Limited (UHCPL) (A-585)	07 th April 2003	F.Y- 2007-08 to 2014-15
16	M/s Amrapali Grand (A-591) Partnership firm in which: a) Ultra Home Construction Pvt Ltd. and b) Biharijilspat Udyog Ltd were partners	Partnership firm	F.Y - 2007-08 to 2014-15
17	M/s. Amrapali Eden Park Developers Private Limited (A-597)	12 th February 2009	F.Y - 2008-09 to 2014-15
18	M/s Shalimar Colonisers Private Limited (A-604)	12 th December 2004	F.Y - 2007-08 to 2014-15
19	M/s STUNNING CONSTRUCTION PRIVATE LIMITED(A-611)	8 th July 2010	F.Y - 2014-15
20	M/s AMRAPALI SAPPHIRE DEVELOPERS PRIVATE LIMITED (A-617)	12 th March 2009	F.Y- 2014-15
21	M/s AMRAPALI LEISURE VALLEY DEVELOPERS PRIVATE LIMITED-(A-635)	07 th May 2010	F.Y- 2014-15
22	M/s AMRAPALI DREAM VALLEY PRIVATE LIMITED (A-660)	16 th September 2010	F.Y- 2014-15
23	M/s AMRAPALI HOSPITALITY SERVICES PRIVATE LIMITED (A-766)	22 nd January 2008	F.Y- 2014-15
24	M/s Mums Mega Food Park Pvt. Ltd. (A-777)	05 th January 2012	F.Y- 2014-15
25	M/s Gaurisuta Infrsolution Pvt Ltd. (A-759), the Respondent was the auditor of the Company	09 th June 2010	F.Y- 2014-15
26	M/s MSB Software Technology Pvt Ltd. (A-754)	27 th June 2003	F.Y- 2014-15
27	M/s Amrapali Buddha Developers Pvt Ltd. (A-750)	25 th November 2010	F.Y- 2014-15
28	M/s. Hawthorne Intellact Management Solutions Pvt. Ltd (A-742)	09 th February 2011	F.Y- 2014-15
29	M/s Amrapali Power and Cement Pvt Ltd. (A-738)	08 th April 2013	F.Y- 2014-15
30	M/s Navodaya Properties Pvt Ltd (A-733)	29 th September 1995	F.Y- 2014-15
31	M/s Sangam Colonizers Pvt ltd (A-727)	18 th January 2005	F.Y- 2014-15
32	M/s. Amrapali Infrastructure Pvt. Ltd (A-706)	28 th December 2007	
33	M/s. Hi-Tech City Developers Pvt. Ltd(A-699)	28 th December 2007	

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Apart, from the specific charges alleged against the Respondent, being statutory auditor of the above-mentioned companies, it was also alleged that:

- the Respondent alongwith Mr. Chander Wahdwa, CFO and Mr. Pankaj Mehta, ex-Company Secretary, were partners of Saffron Consultants LLP and that they were controlling the affairs of Amrapali Group of Companies and were involved in taking undue benefits viz fraudulently withdrawing cash, payments in the nature of cheques given to him or his credit card payments which were never recovered, and flats being allotted to him.
- Audit files handed over by the Respondent were grossly deficient and they did not contain the documents which were normally required in the statutory audit files as per guidelines and directions issued by The Institute of Chartered Accountants of India.

In relation to diversion of funds, it was alleged that funds invested to become the consortium partners in various Projects of Amrapali Group entities were by the 27 companies from the Amrapali group of companies that were just the face created to comply the conditions of partners. In fact, the directors and/or the consortium partners had not invested any substantial amount and if any was invested that was withdrawn within a very short period. The share capital of such companies (A-815-823) was contributed by either the partners of Saffron Consultants LLP – Mr. Pankaj Mehta, Mr. Chandra Wadhwa and in majority cases by Mr. Chandan Kumar and Mr. Vivek Mittal who were the office boy and nephew of the Statutory auditor (i.e., Respondent), respectively. Thus, the Respondent managed these companies.

Brief facts of the Proceedings:

4. During hearing held on 26th July, 2021, the Committee noted that the Respondent vide his e-mail dated 25/07/2021 sought adjournment stating that he would not be able to attend hearing. It was noted that the competent authority had considered the request as received. However, on account of the fact that the matter was being proceeded on the directions of Supreme Court and that in the extant request there was no valid reason placed before it to seek adjournment alongwith the fact that the Respondent had already been given adjournment as envisaged under Rule 18(18) of CA Rules, 2007 explicitly stating that no further adjournment would be given, rejected the said adjournment request and directed vide email dated 25th July, 2021 (on same day) that the Respondent be present before the Committee at the scheduled hearing to defend his matter.
5. It was noted that in extant hearing neither the Respondent nor his authorised representative or Counsel appeared before it. However, as per its directions during the last hearing, the forensic auditors who were appointed by the Supreme Court in the matter of diversion of homebuyers' fund by Amrapali group and summoned as the

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Committee's Witnesses were present for examination before it through video-conferencing. Thereafter, the Witness was put on oath. The Witness was asked to make his submissions based on arguments and questions raised by the Respondent on the findings of the Witness being forensic auditors appointed by the Supreme Court in the matter of diversion of homebuyers' fund by Amrapali group. The Committee noted the submissions of the Witness and also noted that the Respondent was not available to cross examine the Witness despite obtaining its directions to be available for the said hearing. Accordingly, the Committee decided to discharge the Witness.

6. The Committee, further, noted that in view of the principle of natural justice, the Respondent had already been given sufficient opportunities, as per CA Rules, 2007, to make his submissions before it on 12.10.2020, 09.11.2020, 29.12.2020, 14.01.2021, 21.01.2021 as well as 25.06.2021 as discussed below:

- (i) On 12th October 2020, the first hearing scheduled in the matter, when the Respondent was then lodged in jail at Mohanlal Ganj, Lucknow, the coordination was made with jail authorities for the Respondent to attend the hearing through video conferencing. However, as on the day of hearing, due to network breakdown the Respondent failed to attend the said hearing.
- (ii) On 09th November, 2020, through an arrangement of video conferencing made by the Office on obtaining/complying necessary permissions/legal compliances through the Office of Inspector General (Jail) Uttar Pradesh, the Respondent appeared before the Committee. Being first hearing, the Respondent was put on oath and the Respondent was asked, if he pleaded guilty. The Respondent pleaded not guilty and opted to defend the charges alleged against him. ***However, he submitted that that he was tested Covid positive then recently and therefore pleaded for some time to prepare for submissions/defense*** as he informed that the copy of Prima Facie Opinion was delivered to him in Jail premises only on 05th November, 2020. He also appraised the Committee about his bail application before the Hon'ble Apex Court which had been accepted and so he expressed wish to appear in person before the Committee at New Delhi office of the Institute. In view of the principle of natural justice, the Committee accepted said plea of the

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Respondent and directed him that at the time of next hearing he should be well-prepared for his submissions and that ***no adjournment would be granted to him*** since the Committee wished to conclude on the matter within a reasonable time frame and was ready to hold special hearing for 3-4 days at a stretch, ***hence, no plea of any relaxation would be entertained.***

- (iii) On 29th December 2020, next hearing in the matter was held wherein the Respondent along-with his Counsel appeared before the Committee through video conferencing. The Committee asked the Counsel for the Respondent to make submissions on the matter. The Counsel for the Respondent made his oral submissions in the matter on which the Committee directed the Counsel to file the same in writing not later than 04/01/2021. The Committee noted that the Counsel submitted the same vide mail/letter dated 10/01/2021.
- (iv) On 14th January 2021, at the next hearing the Respondent along-with Counsel appeared before the Committee through video conferencing. The Committee considered the written submissions made by the Respondent vide his e-mail dated 10th Jan, 2021 and directed the Respondent and Counsel to appear in person before it on next date 21/01/2021, so that the matter be concluded.
- (v) On 21st January 2021, the Committee noted that despite the directions to the Respondent to appear before it in person, CA. Surbhi Mittal, Authorized Representative appeared before it along with his Counsel. In any case, the Committee directed the Counsel to make submission charge-wise. The Counsel for the Respondent, however, instead of providing defense on the charges alleged by substantiating his arguments with relevant evidences, raised several queries questioning the findings of Forensic Report. The Committee directed the Counsel to provide all objections/queries/questions related to Forensic report in writing till 25th Jan, 2021 and let the Forensic Auditor address the same. Accordingly, the forensic auditors were requested vide letter dated 27th January, 2021 to offer their comments, however, forensic auditors vide letter dated 13th February, 2021 refused to comment upon the questions/queries raised by the Counsel for the Respondent stating that the

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forensic report being adopted by the Apex Court could be cross examined by the Respondent with the explicit permission for the same from the Hon'ble Supreme Court. Considering the circumstances then prevailing, the Committee decided to summon the Forensic Auditors as Committee's witness.

7. The Committee, thus, noted that sufficient opportunities had been provided to the Respondent to make his submissions before it including extant hearing when the Respondent chose to remain absent without any valid reason and being not represented even through any authorized representative which indicated the casual behavior of the Respondent. The Committee took a serious note of the approach adopted by the Respondent and in view of the facts that the extant hearing was being held on the directions of the Hon'ble Supreme Court to proceed in time bound manner, and that despite the Respondent being explicitly directed to appear before it in extant hearing, the Respondent defied the directions of the Committee, decided to proceed further in the matter on the basis of documents/ information as available on record.

Based on the documents available on record and after considering all the submissions made by the Counsel for the Respondent as well as witness before it, the Committee concluded hearing in the matter.

Common charges and Findings are as under:-

8. At the outset, the Committee noted that there were certain charges that were common across several companies and there were other charges that were specific to the entity. In order to avoid repetition in findings, the common charges have been discussed at one place and thereafter, the specific charges have been discussed.

The common charges were :

- i. Registered office of the company being premises of Mr. Anil Mittal i.e. the Respondent. It is noted that the said charge had been raised in respect of
 1. M/s Amrapali Zodiac Developers Private Limited,
 2. M/s. Neelkanth Buildcraft Pvt Ltd, (C-38)
 3. M/s. Rudraksh Infracity Pvt Ltd (C-38)
 4. M/s. Mannat Buildcraft Pvt Ltd. (A-461) (C-38)
 5. M/s Amrapali Smart City Private Limited (A-491 read with A-793)

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6. M/s Gaurisuta Infrastructure Private Limited (C-38)
7. M/s Amrapali Magadh Developers Private Limited (A-535)
8. M/s Amrapali Mahi Developers Private Limited (A-564 read with A-793)
9. M/s Stunning Construction Private Limited
10. M/S Amrapali Leisure Valley Developers Private Limited(A-635 read with A-793)
11. M/s Amrapali Dream Valley Private Limited(A-660 read with A-793)
12. M/s MSB Software Technology Pvt Ltd. (A-754 read with A-793)
13. M/s Amrapali Buddha Developers Pvt Ltd. (A-750 read with A-793)
14. M/s Hawthorne Intellact Management Solutions Pvt Ltd (A-742 read with A-793)
15. M/s Amrapali Power and Cement Pvt Ltd. (A-738 read with A-793)
16. M/s Navodaya Properties Pvt Ltd (A-733 read with A-793)
17. M/s Amrapali Infrastructure Pvt. Ltd. (A-706 read with A-793)
18. M/s Hi-Tech City Developers Pvt Ltd. (A-699 read with A-793)

It was noted that as per forensic report address of the registered office of all the aforesaid entities was stated to be "Registered Office- 307, 3rd Floor, Nipun Towers, Karkardooma Community Centre Delhi-110092" whereas evidences available on record were insufficient to establish to be address or premises of the Respondent. As per the Respondent, the said address referred by him as registered office of Amrapali Zodiac Developers P ltd was not under the ownership of the Respondent. It was owned by Sh. Anil Kumar Sharma , the Chairman of Amrapali group.

In any case, the Disciplinary Committee reviewed all documents available on record and found from Form 23B of following entities:

1. M/s. Neelkanth Buildcraft Pvt Ltd,
2. M/s. Rudraksh Infracity Pvt Ltd
3. M/s. Mannat Buildcraft Pvt Ltd.
4. M/s Gaurisuta Infrastructure Private Limited

to be stated as "Office No. 38, C-Block, DDA Market, Surajmal Vihar, Delhi – 110 092".

It was noted that the Respondent had in all his audit reports issued for various entities stated address of Respondent firm as "Office No. 37, C-Block, DDA Market, Surajmal Vihar, Delhi – 110 092". Further, on review of Institute record in context of Respondent being its member, it was noted that an intimation had been received by

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the Institute as per which a letter dated 31st March 2018 was issued to him about change in his address as per which both "Office No. 37-38 C-Block, DDA Market, Surajmal Vihar, Delhi – 110 092 was stated to be Respondent's address." It was further noted that the said entities were incorporated as follows:

Table II

Name of entities	Date of Incorporation	Period when the Respondent was Statutory Auditor of the Company
M/s. Neelkanth Buildcraft Pvt Ltd,	01 st July 2013	F.Y-2014-15 to 2016-17
M/s. Rudraksh Infracity Pvt Ltd	29 th May 2013	F.Y-2014-15 to 2016-17
M/s. Mannat Buildcraft Pvt Ltd	02 nd March 2013	F.Y-2014-15 to 2016-17
M/s Gaurisuta Infrastructure Private Limited (A-504)	4 th June 2010	F.Y- 2010-11 to 2016-17

It was noted that Section 146 of Companies Act, 1956, then applicable, at the time of incorporation of the respective company required that "a company, as from the day on which it begins to carry on business, or as from the thirtieth day after the date of its incorporation, whichever is earlier, shall have a registered office capable of receiving and acknowledging all communications and notices as may be addressed to it."

It is viewed that in case, if the Group Companies, alleged to be used for siphoning of money had registered office at the premises of its auditor who had been its auditor subsequent to its incorporation till recent period of investigation clearly indicated that there was close relationship between the Respondent and the Group Companies which often raise the doubt if the Respondent was able to exercise an independent role while auditing the financials of the other group entities of which it was auditor and also point on the fact that the Respondent was closely associated with the Group which was involved in siphoning funds across Group Companies.

It is noted that the Respondent has only given his submission in respect of Registered Office of M/s. Amrapali Zodiac Developers Private Limited stating that its Registered Office- 307, 3rd Floor, Nipun Towers, Karkardooma Community Centre Delhi-110092 was held in the name of Chairman of the Group. In view of the evidence available on record, it is clear that Registered Office of companies M/s. Neelkanth Buildcraft Pvt Ltd, M/s. Rudraksh Infracity Pvt Ltd, M/s. Mannat Buildcraft Pvt Ltd., M/s Gaurisuta

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Infrastructure Private Limited (A-504), was addressed at the premises of the Respondent Firm which signify that the Respondent had a complete control on the said entities of the Group Companies and also held business relationship with them. It is noted that Section 141 of the Companies Act 2013 (applicable on FY 2014-15) lays down provisions for eligibility, qualifications and disqualifications of being auditor of the Company which inter alia states as below:

The following persons shall not be eligible for appointment as an auditor of a company, namely:—

(a) ...

(b)...

(c) *a person who is a partner, or who is in the employment, of an officer or employee of the company;*

(d)...

(e) *a person or a firm who, whether directly or indirectly, has business relationship with the company, or its subsidiary, or its holding or associate company or subsidiary of such holding company or associate company of such nature as may be prescribed;*

It is noted that the Companies being registered at Respondent's premises indicate that the Respondent alongwith being auditor of the aforesaid companies also held indirect business relationship with them by allowing them to use his premises and accordingly held complete control on them and as such he was disqualified from being auditor under section 141(3)(e) of the Companies Act 2013 and existence of such relationships clearly shows threat to his independence. Accordingly, the Respondent was held Guilty of professional misconduct falling within the meaning of Item I of Part II, Second Schedule to the Chartered Accountants Act, 1949.

- ii. It was noted that there were two fold allegations against the Respondent, who was their statutory auditor – in respect of entities listed in Table III & Table IV. It was alleged that entities listed in Table III were not carrying on any business activity or that there being no substance in the nature of transactions carried on by them except routing the funds of the group companies and that in respect of one such entity i.e. **M/s Amrapali Eden Park Developers Private Limited** as well as certain other entities, it is alleged that the audit fees of the Respondent were long outstanding which questions his independent role in the audit of Group entities:

Table III

No Business Activity or No substance in transactions undertaken

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Name of entities	Period when the Respondent was Statutory Auditor of the Company
M/s Amrapali Spring Valley Private Limited	F.Y-2010-11 to 2014-15
M/s Amrapali Magadh Developers Private Limited	F.Y-2013-14 to 2014-15
M/s Amrapali Eden Park Developers Private Limited (A-597)	F.Y-2008-09 to 2014-15
M/s MSB Software Technology Pvt Ltd. (A-754) except generating rental income	F.Y. 2014-15

Table IV

Outstanding audit fees since 2013:

Name of entities	Period when the Respondent was Statutory Auditor of the Company
M/s Amrapali Mahi Developers Private Limited (A-564)	F.Y-2011-12 to 2013-14
M/s Amrapali Grand	F.Y-2007-08 to 2014-15
M/s Amrapali Eden Park Developers Private Limited (A-597)	F.Y-2008-09 to 2014-15

The Committee noted that the Respondent had submitted that certain companies in Amrapali Group were strategic and thus were involved in funds management rather than other real estate related activities. M/s. Amrapali Spring Valley City P Ltd came in that category. The Respondent did not consider the same as any kind of adverse point that merited audit qualification. In fact, the Respondent failed to understand as to why the said entities were called shell companies. With respect of M/s Amrapali Magadh Developers Private Limited, the Respondent argued when the facts like the company had not carried its principal business activities or

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that it had no bank account were apparent in the financial statements, then as to how, his obligation to report had arisen.

With respect to pending audit fees in M/s Amrapali Mahi Developers Private Limited, the Respondent submitted that arrear in audit fees was a fact which did not exceed the prescribed limit leading to disqualification of auditors. Therefore, the allegation made was irrelevant. However, in respect of M/s. Amrapali Grand & M/s Amrapali Eden Park Developers Private Limited, he submitted that since there were heavy dues of fees payable the Respondent discontinued as auditors in 2014-15. Thus, independence of auditors was not compromised because of outstanding fees and that unintended crossing of Code of Ethics be viewed with leniency.

At the outset, the Committee noted that Sec 455 of the Companies Act, 2013, defines 'inactive company' as a company which has not been carrying on any business or operation, or has not made any significant accounting transaction during the last two financial years, or has not filed financial statements and annual returns during the last two financial years. The Companies Act, 2013 requires such companies to be declared as dormant companies and empowers the registrar of companies to remove their name from the register of companies if it is not carrying on any business or operation for a period of 2(two) immediately preceding financial years and has not made an application for obtaining the status of a dormant company. Incidentally, it was also noted that the Organization for Economic Cooperation and Development (OECD) defines a **Shell Company as a company which is formally registered but which does not conduct any operation other than in a pass through capacity.**

It was viewed that if the enterprises were not carrying any business except transferring funds and the Respondent was long associated with them being statutory auditor then he had sufficient background to understand the nature of the said entities. On the introduction of aforesaid requirements of Companies Act, 2013, it had become more important for the Respondent to decide if unqualified audit report be reported on the financial statements of FY 2014-15 when neither the company was involved into any business nor it had applied for obtaining the status of dormant company. It was noted that the Respondent viewed such companies to be strategic companies of the Group. It is important to state here that in case if any company is established to fund the projects of the group companies, it should be established as non-banking financial entity rather than

being dormant company because in that case other reporting as envisaged by RBI are applicable on such nature of entities.

It was noted that SA 250, "Consideration of Laws and Regulations in an Audit of Financial Statements", requires an auditor to assess such prevailing circumstances for the purpose of reporting in audit report when it states as under:

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

14. The auditor shall perform the following audit procedures to help identify instances of non-compliance with other laws and regulations that may have a material effect on the financial statements: (a) Inquiring of management and, where appropriate, those charged with governance, as to whether the entity is in compliance with such laws and regulations; and (b) Inspecting correspondence, if any, with the relevant licensing or regulatory authorities. (Ref: Para. A9-A10)

24. If the auditor suspects that management or those charged with governance are involved in non-compliance, the auditor shall communicate the matter to the next higher level of authority at the entity, if it exists, such as an audit committee or supervisory board. Where no higher authority exists, or if the auditor believes that the communication may not be acted upon or is unsure as to the person to whom to report, the auditor shall consider the need to obtain legal advice.

26. If the auditor is precluded by management or those charged with governance from obtaining sufficient appropriate audit evidence to evaluate whether non-compliance that may be material to the financial statements has, or is likely to have, occurred, the auditor shall express a qualified opinion or disclaim an opinion on the financial statements on the basis of a limitation on the scope of the audit in accordance with SA 705. 27. If the auditor is unable to determine whether non-compliance has occurred because of limitations imposed by the circumstances rather than by management or those charged with governance, the auditor shall evaluate the effect on the auditor's opinion in accordance with SA 705.



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Documentation

29. The auditor shall document identified or suspected non-compliance with laws and regulations and the results of discussion with management and, where applicable, those charged with governance and other parties outside the entity.⁹ (Ref: Para. A21)

However, in extant case, the Respondent neither seemed to have understood the gravity of the problem when he raised question on legal provisions applicable on such entities. Moreover, he perceived them as strategic company which was against the provisions of then applicable laws. Moreover, if the Respondent continued to carry the audit of the Group companies when the audit fees were remaining paid for certain previous period(s) raises doubt on the nature of interest held by the Respondent in the Companies.

It was further noted that in para 290.195 of Code of Ethics- 2009, Fees overdue should be considered as one of the self interest threat. It states that

A self-interest threat may be created if fees due from an assurance client for professional services remain unpaid for a long time, especially if a significant part is not paid before the issue of the assurance report for the following year. Generally, the payment of such fees should be required before the report is issued. The following safeguards may be applicable:

- Discussing the level of outstanding fees with the audit committee, or others charged with governance.
- Involving an additional professional accountant who did not take part in the assurance engagement to provide advice or review the work performed.

The firm should also consider whether the overdue fees might be regarded as being equivalent to a loan to the client and whether, because of the significance of the overdue fees, it is appropriate for the firm to be re-appointed.

Since the Respondent had not received fees since long period it had become a loan to the company and accordingly, he should have withdrawn himself from being auditor of a company. The fact that the Respondent continued to render service despite the concern/ auditee being loanee to him for his audit fees create doubt on degree of independence exercised by him while conducting audit. Accordingly, the Respondent is held prima facie guilty of professional misconduct.

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On considering the facts, that the entity was more involved in advancing funds to third parties (Details of diversion of funds to various parties ; A-597), that the Respondent was not bothered to receive his audit fees since 2103 from many entities in the Group when he was working as auditor in many entities as late as 2017 and that many of them were having their registered office at the Respondent's premises clearly shows that the Respondent was not independent while being auditor of such Group entities and therefore he was consistently failing to report on doubtful transactions taking place therein. Accordingly, the Respondent was held Guilty of professional misconduct falling within the meaning of Item I of Part II, Second Schedule to the Chartered Accountants Act, 1949 and Item (2) of Part IV of the First Schedule to the Chartered Accountants Act, 1949, read with Section 22 of the said Act

iii. Differences in Audited financials and tally data

S. No.	Name of Entity	In context of
1.	M/s Amrapali Smart City Private Limited	Inventories (A-498)
2.	M/s Amrapali Centurian Park Private Limited (A-537)	Difference in Opening balance of Rs.372.95 Cr in the tally data (A-545 to A-546)
3.	M/s Mums Mega Food Park Pvt. Ltd.	Difference of Rs. 1.58 cr in loss reported in tally data vs a vs audited financial statement, thus, Understatement of loss Capitalisation of Rs.1.58 Cr to Building under construction (A-787)
4.	M/s Navodaya Properties Pvt Ltd (A-733)	Share application money (A-735-736) and Share capital (A-736-737)
5.	M/s Sangam Colonizers Pvt Ltd (A-727)	Cash in hand and expenses payable (A-731)

- a. With respect to differences in value of inventories, in respect of M/s Amrapali Smart City Private Limited, the Respondent submitted that the reflection of inventory value of Rs 5.73 crores in accounting software Tally as at 31-3-2015, despite that it was written off in 2012-13, it was a clear case of forensic auditor relying upon wrong data. Financial statements duly matched with accounts and

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attested by the company management were used by the Respondent for audit. If the forensic auditor had not been given proper data, by the company management, the blame was on them.

- b. With respect to difference in opening balances, in respect of M/s. Amrapali Centurian Park Private Limited, the Respondent submitted that the Books of account that were provided to him were duly matched with the Balance sheet both for opening balances and closing balances.
- c. With respect to understatement of loss through capitalisation of loss to building under construction, the Respondent stated that there is no merit in the charge that audited accounts of **2013-14** did not reconcile with the books of accounts. The Respondent had ensured during audit of **2013-14** that the accounts and final accounts were duly reconciled. The forensic auditor seemed to have not been able to obtain completed accounts.
- d. With respect to difference arising in case of M/s. Navodaya Properties for in 2010-11, the amount shown as Share Application money was shown as inter-corporate deposits in 2013-14, with no shares allotted, the Respondent submitted that the records that were provided to him had the share application accounting properly done and that he was not answerable to the point as to why the shares were not allotted.
- e. With respect to differences in Audited Financial Statements vs. tally data in respect of Cash and expenses payable, in case of M/s. Sangam Colonizers Pvt Ltd, the Respondent remained silent.

It was noted that observations made above emanates from differences observed by Forensic Auditors in Audited Financial Statements figures vs a vs tally data. It was noted that the Respondent has made submissions on the lines that as to when he had conducted audit all the books of accounts were the same as reflected in financial statements and that forensic auditors be examined on the observations made by them. The Committee noted that opportunity was given to the Respondent to examine the forensic auditors, however, he opted not to avail the said opportunity.

It was observed that extant nature of allegations raise the question as to how the financials were being verified by the Respondent and as to how he had reported that such financials were in agreement with the books of accounts of the Company because in extant case such books were being maintained in Tally. The Committee noted that the Respondent had failed to provide any specific submissions about reported differences in tally data and financial statements. With respect to working papers, the Respondent submitted that the

Respondent, being auditor for a various entities of Amrapali Group, had retained one room as its camp office, within the premises of Amrapali office. He contended that a large number of records that were part of past and current audit working papers were in that office. When the said Office premises were locked up by the police, by reaching directly from the Court after getting its orders on 9th Oct 2018, had the unintended effect on account of which they were unable to retrieve their audit working files and documents from the camp office within the premises of Amrapali office. It was noted that SQC-1, emphasises on the necessity to maintain independence:

Independence

18. The firm should establish policies and procedures designed to provide it with reasonable assurance that the firm, its personnel and, where applicable, others subject to independence requirements (including experts contracted by the firm and network firm personnel), maintain independence where required by the Code. Such policies and procedures should enable the firm to:

(a) Communicate its independence requirements to its personnel and, where applicable, to others subject to them; and

(b) Identify and evaluate circumstances and relationships that create threats to independence, and to take appropriate action to eliminate those threats or reduce them to an acceptable level by applying safeguards, or, if considered appropriate, to withdraw from the engagement.

21. Comprehensive guidance on threats to independence and safeguards, including application to specific situations are contained in the Code.

It was viewed that when the Respondent had decided to keep its audit documentation in space provided by its client, then effectively the Respondent had lost its ownership on audit documentation to its auditee client i.e. Amrapali Group. As a result when default was caused on account of management action, as being argued by the Respondent, he had already lost his control therefore unable to timely obtain its copies. In any case, it was further viewed that even if his audit working papers were confiscated by police on account of Supreme Court Order, firstly the Respondent had a right to obtain its copies and finally it was noted that such documentation obtained were handed over to

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independent forensic auditors who find them insufficient at pointed out alleged differences. To conclude, the Respondent had expressed his inability to defend himself based on working papers but such limitation also signify the degree of close relationship that exist between the Respondent and his audit clientele i.e. Amrapali Group of Companies.

- iv. No statutory Records were maintained and/ or Non-compliance of statutory obligations by the following entities viz Non-maintenance of records like Fixed Assets Register, Register of Directors and shareholders, Register of related party contracts, Minute book of Director and Shareholders, Charges register in respect of loans taken from Banks or Non-filing annual returns, TDS payments, Service tax

- M/s Stunning Construction Private Limited
- M/s Amrapali Leisure Valley Developers Private Limited-(A-643)
- M/s Amrapali Dream Valley Private Limited (A-660)
- M/s Amrapali Hospitality Services Private Limited (A-766)
- M/s Mums Mega Food Park Pvt. Ltd. (A-788)
- M/s MSB Software Technology Pvt Ltd. (A-754)
- M/s Hawthorne Intellact Management Solutions Pvt Ltd (A-746)
- M/s Navodaya Properties Pvt Ltd (A-733)
- M/s Sangam Colonizers Pvt Ltd (A-746)
- M/s Amrapali Infrastructure Pvt. Ltd. (A-725)

Supreme Court Observation

In Paragraph 60 on Pg 99-100 of Order dated 23rd July, 2019

11. Non compliance of statutory obligations

- (i) *The group companies have not filed annual returns and Audited Financial Statements after 31st March, 2015. The Registrar of Companies has already disqualified the Directors namely Mr. Anil Kumar Sharma, Mr. Amresh Kumar, Mr. Shiv Priya, Mr. Ajay Kumar 100 and Mr. Suvash Chandra Kumar for a period of 5 years from 1/11/2017 to 31/10/2022 u/s 164(2) of The Companies Act, 2013.*
- (ii) *The company has not been regular in payment of TDS and Service tax and has also not filled relevant returns of TDS/Service tax after 31st March, 2015. There is also no follow up available from the Concerned departments. Latest information regarding status of default in respect of TDS/ Service tax is not*

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made available to us. There may be huge demands outstanding against the company due to non-payment and non-filing of TDS/Service tax returns.

- (iii) No Statutory records have been maintained by the Amrapali group companies and produced before us relating to the following: i. Register of Directors and shareholders ii. Register of related party contracts iii. Minute book of Director and Shareholders iv. Fixed Assets Register v. Charges register in respect of loans taken from Banks and others*
- (iv) Transfer entries are recorded in Inter Corporate Deposit accounts by transferring the amount from one Amrapali group company to another Amrapali group company in contravention of section 269SS/269T of The Income Tax Act, 1961.*
- (v) Depreciation has not been provided on the building in contravention of the provisions of the Companies Act, 1956, now Companies Act, 2013 in Navodaya Properties Private Limited.*

It is highly surprising that in spite of such glaring discrepancies regarding non-Compliance of statutory compliances, the Statutory Auditors have not pointed out any such discrepancies in their Statutory Audit Reports.

Submissions of the Respondent

It is noted that regarding non-compliance of various statutory obligations the Respondent has submitted that reporting of non-compliance of Section 92 and 170 of the companies Act is not consistent with the requirements of SA 250. . Requirements in SA 250 are designed to assist the auditor in identifying material misstatement of the financial statements due to non-compliance with laws and regulations. The said sections have no bearing on the financial statement, from the point of material misstatement. Further as per AS 250, the auditor is not responsible for preventing non-compliance and cannot be expected to detect non-compliance with all laws and regulations.

In respect of non-maintenance of statutory records by the Company, it was noted that

- **Section 170 of Companies Act, 2013 & Rule 17** requires to maintain the Register of Directors & KMP and their Shareholding describing the Details of Directors such as Name, Address, PAN etc. and their shareholding in the Company itself, its Associate Companies, Subsidiary Companies etc.



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- Further as per section 118 of Companies Act, 2013, every company is required to keep Minutes of all Meetings.
- Further, it is noted that as per section 92 of the Companies Act, 2013, every company is required to prepare the Annual Return in Form No. MGT-7 and file with the Registrar within 60 days from the date on which Annual General Meeting (AGM) is actually held or from the last day on which AGM should have been held.
- As per Sec 189(1) of the Companies Act, 2013, every company is required to keep one or more registers giving separately the particulars of all contracts or arrangements in respect of related party transactions or wherein directors are interested, and after entering the particulars, such register or registers is required to be placed before the next meeting of the Board and signed by all the directors present at the meeting.
- As per Sec 85(1) of the Companies Act, 2013, every company is required to keep at its registered office a register of charges in such form and in such manner as may be prescribed, which shall include therein all charges and floating charges affecting any property or assets of the company or any of its undertakings, indicating in each case such particulars as may be prescribed

It is noted that the Respondent has taken defense with respect to non-filing of returns or non-maintenance of Directors or Shareholders Register stating that non-maintenance of such records had no impact of material misstatement on financial statements of the entities and hence SA 250 is not applicable in the given cases. However, it was viewed that non-maintenance of essential records like Shareholders Register, Directors Register, Minutes register, Fixed assets register, Charge Register have larger impact on various figures and facts stated in the financial statements. If the Company was not maintaining statutory records including register of contracts, minutes etc., it signifies blatant refusal to comply the laws under which the entity prevails and also question the basis on which the financials were being verified. The non-compliance of maintaining statutory records also raises question as to how he was convinced to have obtained all the information and explanation as required under sec 143(1) & (3) of the Companies Act, 2013. Non maintenance of statutory records leading to non-verification of important facts in financial statements had indeed imposed duty on the Respondent to report the same both in Audit Report as well as as per requirements of SA 250, Consideration of Law and Regulations in an Audit of Financial Statements but the Respondent has failed

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to report the same. Further, it was noted that under CARO requirement an auditor was required to report on contracts, loans and advances in which directors are interested as well as if the statutory payments like that of income tax, service tax were being regularly paid, if not then on their arrears.

However, in respect of said entities, it was noted that if no such registers were being maintained or statutory payments were not being made, the Respondent had failed to report the said facts in respect of any of the said entities. It was noted that the Respondent has not offered any explanation / defence regarding above irregularities. Accordingly, the Respondent is held prima facie guilty of 'Professional and Misconduct' falling within the meaning of Items (5), (6), (7) and (8) of Part I of Second Schedule to the Chartered Accountants Act, 1949.

- v. The Respondent had conducted Audit of the entities wherein Chandan Kumar and Vivek Mittal were either major shareholders or directors though they were reported to be peon and nephew of the Respondent respectively. The details of entities and facts thereof in respect of said allegation are tabulated as under:

<u>S. No.</u>	<u>Name of the Entity (Source of Information)</u>	<u>Name of the Person holding Shares</u>	<u>Date of Transaction</u>	<u>% of Shares held</u>	<u>Relation with Respondent</u>	<u>Remarks</u>
1.	M/s Gaurisuta Infrastructure Private Limited (As per Form MGT-9 of FY 2014-15)	Chandan Kumar	31.03.2011	50%	Office Boy	Signed the FSs 31 st March 2011 & 2012
		Vivek Mittal	31.03.2011	50%	Nephew	Signed the FSs 31 st March 2015 & 2016
2.	M/s. Neelkanth Buildcraft Pvt Ltd	Chandan Kumar	-	50%	Office Boy	Both of them signed the FSs from 31 st March 2014 to 31 st March 2016 Signed the FSs 31 st
		Vivek Mittal	-	50%	Nephew	

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						March 2015 & 2016
3.	Stunning Construction Private Limited	Chandan Kumar	-	-	Office Boy	He was appointed as director from 30-Jun-11 to 21-May-13
4.	Gaurisuta Infrsolution Private Limited	Chandan Kumar	-	-	Office Boy	He was appointed as director from 06-Aug-10 to 08-Jan-15
5.	Kapila Buildhome Private Limited	Chandan Kumar	-	-	Office Boy	He was appointed as director from 06-Aug-10 to 29-May-13
6.	Mums Mega Food Park Private Limited	Chandan Kumar	-	-	Office Boy	He was appointed as director from 05-Jan-12 to 18-Dec-13
7.	Rudraksh Infracity Private Limited	Chandan Kumar	-	50%	Office Boy	He was appointed as director from 01-Oct-13 to 12-Mar-17.
		Atul Mittal	-	50%	Relative	He was appointed as director from 09-Oct-13 to 12-Mar-17.
		The Company was incorporated on 29th May, 2013 by Rajender Singh and Sarla Devi who resigned on 4th October, 2013. Shri Chandan Kumar, an employee of CA Anil Mittal, Statutory Auditor and Shri Atul Mittal, relative of CA Anil Mittal were inducted in the board. The basic purpose of this Company was only for money laundering and was incorporated to receive Funds from MannatBuildcraft Private Limited which Company was incorporated by CFO Chander Wadhwa through his close associates.				

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Transactions held with the following entities which were stated to be controlled by the Respondent

<u>S. No</u>	<u>Name of the Entity Wherein Respondent was Statutory Auditor (i)</u>	<u>Name of the Entity with which transaction was held (ii)</u>	<u>Name of the other Person (s) involved in (ii)</u>	<u>Nature of Transaction</u>	<u>Relation with Respondent</u>	<u>Remarks</u>
1.	Amrapali Centurian Park Private Limited	Chandan Homes Private Limited	Mr. Sushil Mittal Mr. Chandan Kumar	The company had received Inter corporate deposits from Chandan Homes Private Limited amounting to Rs. 50 lakhs 31.03.2011	Brother Office Boy	They were the Directors of Chandan Homes Private Limited and its Registered address was the address of the Respondent firm
2.	Amrapali Leisure Valley Developers Private Limited	Chandan Homes Private Limited Mittal Homes Private Limited Surbhi Build Home Private Limited	Mr. Sushil Mittal Mr. Chandan Kumar	A sum of Rs. 40 lakhs, Rs. 50 lakhs and Rs. 50 lakhs was advanced to M/s Chandan Homes Private Limited, Mittal Homes Private Limited and Surbhi Build Home Private Limited respectively on 20/11/2010 which remain unadjusted/unrecovered up to 31/03/2018	Brother Office Boy	They were the Directors of all the three entities

Apart from above there were 27 companies who had invested money obtained from Amrapali Group Companies to become the consortium partners. These 27 companies were just the face created to comply the conditions of partners and also keeping in mind to demerge a part of the plot in future to the consortium partners. The funds contributed by these 27 companies were originated and routed from the Amrapali group companies. Out of these 27 Companies, in many companies

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Chandan Kumar and/or Vivek Mittal were major shareholders and thus alleged to be controlled by the Respondent as discussed below:-

S.No.	Company	Amount of Share Capital	Sundry Creditors	Amount	Cash & Bank	Investment	Other Asset
1.	Adhunik Build tech		Amrapali Saphire Developer Pvt Ltd	10,00,000	30,29,833		
	Amit Wadhwa	50,000	Ultra Home Construction Pvt Ltd	11,50,000			
	Chandan Kumar	50,000					
2.	Aksh Real Estates Pvt Ltd		Shahi Infrastructure Private Limited	82,00,000	9,62,471	Shares of Amrapali Centurian Park Private Limited Rs.82,00,000	
	Chandan Kumar	50,000	Demonitisation Received in Cash	8,90,000			
	Vivek Mittal	50,000					
3.	Aptara Infrastructure Pvt Ltd		Amrapali Dream Valley Private Limited	10,00,000			
	Pankaj Mehta	75,000					
	Vivek Mittal	25,000					
4.	Bhavya Housing Projects Pvt Ltd		Amrapali Dream Valley Private Limited	1,00,000		Shares of Amrapali Leisure Valley Rs. 10,000	
	Chandan Kumar	50,000	Amrapali Leisure Valley Private Limited	3,78,000			
	Vivek Mittal	50,000					
5.	Chintapurni Estates Pvt Ltd		Amrapali Dream Valley Private Limited	70,000			Securi Depos In-Ultr. Const Pvt. Li 30,24,
	Chandan Kumar	50,000	Nachiketa Agro	31,00,000			
	Vivek Mittal	50,000					

Similarly there were 11 additional companies - DH Education Services Pvt Ltd (wherein Chandan held Rs. 50,000 shares), Earthwell Developers Pvt Ltd. (Chandan

& Vivek Mittal held Rs. 50,000 each shares), Eklavya Building Solution Pvt Ltd (Vivek Mittal held Rs. 50,000 shares), Gaurisuta Real estate & Developers Pvt. Ltd. (Chandan & Vivek Mittal held Rs. 50,000 each shares), Kamakshi Buildwell Pvt Ltd (Chandan & Vivek Mittal held Rs. 50,000 each shares), Kamayan iRealtors Pvt Ltd (Chandan & Vivek Mittal held Rs. 50,000 each shares), Mahamaya Buildcon Pvt Ltd (Chandan & Vivek Mittal held Rs. 50,000 each shares), Rinku Clothing creation Pvt Ltd (Chandan & Vivek Mittal held Rs. 50,000 each shares), RRS Properties Pvt Ltd (Chandan & Vivek Mittal held Rs. 50,000 each shares), Spacewell Developers Pvt Ltd. (Chandan & Vivek Mittal held Rs. 50,000 each shares), Mansarovar Textiles Pvt Ltd (Chandan & Vivek Mittal held Rs. 50,000 each shares) that were being controlled by the Respondent through Chandan Kumar and/ or Vivek Mittal and were used as platforms to route funds among Amrapali Group Companies and/or their projects thereof. As per the forensic report, they were not aware of any transaction and/or movement of funds. While Mr. Vivek Mittal, was the nephew of the Respondent residing alongwith him at the same address, Mr. Chander Kumar, was an office boy in the office of Respondent who was working only as an office boy cum office assistant for more than 10 years. Forensic auditors investigated into the degree of involvement of these two individuals who informed that they had signed the documents/papers under the advice from Mr. Anil Mittal and Mr Chander Wadhwa- the CFO of Amrapali Group.

It was noted that the Respondent in his Written Statements has denied the said allegation of his involvement In Amrapali Group sham through Chandan Kumar and Vivek Mittal stating that:

- a. He had no role in the management of 27 companies. As per him, it was Chander Wadhwa who managed all those companies. He requested the Committee to ask Forensic Auditor to establish allegation against him about the role alleged to be played by him in this matter.
- b. The Respondent contended that in the order of the Hon SC dated 2nd Aug, 2018 in paragraph 11, it was mentioned that Amrapali Group had admitted transfer / diversion of funds of Rs 2765.00 crores out of six projects. Most of those diversions happened in 2016 and 2017. He argued that it was a case of imprudent fund management by the management of Amrapali group which was headed by Sh. Anil Kumar Sharma, CMD/Chairman of the Amrapali Group of Companies. Its Board of Directors was assisted by Sh. Chander Wadhwa, Chief Financial Officer, and respective heads, consisting of 22 Chartered Accountants who as per him were responsible for funds diversion. As per him, through an affidavit to the Hon SC dated 13.11.2018 the Chairman had admitted that all the decisions were taken by the management

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and the Board. Thus, his role, as an auditor was limited to examining the legality and genuineness of the transactions and not to question the propriety of the management decisions. As per him, the whole case was built by tagging him also as part of management, whereas, the fact was that he was just an auditor whose interest was limited to the fees from services rendered which was totally overlooked.

- c. With respect to involvement of Mr. Vivek Mittal, the Respondent submitted that his relationship with Shri Vivek Mittal was not falling within the prohibited list of relation as defined in Section 2 (77) of the Companies Act 2013 or in Rule 4 of the Companies (Specification of definitions details) Rules, 2014 or in the erstwhile Companies Act 1956. Thus, there was no relation between the Respondent and the said director and because their address was same did not attract any disqualification for appointment as auditor under section 141(3)(f).
- d. The Respondent further impressed that the relation between either of the directors and the Respondent was not falling within the ambit of Section 141(3) (c)/ 141 (3)(e) or 141 (3) (f) of the Companies Act . Similarly even for the years prior to FY 2014-15 for which provisions of Companies Act 1956, were applicable , the Respondent did not suffer from any disqualification as none of the directors came within the prohibited relation within the meaning of 2(41) of the Companies Act 1956.
- e. As per the Respondent, so long as the relation with directors did not come within the scope of disqualification, it was not legally correct to question the independence of auditor. He argued that to conclude the companies were totally controlled by the Respondent, it was essential to ascertain about signatories of bank operations. The Respondent denied having any control over the functioning of any of the alleged companies.

Further, the Supreme Court in its Order dated 23rd July 2019 stated that

"It was pointed out that shares of Amrapali Zodiac were ultimately purchased for Rs.140 crores by M/s Neelkanth and M/s Rudraksha. It is pointed out by forensic auditors that there are two persons, namely, Chandan Kumar, who is a peon of Mr. Anil Mittal, Statutory Auditor, and working in his office and another one is Vivek Mittal, who is the nephew of Mr. Anil Mittal, and is doing petty jobs of subcontractors and having a monthly income of Rs.15,000/-. It is stated by the learned counsel appearing on behalf of M/s J.P. Morgan that in one company, Chandan Kumar and Atul Mittal were Directors. M/s Neelkanth and M/s Rudraksha are the private limited companies in which the abovementioned persons are named as Directors. They are not having the capacity to give an amount of Rs,140 Crores to be paid to M/s J.P. Morgan. This is a serious kind of fraud apparent from the aforesaid facts. On being

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asked, Mr. Anil Kumar Sharma has shown reluctance to disclose about Atul Mittal, who was the Director of M/s Rudraksha along with Chandan Kumar. It is apparent that it was not a fair transaction of sale. That fact is required to be gone into. Let Mr. Anil Mittal and Directors of Amrapali Zodiac and Mr. Anil Sharma explain the situation by filing their personal affidavits from where the money came to be paid to M/s J.P. Morgan, who managed the money and how the companies were framed and for what purpose."

Supreme Court Observation

As observed by the Apex Court

In Paragraph 60, Pg 137 of its Order dated 23rd July, 2019

23. 27 Additional companies

- (i) Funds invested to become the consortium partners by these 27 companies were from the Amrapali group of companies and these 27 companies were just the face created to comply the conditions of partners and also keeping in mind to demerge a part of the plot in future to the consortium partners. The funds contributed by these 27 companies were originated and routed from the Amrapali group companies.
- (ii) These companies were managed by CFO Mr. Chander Wadhwa, Company Secretary Mr. Pankaj Mehta and CA Mr. Anil Mittal.

General:

1. The companies were formed for the purpose of acquiring the shares in the 47 group companies to gain the position of consortium partner, for villa in Goa, immovable property **E/17 Surajkund Noida, D- 151 , Preet Vihar, New Delhi, First Floor-E-57, Preet Vihar, New Delhi.** for routing the cash during demonetization and booking flats in IT Park Greater Noida of Ultra Home Construction Private Limited. The cash on Hand of Rs. 1.98 crore. From these companies is not traceable and is misappropriated and be recovered from CA Anil Mittal The Directors in these companies are Junior employees of Anil Mittal Statutory Auditors namely

1. Pankaj Mehta Company Secretary of Amrapali group of Companies
2. Vivek Mittal Nephew of Anil Mittal
3. Chandan Kumar Office boy of Anil Mittal
4. Seema Mittal wife of Anil Mittal
5. Chandar Wadhwa CFO
6. Bushan Sharma
7. Ashish Jain employee of Anil Mittal
8. Amit Wadhwa Nephew of Chandar Wadhwa





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.... the funds invested to become the consortium partners were from the group companies and these companies were just the front created to comply the conditions of partners and also keeping in mind to demerge a part of the plot in future to the consortium partners. The funds contributed by these 27 companies were originated and routed from the Amrapali group companies.

Observation of the Committee

It was noted that Shri Chandan Kumar, Ashish Jain, Pankaj Mehta and Vivek Mittal were the Directors of the Company from FY 2010-11 to FY 2015-16. It is also noted that the financial statements for the various financial years were signed by the said directors and the Respondent. It is further noted that:

- Mr. Pankaj Mehta ex- company secretary of Amrapali Group of Companies as per his statement, after resignation was partner of Saffron Consultants LLP alongwith Mr. Chander Wadhwa (CFO of Amrapali Group of Companies) and the Respondent.
- Further, as per the submission of the Respondent Mr. Ashish Jain and Mr Vivek Mittal are his distant relatives and are not relatives within meaning of section 2(41) of the Companies Act, 1956. It is further noted that since the balance sheet is related to F.Y 2014-15 section 2(77) of the Companies Act, 2013 shall be applicable in instant case.
- Mr Chandan Kumar is reported to be his office peon and assistant who has often signed the financial statements in the capacity of being director of the Company. It is noted that the Respondent was silent about his alleged personal / business relationship with the Directors of the Company. Further, he is also silent on various Amrapali Group of Companies having its registered office at his premises. It is noted that Section 141 of the Companies Act 2013 lays down provisions for eligibility, qualifications and disqualifications of being auditor of the Company which interalia states as below:

The following persons shall not be eligible for appointment as an auditor of a company, namely:—

- (a) ...
- (b)...
- (c) a person who is a partner, or who is in the employment, of an officer or employee of the company;
- (d)...
- (e) a person or a firm who, **whether directly or indirectly**, has business relationship with the company, or its subsidiary, or its holding or associate company or subsidiary of such holding company or associate company of such nature as may be prescribed;
- (f) a person whose relative is a director or is in the employment of the company

as a director or key managerial personnel;

It is also noted that the Respondent was partner in Saffron Consultants LLP alongwith Mr. Chander Wadhwa, CFO of Amrapali Group of Companies. Moreover, Mr. Pankaj Mehta was also the partner of same LLP. It was viewed that being partner of CFO is a clear violation of provisions related to the disqualifications as prescribed in the aforesaid Act especially section 141(3)(c) of the Companies Act 2013. Further, the Companies being registered at Respondent's premises indicate that either he indirectly held business relationship with such companies by allowing them to use their premises or had complete control on them. In either situation he was again disqualified from being auditor under section 141(3)(e) of the Companies Act 2013 and existence of such relationships among companies, shareholders and directors clearly shows threat to his independence.

Further, with respect to other financial years when his distant relatives were directors of the Company, although the Respondent has argued that they were not relatives in terms of the provisions of the Companies Act, 1956/2013, it is worth to note that when such distant relative shared the same addresses as that of the Respondent (Shri Vivek Mittal, Shri Atul Mittal, Shri Chandan Kumar, Shri Ashish Jain etc.). It is noted that Amrapali Group entries often used the entities - Chandan Homes Private Limited, Mittal Homes Private Limited and Surbhi Build Home Private Limited for undertaking various transactions relating to transfer of funds wherein his brother - Mr. Sushil Mittal and Mr Chandan kumar, the Office boy, were directors. So, the Respondent's arguments that his relative did not fall within the definition of 'relative' as per existing or erstwhile provisions of the Companies Act is not acceptable. The Respondent was indeed disqualified to be appointed auditor of said companies.

In view of submissions made by the Respondent, it is noted that the Respondent has failed to explain as to how he ensured independence in his audit despite existence of such relationship.

With respect to Mr. Chandan Kumar, considering the facts who is reported to be the Respondent's peon and office assistant from last 10 years, it is noted that it is the specific qualification and experience of various individuals that makes them eligible for being appointed as directors of any Company but in present the Respondent had failed to explain the role or existence of Chandan Kumar or any of his relative as being shareholders or directors of Amrapali group companies. A few of them were also undertaking transactions with other entities wherein again his brother, nephew, Office boy were again shareholders and/ or directors.

It was noted that the Respondent has instead of emphasizing the key points on ensuring his independence during audit of said entities, challenged that

either of said directors were not his relatives within the definition of Companies Act. It was viewed that when the funds of public in general are at stake and fraud committed is rooted to an extent that it questions the effectiveness of the prevailing laws on the entities and the profession, it is duty of a regulator to lift the veil and understand the substance in relations existing between the Respondent and the other persons acting as director. *It was noted that such other person may not be falling within the definition of relative but they were connected or associated with the Respondent on one hand and were also holding a position to exercise significant influence or control on such entities, thereby enabling the Respondent to exercise the said influence and control. In the absence of any information on record about the merit/ qualification held by Office boy or either of said relatives it is crystal clear that said significant influence or control was being exercised by the Respondent. Further, such circumstances become even stronger when some of the said entities viz. M/s Gaurisuta Infrastructure Private Limited, M/s. Neelkanth Buildcraft Pvt Ltd and Rudraksh Infracity Private Limited were registered at the address of the Respondent firm.*

Again there were 27 companies out of which in 16 companies, his relative and/or Office boy were the directors and were used to obtain funds from Amrapali Group Companies in order to invest in other Amrapali Group Companies clearly demonstrate the web laid down in association with him to divert the funds of Amrapali Group Companies.

Thus, in view Section 141 of the Companies Act 2013 deal with the eligibility, qualifications and disqualifications of auditors, the Committee observed that by functioning as an auditor of the Companies where directors were related to Respondent, in one way or the other, there is a clear violation of provisions related to the disqualifications as prescribed in the aforesaid Act especially section 141 of the Companies Act 2013. Accordingly, the Respondent was held Guilty of professional misconduct falling within the meaning of Item I of Part II, Second Schedule to the Chartered Accountants Act, 1949 and Item (2) of Part IV of the First Schedule to the Chartered Accountants Act, 1949, read with Section 22 of the said Act

9. **Specific charges and Findings are as under:-**

Specific Charges against the Respondent in relation to entities wherein he was the Statutory Auditor which reflect upon the quality of audit that was being conducted by the Respondent and his failure to report the stated specific discrepancies are discussed as below:

I: In respect of M/s Amrapali Zodiac Developers Private Limited, M/s. Neelkanth Buildcraft Pvt Ltd, M/s. Rudraksh Infracity Pvt Ltd and M/s. Mannat Buildcraft Pvt Ltd., it is reported/ alleged as under:

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It is noted that there were following specific charges too in respect of above-mentioned entities:

- (i) Sale of shares by M/s Amrapali Zodiac Developers Private Limited to JP Morgan which in turn sold to other SPVs of Amrapali Group - M/s. Neelkanth Buildcraft Pvt Ltd and M/s. Rudraksh Infracity Pvt Ltd through M/s. Mannat Buildcraft Pvt Ltd . Further, the company invested Rs 60 crore out of Rs 85 crore received from JP Morgan in M/s. Amrapali Leisure Valley Developers Pvt Ltd as 0.01% compulsory convertible preference shares, entire route of diversion of funds or purchase of share was supported by the Respondent. (A-470).
- (ii) In respect of M/s Neelkanth Buildcraft Private Limited, Rudraksh Infracity Private Limited and Mannat Buildcraft Private Limited, it is alleged that these companies were formed in 2013 for the purpose of buying shares from J P Morgan. The basic purpose of these Companies was reported to be money laundering and was incorporated to purchase of Equity Shares of M/s. Amrapali Zodiac Private Limited from J.P. Morgan Investments at an exorbitant price. It is reported that the Valuation Report was also made to suit to the requirement of J.P. Morgan Investments as M/s Sudit K. Parikh & Company, Chartered Accountants were appointed by J.P. Morgan officials for the said valuation. They have admitted that valuation work was done on the basis of information provided by J.P. Morgan Investments after applying some basic checks (A-790).

It is further noted that as per Forensic Auditors Report the SPV- M/s Amrapali Zodiac Developers Private Limited- was a project where home buyers were required to pay on the basis of progress of the construction of the project, accordingly it was construction linked payment project. It was further observed in report that most of the time customers had paid more than what was spent in the project (A-470). It is also noted that Neelkanth Buildcraft Private Limited received a loan of Rs.100.05 Cr from Mannat Buildcraft Private Limited and Mannat Buildcraft Private Limited received the said money from Amrapali Zodiac Developers Private Limited. Neelkanth Buildcraft Private Limited used the same to buy shares of Amrapali Zodiac Developers Private Limited from JP Morgan as reflected from their respective balance sheets from the loan component and investments appearing therein. So it was concluded that effectively Amrapali Zodiac Developers bought back its own shares from JP Morgan.

At the outset, it was noted that the Respondent made his submissions only in respect of allegations made in context of M/s. Amrapali Zodiac Developers Private Limited and remained silent in respect of of M/s Neelkanth Buildcraft Private Limited, Rudraksh Infracity Private Limited and Mannat Buildcraft Private Limited that were alleged to be floated for the purpose of money laundering/ buying shares of M/s. Amrapali Zodiac Developers Private Limited from J P Morgan. The Respondent submitted that in the

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prima facie opinion reliance was placed on page A 461 in the Forensic audit report which made some wrong assumptions and therefore arrived at wrong conclusions on this point. The Respondent argued that as evident from Page A 461 the Respondent was auditor only of FY 2009-10. Post 2009-10 BSR & Company and SN Dhawan & Co were auditors as shown on page A 461. As per him, evident from pages 461-490, the contentious transactions, share subscription agreement, deal with JP Morgan and all other matters of criticism in the FA report had taken place post the audit period of the Respondent. In view of the said facts, it was argued that insinuations drawn against the Respondent were baseless. Further, the Respondent expressed his intention to cross examine the forensic auditors to understand the nature of illegality observed by them in the transactions undertaken between M/s Neelkanth Buildcraft Private Limited and Rudraksh Infracity Private Limited with J P Morgan or that between M/s Neelkanth Buildcraft Private Limited, Rudraksh Infracity Private Limited and Mannat Buildcraft Private Limited or that between Mannat Buildcraft Private Limited and Amrapali Zodiac developers Pvt Ltd when he raised the following questions:

- “1. Did you observe any illegality in the transaction of purchase of equity shares of Amrapali Zodiac Developers Pvt Ltd by Rudraksh Infracity Pvt Ltd from JP Morgan Investments? If yes, please specify the same?
2. Did you observe any illegality in the transaction of purchase of equity shares of Amrapali Zodiac developers Pvt Ltd by Neelkanth Build craft Pvt Ltd from JP Morgan Investments? If yes, please specify the same?
3. Did you observe any illegality in the transaction of intercorporate deposit accepted by Rudraksh Infracity Pvt Ltd from Mannat Buildcraft Pvt Ltd in 2013? If yes, please specify the same?
4. Did you observe any illegality in the transaction of intercorporate deposit accepted by Neelkanth Buildcraft Pvt Ltd from Mannat Buildcraft Pvt Ltd in 2013? If yes, please specify the same?
5. Did you observe any illegality in the transaction of intercorporate deposit accepted by Mannat Buildcraft Pvt Ltd from Amrapali Zodiac developers Pvt Ltd in 2013? If yes, please specify the same?”

Supreme Court Observation

As observed by the Apex Court

In Paragraph 60, Pg 84 of its Order dated 23rd July, 2019

c) Neelkanth Buildcraft Private Limited - It was formed in the year 2013 having a capital of Rs.0.01 crore for the specific purpose of buying shares from JP Morgan. Mr Chandan Kumar, director of Neelkanth Buildcraft Private Limited is an office boy in the office of

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Statutory Auditor of Amrapali Group, Mr Anil Mittal and the other director Mr Vivek Mittal is nephew of Statutory Auditor Mr Anil Mittal & does small time jobs.

In Paragraph 60, Pg 85 of its Order dated 23rd July, 2019

f) Rudraksh Infracity Private Limited- Shri Chandan Kumar, an office boy and employee of CA Anil Mittal, Statutory Auditor and Shri Atul Mittal, relative of CA Anil Mittal were inducted in the board. The basic purpose of this Company was only for money laundering and was incorporated to receive Funds from Mannat Buildcraft Private Limited. After receiving money (Rs.25 Cr.) from Mannat Buildcraft Private Limited, the same was transferred to J.P. Morgan Investments for purchase of Equity Shares of Amrapali Zodiac Private Limited at an exorbitant price. There are no transactions before or after these transfers of money and the same have been camouflaged to make it look with business transactions on the basis of the Valuation Report. It was also observed that there are no transactions at any date during the period but the bank account has only been used for diversion of funds.

g) Mannat Buildcraft Private Limited - Shri Pankaj Mehta is Company Secretary of Amrapali group of Companies and now Partner of Mr. Chander Wadhwa, CFO in Saffron Consultants LLP and Mr. Ashish Jain who is also Partner of Mr. Chander Wadhwa, CFO in Saffron Consultants LLP, were inducted in the board. The basic purpose of this Company was only for money laundering (Rs.120 Cr.) and was incorporated to receive Funds from Amrapali Zodiac Developers Private Limited.

The whole racket of money laundering and receiving money from these Companies i.e. Mannat Buildcraft Private Limited, Rudraksh Infracity Private Limited and Neelkanth Buildcraft private Limited are the brain child of Mr. Chander Wadhwa, CFO and Anil Mittal, Statutory Auditor of Amrapali Group of Companies. Both these Companies are controlled by both of these persons and had been formed only for this Money Laundering Business. There are no transactions before or after these transfers of money and the same have been camouflaged to make it look with business transactions on the basis of the Valuation Report.

In paragraph 62 on pg 189 of the said order

"62. As is apparent from the report, several companies were created only to route the funds and transactions consisting of office boys, persons with no income and dummy companies in which family members and relatives were inducted as members only for few transactions, which are as under:



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(3) Neelkanth Buildcraft Private Limited

Similarly it was formed for the purpose of buying shares from J.P. Morgan at exorbitant rates, consisting of office boys and relatives of Mr. Anil Mittal, Statutory Auditor.

(6) Rudraksha Infracity Private Limited

It was consisting of office boys and relative of Anil Mittal, Statutory Auditor, which was created to receive money from Mannat Buildcraft Private Limited and to transfer it to J.P. Morgan Investments by purchasing it at exorbitant rates and for no other transaction.

(7) Mannat Buildcraft Private Limited

It was created for money laundering of Rs. 120 crores, only for few transactions."

Observation of the Committee

on consideration of different submissions made in this context, it is coming out that the Respondent major defense line is the fact that he was the statutory auditor of Amrapali Zodiac developers Pvt Ltd only in year 2009-10 whereas the share purchase agreement amongst Ultra home Construction Pvt. Ltd., Amrapali Homes Project Private Limited, J P Morgan & Amrapali Zodiac developers Pvt Ltd dated 9th Sept, 2010. Further, as per him, if he was associated with M/s Neelkanth Buildcraft Private Limited, Rudraksh Infracity Private Limited and Mannat Buildcraft Private Limited, he could only look at one side of the coin being completely oblivious of the other side of the coin.

With respect to funds being transferred from one company to another, the Respondent submitted that the alleged shell companies were part and owned by Amrapali Group of Companies as admitted by the Company in its letter to ROC dated 27.07.2018 (B-8). He stated that such funds were being provided by way of Inter Corporate Deposits between the alleged shell companies and the main companies which was permissible under the Companies Act and law. He argued that as per Section 186 of Companies Act 2013, Inter Company Deposit can be given and is not considered as bad or illegal in eyes of law as far as the transaction is permitted through procedure defined under said section as well as entities did not mis-utilize the funds. In the disclosed transactions, the entries or transaction was permitted as done on the basis of resolutions and approvals of the Board of Directors. Further, such funds were duly paid back to the Amrapali group entities with due disclosures in the balance sheet of entities with justified reasons.

The Committee took perusal of the forensic audit report, which states that:

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"...the Respondent alongwith CFO was controlling these companies. These Companies were formed only for the purpose of transferring funds as there were no substantial transactions before or after these transfers of money (A-790 & A-796,797) and the same have been camouflaged to make it look with business transactions on the basis of the Valuation Report... The summarized transaction is as under:

- a) Amt Paid by Amrapali Zodiac Pvt Ltd. to Mannat Buildcraft Pvt Ltd - Rs.125.08 Cr
- b) Amt Paid by Mannat Buildcraft Pvt Ltd.
 - to Neelkanth Buildcraft Pvt Ltd.-Rs.100.05 Cr
 - to Rudraksh Infracity Pvt Ltd. - Rs. 25.03 Cr

Thus, it is apparent that Amrapali Zodiac Developers Private Limited has financed this transaction to by its own shares through Group Companies by incorporating new companies. These transactions enable Amrapali Zodiac Developers Private Limited to avoid the provisions of the Companies Act, 1956 applicable for buying its own shares.

2) While scrutinizing the Bank Statement of HDFC Bank of the Company, Account number: - 00030350019177, we have observed that there are no transactions at any date during the period but the bank account has only been used for diversion of funds. Details of transactions in the bank statement are given below:

Date	Description	Debit	Credit	Balance
26/09/2014	FT – Mannat Buildcraft Private Limited	-	250,300,000	250,300,000
26/09/2014	FCY – Outward Remittance	250,069,655	-	230,345

This account has been opened in the name of "Rudraksh Infracity Private Limited – Amrapali Zodiac Escrow Account".

This shows that this account was only opened for purchase of shares of Amrapali Zodiac Developers Private Limited out of the funds transferred from Mannat Buildcraft Private Limited another shell company of the Amrapali group.

Further, Mannat Buildcraft Private Limited had received these funds from Amrapali Zodiac Developers Private Limited. All these bank entries are routed on the same date i.e, 26th September 2014.

This manipulation is being done to evade the provisions of the section 67 and 186 of the Companies Act, 2013. Further these shares of Amrapali Zodiac Developers

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Private Limited have been purchased from J P Morgan Investments @ 2577.25 per share as per Valuation report dated 09/09/14 on the face value of INR 10 each. As per financial statements of Amrapali Zodiac Developers Private Limited such high valuation is not justified, and the Valuation Report made by Sudit K Parikh & Company, CA, Mumbai is basically incorrect and wrong and has been made without Applying any basic checks to ensure that the figures on which the Report is based are factual and correct or not."

On review of the entire facts available on record, it was noted that the Respondent firm was the auditor of all the above entities except M/s. Amrapali Zodiac Developers Private Limited for the entire period since their inception including Ultra Home Construction Pvt. Ltd. (A-588), Amrapali Homes Project Private Limited (A-584) which were party to subscription agreement. Further, he was associated with M/s Neelkanth Buildcraft Private Limited, Rudraksh Infracity Private Limited and Mannat Buildcraft Private Limited not only as statutory auditor but these companies were registered at Respondent's firm address. Hence, his argument that he was oblivious of the said agreement could not be accepted.

On review of the financial position of each of the three later companies, it was noted that the major asset in the balance sheet was only shares in M/s. Amrapali Zodiac Developers Private Limited in case of M/s Neelkanth Buildcraft Private Limited (A-603) and Rudraksh Infracity Private Limited (A-789) and that M/s. Mannat Buildcraft Private Limited held receivables given to the former two companies (A-794). Further, the directors of M/s Neelkanth Buildcraft Private Limited and Rudraksh Infracity Private Limited were his relatives and that of M/s. Mannat Buildcraft Private Limited were partners of Saffron Consultants LLP. So these three enterprises were very much under the control of the Respondent. The fact that the amounts received from J P Morgan were transferred through various entities including Chandan Homes Private Limited, Mittal Homes Private Limited and Surbhi Build Home Private Limited wherein his brother Sushil Mittal and office boy Chandan kumar were directors signify the degree of Respondent's involvement with the Company in siphoning the money.

In respect of legality of the transactions held through ICDs, it was noted that though the Respondent has stated that the stated funds were being transferred after passing due resolutions and with the approvals of the Board of Directors but he failed to provide the basis on which he as a statutory auditors of all such companies was convinced that such transactions were in compliance with the various provisions of the Companies Act, 2013 especially in context of Section 67 and 186 of the Companies Act, 2013 which lays

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down laws regarding – ‘Restrictions on purchase by company or giving of loans by it for purchase of its shares’ and ‘Loan and investment by company’ respectively. It is noted that the Respondent has argued that such funds were transferred by passing special resolution but copy of no such resolution was produced on record. Further, it is important to note as to whether such resolution only provides for transfer for funds or provides for the purpose that is to purchase its own shares effectively. It was accordingly viewed that M/s Amrapali Zodiac Developers Private Limited diverted home buyers money & there was no need of any investment from JP Morgan (A-470).

In view of discussion held above, it was observed that while reporting in audit report the Respondent had failed to disclose material facts, in fact he failed to report the material misstatement that existed in the financial statements and also the audit opinion expressed was not correct. The fact that the Registered office of the entities involved was the premises of the Respondent. Further, his office boy cum assistant as well as his relatives were directors of the alleged entities, some of which even paid money to the certain entities in which the Respondent was interested. In fact, the Respondent was controlling the affairs of Amrapali Group of Companies which was highly unbecoming of the chartered accountant. Accordingly, the Respondent is **GUILTY** of ‘Professional and Other Misconduct’ falling within the meaning of Items (5), (6), (7) and (8) of Part I of Second Schedule and Item (2) of Part IV of the First Schedule to the Chartered Accountants Act, 1949, read with Section 22 of the said Act

II In respect of M/s Amrapali Smart City Private Limited (A-491), it is noted that the Respondent was the auditor of the Company from financial year 2009-10 to 2014-15 and that the other specific charges in respect of said Company alleged are as under:

- i. Unexplained labour charges of INR 4.16 crore payable to GSJ Envo Limited for the year ended 31st March 2010.
- ii. Despite cancellation of Lease deed of Land purchased for INR 175 crore, construction of project could not be initiated and consequently project being scrapped in FY 2011-12. The company continued to pay professional charges to CFO & Directors. The company booked cost of construction in the FY 2012-13 amounting to Rs. 68 lakhs when the project was scrapped in the financial year 2011-12 itself. Thus, there was net loss of Rs. 44,38,01,56 for the period beginning from the year 2010 to 2015.

It was noted that the Respondent in his submissions stated he was not in a position to accept or reject any of the numbers or facts narrated in the forensic report pertaining




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as details or working documents related to the audit of the said Company were not in his possession for cross verification. However, assuming that the forensic auditor was correct in presenting the data and facts, the Respondent made his submissions.

- a. In relation with high labour cost incurred by the auditee company, as per the Respondent, the explanation by the company management given on 6th March 2019, quoted on page A 496 was sufficient. The Respondent questioned if the forensic auditor could judge the wisdom of the management of the Company in incurring certain expenses during 2009-10. He argued that the context and back ground during 2009-10 was not same as of 2018 when the Forensic auditor formed his opinion. Similarly, as per him, professional judgment exercised by him as auditor about 10 years back on the basis of facts and circumstances then existing could not be questioned on the basis of certain views expressed by the forensic auditor. He further argued that it was not within the scope of his responsibility, as statutory auditor, to question the correctness of business decisions being taken by the Company's management. The Respondent as auditor had not found anything improper during 2009-10 while conducting the audit.
- b. In relation to expenditure booked against the scrapped project, the Respondent submitted that it was management's wisdom for rewarding directors and CFO. He further stated that expenses incidental to and attributable to a "project to be undertaken" was expenditure for the company regardless of the fact that the project was scrapped. If the company had contracted for certain expenses in 2011-12 and had incurred them in 2012-13 by virtue of accrual principle, irrespective of the fact that the project had been scrapped, it would not have been possible for the company to go back on its obligation. Therefore an auditor would not find reasons to opine adversely about the expenses booked.

In relation with high labour cost incurred by the auditee company immediately on incorporation, on perusal of Forensic Report findings, the Committee noted that the Company was incorporated on 26th March, 2010 and within 4 days (i.e. 31st March, 2010), labour charges for Rs. 4.16 crore were booked payable to GSJ Envo Limited for the year 2009-10. It was noted that the Respondent has referred to management's clarification therein in respect of the same. In the report it was stated that

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"...On interaction with Mr H S Walia, on 6th March 2019, it was informed and submitted that GSJ Envo started working before the date of the incorporation, and the amount yet to be paid is Rs. 3.10 crore. The copy of the ledger of Amrapali Smart City Private Limited in the books of GSJ Envo Limited is below-

GSJ ENVO LTD-(2007-2013) - (From 1-Apr-2013)
AMRAPALI SMART CITY PVT LTD (B/R)
 Ledger Account

1-Apr-2013 to 31-Mar-2017

Date	Particulars	Vch Type	Vch No.	Debit	Page 1 Credit
1-4-2013	Cr Opening Balance			3,10,01,313.00	
	Dr Closing Balance				3,10,01,313.00
				3,10,01,313.00	3,10,01,313.00

GSJ ENVO LTD.
AMRAPALI SMART CITY PVT LTD (B/R)
 Ledger Account

ANNEXURE-13

1-Apr-2011 to 31-Mar-2013

Date	Particulars	Vch Type	Vch No.	Debit	Page 1 Credit
1-4-2011	Cr Opening Balance			3,42,56,920.00	
18-4-2011	Dr AMRAPALI SILICON CITY PVT. LTD. (B/R) being amt transferred	Journal	124		200.00
	Dr HDFC BANK CA A/C NO. 00928470000017 Ch. No. RECD FROM AMRAPALI SMART CITY THROUGH RTGS	Receipt	13		9,74,627.00
28-3-2012	Dr AMRAPALI HOMES (B/R) BEING AMT TRANSFERRED	Journal	2054		22,80,780.00
				3,42,56,920.00	32,55,607.00
	Dr Closing Balance				- 3,10,01,313.00
				3,42,56,920.00	3,42,56,920.00

It was noted that in extant case substantial labour charges were incurred before the Company was incorporated, construction cost was incurred despite cancellation of Lease deed of Land and professional charges were being paid to CFO & Directors

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when the project was scrapped. A fundamental question arises as to how an entity could incur labour expenditure when it was not in existence or incur construction cost when the project was scrapped. It was not a question of management's wisdom but that whether incurrence of such expenses was legitimately possible. The Respondent had contended to have entrusted on management's wisdom but a professional being an independent auditor of the financial statements was under a duty to understand as to the expenditures being booked could have been incurred by the Company in view of then prevailing circumstances that the project was scrapped. If the Respondent had failed to come across such facts or was aware of the said facts but still went with management's decision, then the Respondent had failed to form an independent view on the financials of the Company. He should have reported about the said expenses considering the nature and circumstances when the said expense were being incurred.

Accordingly, it was viewed that the Respondent had failed to obtain sufficient audit evidence to express opinion on financial statements. In fact he failed to report a material misstatement that appeared in the financial statement and also failed to perform his professional duties diligently. Hence, the Respondent is **GUILTY** of 'Professional and Misconduct' falling within the meaning of Items (5), (6), (7) and (8) of Part I of Second Schedule to the Chartered Accountants Act, 1949.

III : In respect of M/s Gaurisuta Infrastructure Private Limited (A-504), it is noted that the Respondent was the auditor of the Company for financial years 2010-11 to 2016-17 and that the other specific charges in respect of said Company alleged are as under:

- With share capital of Rs. 1 lakh, the Company borrowed Rs.687 Cr. and loans and advances of Rs. 598 Cr. and inventory of Rs.89 Cr.(A-513)
- An inventory of Ultra Home Construction Private Limited Project Name-
 - (i) Castle- Rs.24.29crores
 - (ii) Platinum- Rs.20.63crores
 - (iii) Village- Rs.44.41crores

i.e., a total of Rs. 89 crores was transferred by way of book adjustment in the name of Gaurisuta Infrastructure Private Limited on 31st March 2013 and there was no movement in expenses and/or with customers since then. Above inventory purchased in the year 2012-13 was found to be still lying without any movement. It implies that these were bogus customers. This was a diversion of funds.

- It was further reported that list of flatwise Inventory was not provided/available due to which it was deduced that flats were not actually transferred and it was only a book entry

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which was made to divert the funds. Both the directors were also not aware of what was the inventory of Rs. 89 crore lying in the books of accounts.

- In Audited Financial Statements, shareholders are Ankur Rastogi & Chandan Kumar holding 50% each whereas in Annual Report for the year ended March 2015, the shareholders were Chandan Kumar & Vivek Mittal. Mr. Vivek Mittal, director of the company was the nephew of the statutory auditor of Group residing along with him at the same address.
- Mr. Gaurav Kakkar was paid Rs. 1 lakh in cash who was a partner of statutory auditor i.e. the Respondent by the Company(A-515) .
- The company has availed Inter Corporate deposits from various companies as illustrated in the Annexure (A-508 to A-510). It is stated that the company who were giving money were routing the money of the group as no details were available with regard to any agreements for loan given/taken.

Respondent's Submissions

a. As per the Respondent, from the facts available it appeared to him that the Forensic auditor (FA) was not provided with inventory details of the Company, which led to speculation by FA about its genuineness. It is the failure of the Arnrपालि management to provide the details of inventory, which was provided to him during audit. It was speculated that it was a book adjustment. Then it was suggested that those were bogus customers and as such surmised that it was for diversion of funds. The Respondent argued that all these comments did not reconcile with each other.

b. With respect to a picture given on page A 513, he stated that it was a voucher presented which was not from the books of account of the Company as apparent from the 'debit' and 'credit' terms used in the voucher. The Respondent argued that all the stated divergent points was because the FA was just forming his views without much conviction about what he was saying. The data provided in the FA report was hardly sufficient to subscribe to the views made by him.

c. The Respondent denied having any control over the functioning of the Company. He argued that before drawing conclusion that the Company was totally controlled by him, it was essential to ascertain as to who were signatories of bank operations in the case of the company. Forensic auditor kept silence on this in his report.

Supreme Court Observation

As observed by the Apex Court in Paragraph 60, Pg 82 of its Order dated 23rd July, 2019

b) *Gaurisuta Infrastructure Private Limited – It lent and received funds from several parties without doing any business. Details of Rs.25 crore received from third parties are as under:*

S.no.	Name of party	Amount	Since date
1	Ams Powertonic Pvt Ltd	50,00,000	07-05-2012
2	Anuj Buildcon Pvt Ltd	50,00,000	10-05-2012

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3	Asv Garments Pvt Ltd	50,00,000	07-05-2012
4	Bij Buildcon Pvt Ltd	50,00,000	10-05-2012
5	Carona Infra Projects Pvt. Ltd.	2,20,00,000	Received on various dates From 16-05-2013 to 16-09-2014
6	Charuvilla Apartment Behl	8,31,000	08-07-2011
7	Financial World Pvt. Ltd	57,00,000	11-07-2012
8	Function Distributors Pvt. Ltd.	50,00,000	03-08-2012
9	Green Value Agro Farm Pvt. Ltd	30,00,000	01-08-2012 & 03-08-2012
10	Infotech India Pvt Ltd	1,00,00,000	03-07-2012
11	Kabir Enterprises Pvt Ltd	50,00,000	06-06-2012
12	Ladli Ji Enterprises Pvt Ltd	2,00,00,000	15-05-2012
	Leisure Buildcon Pvt Ltd	50,00,000	25-04-2012
	M/S Naksha Properties Pvt. Ltd	84,00,000	19-04-2012
15	M/S Shravni Infrastructre	3,20,00,000	Received on various dates From 19-04-2012 to 11-07-2013
16	M/S Souful Heart Solutions	22,00,000	Received on various dates From 19-04-2012 to 17-07-2013
17	Ram Rahim Trading Co. Limited	70,00,000	01-08-2012 & 02-08-2012
18	Randhir It Solutions Pvt Ltd	50,00,000	07-05-2012
19	Rayan Garments Pvt Ltd	1,40,00,000	26-04-2012 & 07-05-2012
20	R N Sangahi	24,37,480	11-04-2011; 02-07-2011 & 18-12-2012
21	S A Corrugators Pvt Ltd	20,00,000	01-08-2012
22	Sadbhavana Properties Pvt Ltd	4,00,00,000	08-06-2012
23	SpbPropcorn Pvt. Ltd.	50,00,000	25-04-2012
24	Technicare Biomed India Pvt Ltd	40,00,000	25-04-2012
25	Utkarsh Properties Solution	28,00,000	26-04-2012 ; 16-09-2014 & 17-09-2014
26	Vendure Agents Pvt Ltd	50,00,000	01-08-2012

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27	Zarf Infra. Development Pvt Ltd	1,45,00,000	Received on various dates From 26-04-2012 to 04-08-2012
28	Zoom Building Materials Pvt Ltd	1,00,00,000	10-05-2012 & 11-05-2012
	TOTAL	25,08,68,480	

The above companies were used for the purpose of money laundering and required a detailed investigation. Further the amount as shown above is not payable to the party as indicated against. None of the parties as above has lodged any claim so far therefore it strengthens our charge.

As on 31st March 2017, the company is having interest free loans and advances amounting to Rs.703 crore without any movement with a paid up share capital of merely Rs.0.01 crore **and the directors are employees and junior employees of statutory auditors.** The company is used as a conduit in diverting home buyer funds to Amrapali Healthcare (Noida Hospital) and buying shares in different group companies from the funds of home buyers. The entire shareholding should be attached and be made up for sale.

In paragraph 62 on pg 189 of the said order

"62. As is apparent from the report, several companies were created only to route the funds and transactions consisting of office boys, persons with no income and dummy companies in which family members and relatives were inducted as members only for few transactions, which are as under:

(2) Gaurisuta Infrastructure Private Limited

It was also created for diverted funds."

Observation of the Committee

The Committee noted that the Respondent in his submission has simply stated that the findings of the Forensic Auditor was questionable due to lack of data available with them which was a lapse on the part of the management of the Company to provide him the complete details as were provided to him at the time of audit conducted by him. However, the Committee noted a few key points in respect of the Company. Firstly, the Company was incorporated on 4th June, 2010 and address of the registered office of the Company was same as that of the Respondent's firm. His Office boy and nephew were the directors of the Company. In fact from 2010-11 to 2015-16, it was his relatives/associates who were signatories on the financials. Apart from prevailing conflict of interest in audit of said entity as already discussed above, the Committee noted that the major components of the total Company's assets (A-504) of Rs.703 Cr were

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comprised of inventory of Rs.89 cr, investments in the shares of Amrapali Healthcare Limited of Rs. 9.38 cr and Long term loans and advances of Rs. 604 crores out of which the forensic auditors have given serious observations regarding inventories and loans and advances when it reported of a book adjustment made in the books of Ultra Home Construction Pvt. Ltd. on 31st March 2013. The Respondent submitted that it was not from the books of accounts of the extant Company but the other company 'Ultra Home Construction Pvt. Ltd.'. However, it is not out of place to mention that the Respondent was also the statutory auditor of Ultra Home Construction Pvt. Ltd. for the period from 2007-08 to 2014-15. Further, transfer of such inventories without transfer of expenses or customers, non-movement of inventories so transferred, non-availability of details of inventory transferred, the Company neither undertaking any construction or providing any manufacturing activity or service raised serious question on the basis of which the audit was being conducted. It was noted that the Respondent had remained completely silent on other charges like amount paid to Gaurav Kakkar, non-existence of loan agreements and the loan being given interest free. It was noted that the entire facts signify the Company being formed only for the purpose of transferring funds and not to conduct business which the Respondent ought to have understood considering his association with the Company since its incorporation.

As regards, the Respondent argument about the findings of Forensic Audit report being incorrect on account of non-availability of data, it was noted that Forensic Report on Amrapali matter was accepted by the Hon'ble Supreme Court vide its Order dated 23rd July 2019 , when the Court took decision on the basis of the said Forensic Audit Report and states as under

"18. This Court appointed Mr. Ravi Bhatia of M/s. Bhatia & Co. and Mr. Pawan Kumar Aggarwal of M/s. Sharp & Tannan Company to conduct the forensic audit, which was ordered to be conducted with effect from the year 2008 till date, to be completed within two months. On 12.9.2018, a list of properties was submitted which was to be sold by the Debt Recovery Tribunal, Delhi, (DRT) and the details of properties, title deeds and maps were to be submitted to the DRT. This Court directed statutory Auditor, Mr. Anil Mittal, to hand over the original records of Amrapali group of companies vide order dated 12.9.2018. This Court also directed remaining records from 2008 till date, be handed over within 10 days. Amrapali group of companies were also directed to hand over the documents required by the forensic auditors. The matter was taken up by this

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Court on 26.9.2018. Considering the non-cooperation of the Directors, the following order was passed by this Court on **26.9.2018** :

"Heard the learned counsel for the parties.

...With respect to the handing over the documents by the Statutory Auditors as well as by the Amrapali Group of companies, we note it regrettably that order passed by this Court has been violated and the documents have not been handed over in spite of clear and categorical direction to hand over the documents to forensic auditors within ten days. However, it was pointed out by Mr. Gaurav Bhatia, learned counsel that statutory auditors are going to hand over the document, etc. w.e.f. 2008 to 2015 by tomorrow to the forensic auditors. Let all the necessary documents which may be in possession of Amrapali Group of companies in addition to statutory auditors be also handed over from 2008-2015 and also all the papers of Amrapali Group of companies 2015-2018 by tomorrow. We make it clear that the documents with respect to 2015- 2018 shall be handed over by the Amrapali Group companies along with all the original documents necessary to do audit shall be handed over to the forensic auditors by tomorrow. Let account books in whatever status they are, at present, be also handed over."

"On 26.10.2018 the Forensic Auditors submitted an interim report. It was pointed out that the tally data of 23 companies, reserves and surplus figures as appearing in the tally data does not reconcile with the reserves and surplus as appearing in the last signed financials. The difference has also been pointed out in a tabular form. There were several advances, investments, utilisations, advances made to suppliers and payments made to Mr. Anil Sharma and Mr. Shiv Priya, Directors of the company for professional charges, etc. It was also pointed out that in spite of repeated reminders, groupings have not been supplied. Grouping is a process to indicate the process between the stage of trial balance, balance sheet, and profit and loss account. **All files had not been handed over and Mr. Anil Mittal, the Statutory Auditor had sent one file late in the evening.** This Court ordered that in case documents were not handed over, the same shall be viewed seriously and the incumbents punished suitably. The last opportunity was granted to hand over the requisite documents to the Forensic Auditors. **We directed Statutory Auditors to comply with the requisition made by the Forensic Auditors.**

24....We directed the Amrapali group of companies/statutory auditors as well as Anil Mittal, Ravi Kapoor and S.N. Dhawan and CFO to disclose the names of all the



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companies in which their family members or acquaintance were included as Director and all the transactions inter alia family members and relatives....

This Court has noted the conduct of non-compliance of the order vide order dated 13.11.2018 thus:

10. We have two affidavits. One of Anil Mittal and another of Chander Wadhwa. Both are passing liability on each other for creating certain additional companies. None want to own the responsibility. We require Amrapali Group of Companies and their Directors to file a reply to the affidavit, filed by their CFO Chander Wadhwa and Anil Mittal. Let the copies of affidavits of Chander Wadhwa and Anil Mittal be furnished to the Advocate on Record, Amrapali Group of Companies. Let para-wise and point-wise reply be submitted as to what has transpired in the Court, as recorded in order-sheets, including what they have stated in their affidavits.

25. On 20.11.2018 this Court had noted non-compliance of various orders passed by this Court from time to time.

...In order dated 5.12.2018 this Court observed that let the Amrapali group of companies and their Directors Mr. Chander Wadhwa, CFO and **Mr. Anil Mittal** to **explain as to why criminal action be not initiated against them on the basis of affidavits, various documents and the statements made in this Court on various dates and why their conduct as projected in the case be not reported to the ICAI to inquire.**

28. On 28.2.2019, this Court considered IA No.35430/2019 filed by Deputy Commissioner of Police, EOW, Delhi Police, seeking permission to take into custody various Directors namely Anil Kumar Sharma, Shiv Priya, and Ajay Kumar. This Court has passed the following order:

"...The Police are directed to investigate the role of Mr. Anil Mittal, Statutory Auditor, and Mr. Chander Wadhwa, CFO as well. The Police may interrogate them and find out their criminality, if any, in the matter. Let various order sheets of this Court as well as the affidavits of Mr. Chander Wadhwa and Mr. Anil Mittal and Directors of Amrapali Group of Companies indicating the operational methods of diversion of funds and creation of companies be also furnished to the Deputy Commissioner forthwith.

The application is allowed."

152. It has been found in the Forensic Audit Report that there are several recoverable from various companies as well as from individuals, Directors and other incumbents. We direct that as per the findings recorded by the Forensic Auditors, the money be deposited in this Court on a time-bound basis and other needful be done as

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observed by the Auditors. **As we have approved the report, let the concerned companies/ Directors/ individuals take steps in compliance with the observations and findings made by Auditors to refund the amount and or to do needful as suggested within one month**

154. Resultantly, we order as follows:

vii) We direct the Institute of Chartered Accountants of India to initiate the appropriate disciplinary action against Mr. Anil Mittal, CA for his conduct as reflected in various transactions and the findings recorded in the order and his overall conduct as found on Forensic Audit.

From the above, it was noted that the findings of the Forensic Audit have been approved by the Supreme Court as observed by it in paragraph 152 of the judgment and that the Forensic Audit findings once approved by the Supreme Court would become the findings of the Supreme Court. It was, further, noted that the Respondent had failed to bring on record any review petition filed by him on the said Supreme Court decision. Hence, the submissions of the Respondent to state that findings of the Forensic Audit were erroneous could not be accepted.

In view of discussion held above, it was observed that while reporting in audit report the Respondent had failed to disclose material facts, in fact he failed to report the material misstatement that existed in the financial statements and also the audit opinion expressed was not correct. The fact that the Registered office of the Company involved was the premises of the Respondent. Further, his office boy cum assistant as well as his relative was directors of the Company. Thus, the Respondent was controlling the affairs of the said Company besides being the statutory auditor which was highly unbecoming of the chartered accountant. Accordingly, the Respondent is **GUILTY** of 'Professional and Other Misconduct' falling within the meaning of Items (5), (6), (7) and (8) of Part I of Second Schedule and Item (2) of Part IV of the First Schedule to the Chartered Accountants Act, 1949, read with Section 22 of the said Act

IV In respect of M/s Amrapali Spring Valley Private Limited (A-520), it was noted that it was incorporated on 16th September, 2010 and that other specific charges alleged against the Respondent, being auditor of the Company from financial year 2010-11 to 2014-15, are as under:-

- The company does not carry any business activity as it was created solely for the purpose of routing the funds of the group companies.

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- The company has received amount of Rs. 168.59 crore from Amrapali Smart City Developers Private Limited and invested Rs. 168.57 crores in the shares of Ultra Home Construction Private Limited.
- Valuation Report of shares of Ultra Home Construction Private Limited was not available so that genuineness of the transaction could be verified.
- The transaction of Inter Corporate Deposit & Investment as above was not disclosed in audited Financial Statements as transaction with related party.

Respondent's Submissions:

The Respondent submitted that

- a. he had accessed all the relevant documents including valuation of shares, ICD agreements, resolution which were available with the Company during audit and that he was unable to comment why the forensic auditor was unable to obtain such key documents.
- b. Certain Companies in Amrapali group were strategic and were involved in fund management rather than other real estate related activities. The extant Company came in this category and he did not view the same as any kind of adverse point that merited audit qualification.
- c. He argued that it was wrongly observed that no entry with regard to inter corporate deposit and Investments were made. As apparent from page A 520, reporting about ICD and investment in this case, by the forensic auditor was only from the audited accounts of the Company.

Supreme Court Observation:

As observed by the Apex Court in Paragraph 60, Pg 86 of its Order dated 23rd July, 2019

"j) Amrapali Spring Valley Pvt Ltd- the company is created for diversion of funds and Rs.186 crore was diverted from Amrapali Smart City Pvt Ltd to buy shares of Ultra Home Construction Pvt Ltd and shareholders are promoter directors without doing any investments. Most of the above companies will qualify to be NBFC, which was reported neither by the management nor by the statutory auditors (except Jhamb Finance & Leasing Pvt Ltd)..."

Observation of the Committee

It was noted that though the Respondent had argued to have accessed all the relevant documents including valuation of shares, ICD agreements, resolution, but he failed to bring them on record. Incidentally, it was noted that with respect to working papers, the Respondent had submitted that large number of his records that were part of past and current audit working papers were retained in one room as its

camp office, within the premises of Amrapali office which was locked up by the police and as such he was unable to retrieve the audit working files and documents. The said situation has been discussed in detail in paragraph 8(iii) above that such limitation not only show non-compliance of SQC-1 in relation to necessary conditions for maintaining independence but also signify the degree of close relationship that existed between the Respondent and his audit clientele i.e. Amrapali Group of Companies.

Further, with relation to the Respondent's submission about extant Company being the strategic Company to fund the activities of the Group Company, it was noted that the Respondent had indirectly agreed it to be a dormant company but at the same time when the details of its assets and liabilities were reviewed (A-520), it was noted that its total assets were in the form of financial assets with no income being earned and as such it was an NBFC which again the Respondent failed to observe and instead considered it as strategic company.

It was viewed that if the Company was not carrying any business except transferring funds and the Respondent was long associated with it being statutory auditor then he had sufficient background to understand the nature of the said entities. In respect of extant Company, considering its nature of activities, there were other reporting as envisaged under RBI, Act were applicable on it but the Respondent failed to observe and report the same in compliance with the provisions of SA 250, "Consideration of Laws and Regulations in an Audit of Financial Statements".

Further it was noted that although Inter-Corporate Deposits & Short term loans and advances of 2014 were later on converted into Investments in 2015 but neither on the face of balance sheet, schedules or notes to accounts the details of such significant transaction recorded were disclosed. Moreover, under related party disclosure too that was not disclosed which signify not only the non-compliance of AS-18 but also point towards deliberate non-disclosure of significant information.

In view of discussion held above, it was observed that while reporting in audit report the Respondent had failed to disclose material facts, in fact he failed to report the material misstatement that existed in the financial statements and also the audit opinion expressed was not correct. The Respondent had failed to disclose the nature of entity as well as non-compliance of mandatory disclosure in relation to significant transactions being undertaken by the Company. Such negligence in reporting on the part of the

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respondent was unbecoming of the Chartered Accountant. Accordingly, the Respondent is **GUILTY** of 'Professional and Other Misconduct' falling within the meaning of Items (5), (6), (7) and (8) of Part I of Second Schedule and Item (2) of Part IV of the First Schedule to the Chartered Accountants Act, 1949, read with Section 22 of the said Act

V In respect of M/s Amrapali Healthcare Private Limited (A-525), it was noted that it was incorporated on 27th November, 2012 and that other specific charges alleged against the Respondent, being auditor of the Company from financial year 2012-13 to 2016-17 was that he had failed to report despite the following:-

- Ultra Homes purchased and paid for Land, Building, Lift, Air Conditioner & Medical Equipment for the company upto 31st December 2012 & transferred these in the name of Amrapali Healthcare on 1st January, 2013. In other words, shares of Amrapali Healthcare were allotted to/ purchased by Ultra Homes for a consideration other than cash. Ultra Homes was ultimate holding company, holding 99.98% shares of Amrapali Healthcare. On 31st March 2013, though shares were allotted to Miss Swapnil Shikha & Mr. Suvash Chandra Kumar but the whole amount was standing in the books as Share Application Money Due.
- In FY 2016-17, the shares of Amrapali Healthcare Private Limited were transferred by Ultra homes construction Private Limited to Gaurisuta Infrastructure Private Limited at par without carrying out any valuation.
- In the year 2013-14, assets purchased by the Company viz. office equipment, Medical Equipments, Ambulance were paid by Ultra Homes. In the year 2014-15, the company charged excessive depreciation on Office equipment, Plant & Machinery, Building & thus increased the loss & reduced the value of Fixed Assets.
- ICDs and expenses payable to group companies were adjusted vide journal entry with third party being another group company, without making any payment through banking channels. On 31st March 2016, ICD received from Ultra Homes amounting to INR 5.68 crores was transferred in the name of Kapila Buildhome Private Limited, thereby adjusting ICD given by Kapila Buildhome to Ultra Homes, without making any payment in actual through bank. This was a planned move to create an unsecured loan in the name of Kapila Buildhome Private Limited. Similarly expense payable (primarily salary payable) amounting to Rs. 71.83 lakhs to Kapila Buildhome was adjusted by journal entry with Ultra Homes Construction Pvt Ltd. The total amount diverted/transferred to Amrapali Healthcare from Ultra Homes was Rs. 5.68 crores (in the form of ICD) + Rs.9.39 crores (in the form of fixed assets/share capital). i.e. 15.07 crores.

Respondent's Submissions:

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The Respondent raised the question on the observations made in prima facie opinion as well as in forensic audit report when he stated that

- a. It was not specified how transfer of land, building, lift, air conditioner, and medical equipment by Ultra Homes Construction Pvt. Ltd (UHPL) another group company as consideration for issue of shares by its hundred percent subsidiary, was an irregularity
- b. It was not specified whether the forensic auditor had examined amount of share application money due from Swapnil Shikha and Suvash Chandra Kumar, outstanding as recoverable till which date.
- c. It was not specified whether the DD was able to rely on any evidences the forensic auditor (FA) had referred to that suggested that the par value at which shares of Amrapali Health Care Pvt. Ltd (AHCL) were transferred by Ultra Homes Construction P Ltd to Gaurisuta Infrastructure in 2016-17 was less than the fair value which was to be realized.

As per the Respondent, based on observations of Forensic Audit, charges could not be considered against the Respondents because as per him point (a) to (c) stated above were pertinent points that were to be ascertained to conclude that the Respondent had compromised in his duties or not. He argued that the observations by Forensic Audit were not conclusive evidence of the Respondent having compromised in his responsibilities.

Supreme Court Observation:

As observed by the Apex Court in Paragraph 62, Pg 191 of its Order dated 23rd July, 2019

"(15) Amrapali Healthcare Private Limited

It formed the property by funds of Ultra Home Construction Private Limited created from home buyers' funds."

Observation of the Committee

At the outset, it was noted that though the Respondent had raised questions on the findings of the forensic audit that shares were issued for consideration other than cash, he failed to observe/ defend himself on more important issue as to why the significant transactions relating to purchase of fixed assets, ICDs repayment or allotment of shares were being done only through Journal entries. Even expenses payable were also being transferred/ adjusted through journal entry. Further, it was noted that there were other issues viz excessive depreciation charged on fixed assets which the Respondent totally failed to put forth his defence. It was noted that depreciation rates adopted by the Company was evident from the financial statements of FY 12-13 abstract of which is reproduced below:-

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PARTICULARS	Rate
Land	0.00%
Plant & Machinery	13.91%
Office Equipments	13.91%
Furniture & Fixture	18.10%

Further, the abstract of Fixed Assets schedule for FY 14-15 was noted as below:

A. FIXED ASSETS

PARTICULARS	Useful Life (in Years)	Original cost			Depreciation and amortization			Net Book Value	
		As at 01.04.2014	Additions during the year	Deletion during the year	As at 31.03.2015	As at 01.04.2014	For the year	As at 31.03.2015	As at 31.03.2015
Fixed Assets:									
Office Equipments	5	34,12,927	20,750	-	34,94,677	4,36,728	15,10,956	19,47,683	15,46,994
Furniture & Fixture	10	11,02,704	62,362	-	11,65,066	1,73,639	2,54,116	4,27,753	7,37,311
Plant & Machinery	11	1,60,03,585	40,79,478	-	4,00,83,063	53,89,496	67,51,476	1,21,40,972	2,79,42,091
Computer & Software	3	3,82,855	25,800	-	4,12,655	89,034	2,04,714	2,03,747	1,18,908
Land		53,92,067	-	-	53,92,067	-	-	-	53,92,067
Buildings	30	5,77,32,335	-	-	5,77,32,335	33,52,479	52,65,128	86,17,557	4,91,14,778
Total		10,48,27,473	42,52,390	-	10,82,79,863	94,41,336	1,39,86,389	2,34,27,715	8,48,52,148

On review of depreciation of Rs. 15,10,956 charged either on gross block of Rs. 34,94,677 on straight line basis or on (Rs. 29,77,199+Rs.80,750) on written down value basis, it was found that it work out to be around 43.24% on SLM or 49.41% on WDV basis which was not at all around 5 years of useful life.

In the absence of any defence of the Respondent in respect of the Company, it was viewed that the entire gamut of transactions that took on the basis of journal entries within the Group companies, it is evident that the Company was established using the excess cash available with other Companies and any income whether earned actually or not was reduced by charging excessive depreciation. It was noted that the either Respondent had not duly verified the efficacy of the transactions that were reflected in the financials or had deliberated avoided to report on the same as the Respondent had also failed to produce documents/working papers based on which the transactions were verified by him. Based on the discussion already held in para 8(iii) above, it was viewed that failure on part of the Respondent to produce its working papers being kept in the premises of client again found to

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be negligence on his part thereby disowning the responsibility of maintaining his working papers under his custody.

In view of discussion held above, it was observed that while reporting in audit report the Respondent had failed to disclose material facts, in fact he failed to report the material misstatement that existed in the financial statements and also the audit opinion expressed was not correct. The Respondent had failed to disclose the nature of entity as well as non-compliance of mandatory disclosure in relation to significant transactions being undertaken by the Company. Accordingly, the Respondent is **GUILTY** of 'Professional and Other Misconduct' falling within the meaning of Items (5), (6), (7) and (8) of Part I of Second Schedule and Item (2) of Part IV of the First Schedule to the Chartered Accountants Act, 1949, read with Section 22 of the said Act

VI In respect of M/s Amrapali Magadh Developers Private Limited (A-535), which was incorporated on 11th February, 2014 and the Respondent was the auditor of the Company for financial year 2013-14 to 2014-15 wherein it was alleged that the following irregularities were not pointed out by the Respondent in his audit report:

- The company has not carried out principal business activities.
- There is no bank account.
- The shareholders paid the share application money in cash.
- The company is a dormant company & did not have any significant transaction.

Respondent's Submissions:

The Respondent submitted that he was unable to understand under which legal or professional requirement for an auditor to report that the Company had not carried its principal business activities or that it had no bank account when these facts were apparent in financial statements. Further, he stated that collecting share application money in cash was not in violation of law. He contended that Section 42 of Companies Act deals with private placement of shares. Subscribing to share in cash particularly subscription for Memorandum of Association was not a violation and auditor's responsibility in this regard was limited to the provisions as laid down in section 143 (1) (f) of Companies Act, 2013.

Supreme Court Observation:

As observed by the Apex Court in Paragraph 60 on pg 85 of its order dated 23rd July, 2019:

"h) Amrapali Magadh Developers Pvt Ltd - The company has not carried out principal business activities. There is no bank account. The purpose of creating the

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company is not clear. The shareholders paid the share application money in cash. The company is a dormant company & did not have any significant transaction".

Observation of the Committee

In relation to subscription received in cash, the Committee agree that there is no bar in company law to receive subscription money from subscribers of MOA or AOA through cash. However, with relation to the Respondent's submission about extant Company that if it was neither carrying any principal business nor possessing the bank account, he was under no legal obligation to report the same, such facts were being reflected from the financials of the Company. It was noted that the Respondent had indirectly agreed it to be not only then prevailing dormant company but also had no intention to undertake any activity because it had no bank account. It was noted at the same time when the details of its assets and liabilities were reviewed (**A-535**) alongwith its financials of 13-14 and 14-15 separately downloaded from MCA 21 that its total assets were in the form of financial assets (i.e. cash) with no income being earned and as such it was an NBFC which again the Respondent failed to observe and report accordingly.

It was viewed that if the Company was not carrying any business except booking certain rental obligations to related parties and audit fees payable to the Respondent which in fact was never paid to either party and that net-worth was eroded with no business in hand clearly indicate that the Respondent, being statutory auditor, had sufficient reason to question the purpose of the entity to understand if it was going concern. However, the Respondent failed to observe either to treat company as NBFC or report in compliance with the provisions of SA 250, "Consideration of Laws and Regulations in an Audit of Financial Statements".

In view of discussion held above, it was observed that while reporting in audit report the Respondent had failed to disclose material facts, in fact he failed to report the material misstatement that existed in the financial statements and also the audit opinion expressed was not correct. The Respondent had failed to disclose the nature of entity as well as non-compliance of mandatory disclosure in relation to significant transactions being undertaken by the Company. Accordingly, the Respondent is **GUILTY** of 'Professional and Other Misconduct' falling within the meaning of Items (5), (6), (7) and (8) of Part I of Second Schedule and Item (2) of Part IV of the First Schedule to the Chartered Accountants Act, 1949, read with Section 22 of the said Act

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VII In respect of M/s Amrapali Centurian Park Private Limited (A-537), which was incorporated on 10th September, 2010 and the Respondent was the auditor of the Company for financial year 2010-11 to 2015-16 wherein the following irregularities were reported in the forensic report which Respondent as an auditor had failed to report:

- (i) The company had not passed the entry of transfer of shares from Mr. Anil Kumar Sharma & Mr. Shiv Priya to M/s Ultra Home Construction Private Limited, M/s Mansarovar Textiles Private Limited, and M/s DH Education Services Private Limited in its books of accounts.
- (ii) The company had taken inter-corporate deposit and loans from related parties on which no interest was provided. No agreement of ICD's taken and loans from related parties were provided to the forensic auditor.
- (iii) As per the latest audited financial statements for the year ended 2015-16, the company had cash in hand amounting to Rs 10.98 crores, however the same was not traceable.

Respondent's Submissions:

In respect of above charges, the Respondent submitted that once shares are issued, share capital account is credited with consideration received and that remain intact and permanent regardless of transfer of shares take place. The only reference in share capital account are serial number of shares. It is not feasible to pass share transfer entries in regular books of accounts. Further, ICDs were interest free and he was not responsible if forensic auditor was unable to collect agreements from management. Further he stated that he had obtained management representation letter to the effect that cash balance was with promoters and had disclosed the auditor had not verified cash physically. Moreover, books of accounts that were provided to him were duly matched with balance sheet both for opening balances and closing balances.

Observation of the Committee:

In view of above submissions by the Respondent, It is noted that physical verification was not done by the Respondent w.r.t cash which was a material item, as forensic auditors have not been able to found the cash. Inter Corporate Deposit agreement were also not made by the company before taking deposits from corporates. Draft of Inter-Corporate Deposit / Loan Facility Agreement between the Lender, Borrower and the Pledger to lend and advance inter- corporate deposit to the Borrower consists of following:

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Sr. No.	Particular of Clause
1	Definitions
2	The Loan Facility
3	Request for Advances
4	Interest
5	Security
6	Use of Proceeds
7	Payment and Repayment and Cancellation
8	Rank of Obligation
9	Taxes and Deductions
10	Event of Default
11	Notices
12	Entire Agreement
13	Counterparts
14	Invalidity
15	Amendments
16	Costs
17	Governing Law
18	Jurisdiction

From the above, the Committee noted that in the absence of such agreements neither the purpose of receiving the funds were clear nor its associated other term and conditions. Further, the Respondent has failed to submit any copy of his working papers in respect of audit conducted by him for each period to justify that he being the statutory auditor how he satisfied himself about all these transactions while conducting the audit when there existed differences in Audited financials and tally data in context of opening balance as pointed out by the Forensic Auditors. Further the company had not passed the entry of transfer of shares from Mr. Anil Kumar Sharma & Mr. Shiv Priya to M/s Ultra Home Construction Private Limited, M/s Mansarovar Textiles Private Limited, and M/s DH Education Services Private Limited in its books of accounts which the Respondent failed to report.

It was viewed that above observations primarily occurred on account of non-maintenance of Share register, Loan register or Related Party transaction

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Register. It was noted that the Respondent tried to wash his hands stating his limited scope of audit and inability on the part of forensic auditors to collect/track relevant information. It was viewed that non-maintenance of basic registers also raises question as to how he was convinced to have obtained all the information and explanation as required under sec 143(1) & (3) of the Companies Act, 2013. It was noted that if no such registers were being maintained or statutory payments were not being made, the Respondent had failed to report the said facts in respect of the Company.

It was noted that in respect of deficit cash balance he reported to have obtained management representation letter to the effect that cash balance was with promoters. It was viewed that the stated submission clearly indicates that the Respondent neither verified the cash balance physically nor bothered to evaluate whether the then available cash was in safe custody. He also failed to evaluate the degree of internal control exercised by the Company on the same. Further, it is noted that the respondent has failed to bring his working paper i.e. management representation letter to justify the reasonableness of audit procedures applied by him. Based on the discussion already held in para 8(iii) above, it was viewed that failure on part of the Respondent to produce its working papers being kept in the premises of client again found to be negligence on his part thereby disowning the responsibility of maintaining his working papers under his custody.

Accordingly, the Respondent is held prima facie guilty of 'Professional and Misconduct' falling within the meaning of Items (5), (6), (7) and (8) of Part I of Second Schedule to the Chartered Accountants Act, 1949.

VIII In respect of M/s Amrapali Homes (A-557), it was reported to be a Joint Venture of Ultra Home Construction Private Limited (95% share) and Mauria Udyog Limited (5% share) and the Respondent was the auditor of the said entity from financial year 2008-09 to 2014-15. In respect of the said entity, the following specific irregularities were pointed out in the forensic audit report which Respondent was alleged to have failed in reporting the same in his audit report concerned being its auditor:-

- (i) Amount given as advance for property was adjusted with journal entry and transferred to Ultra Home Construction Private Limited.
- (ii) The firm was booking bogus expenses against rent and paying in cash to Anil Kumar Sharma.

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It is noted that the Forensic Report states the facts of rental income and its payment to Mr Anil Kumar Sharma and his relatives in cash as follows:

"The firm has given a commercial property in Indirapuram on rent to Andhra Bank Indirapuram branch and received rent from 1/4/2008 till 31/3/2015 for the same.

Purpose	Period of transaction	Amount received
Rent from Andhra Bank Indirapuram branch and ATM	1/4/2012 to 31/3/2015	23,69,827
	13/4/2013 to 15/2/2014	9,38,307
	1/4/2008 to 8/9/2012	31,88,466
Total		64,96,600

The firm has paid rent in cash to Mr. Anil Kumar Sharma and related persons/entities.

Name of person	Period of transaction	Amount	Remarks
Mr. Madan Mohan Sharma, father of Anil Kumar Sharma	1/04/2008 to 31/03/2009	3,29,745	Paid through bank
Mr. Anil Kumar Sharma	31/3/2013	67,416	Paid in cash
MSB Software Technology Private Limited	31/3/2013	67,416	Paid in cash
Mr. Anil Kumar Sharma	31/3/2014	1,34,832	Adjusted with Ultra Home Construction Private Limited
MSB Software Technology Private Limited	31/3/2013	67,416	Paid in cash
Mr. Anil Kumar Sharma	31/3/2015	67,416	Still outstanding
Total		7,34,241	

Hence, it's clear that the firm was booking bogus expenses against rent and paying in cash to Anil Kumar Sharma."

Respondent's Submissions:

In respect of these charges, the Respondent stated that it is not specified why the journal entry that resulted in debit balance of the Company by settling advances to Vrindavan Buildcon Pvt Ltd and Vrindavan Homes was a point of objection. There is no truth in the claim that the firm was booking bogus expenses. The rent paid were genuine expenses towards use of the property. Rent was paid to the respective owners of building. Rent payments for total year should not have been based to determine whether cash payments were in violation law or not. The forensic auditor must be asked to explain whether he viewed the cash payments to related parties violative of any law. Recipients had paid taxes on the rental income.

Observation of the Committee

On perusal of forensic report, the Committee observed that the Forensic Report reported two major facts as follows

- (i) Rs.30 lakhs given to Vrindavan Buildcon (wherein the relatives of the Respondent was stated to be directors) and Rs. 14 lakhs given to Vrindavan Homes. It is stated that **(A-567)**

"As per affidavit filed by Mr. Anil Kumar Sharma dated 3rd December 2018, Amrapali homes has given Inter corporate deposits to Vrindavan Buildcon Private Limited amounting to Rs 44 lakhs in April 2008. However, Amrapali homes shown it as advance given against property to Vrindavan Buildcon Private Limited and Vrindavan Homes".

- (ii) the facts of rental income and its payment to Mr Anil Kumar Sharma and his relatives in cash which were adjusted as deemed purchases without record when it reported as follows:

"The firm has given a commercial property in Indirapuram on rent to Andhra Bank Indirapuram branch and received rent from 1/4/2008 till 31/3/2015 for the same.

Purpose	Period of transaction	Amount received
Rent from Andhra Bank Indirapuram branch and ATM	1/4/2012 to 31/3/2015	23,69,827
	13/4/2013 to 15/2/2014	9,38,307

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	1/1/2008 to 8/9/2012	31,88,466
Total		64,96,600

The firm has paid rent in cash to Mr. Anil Kumar Sharma and related persons/entities.

Name of person	Period of Transaction	Amount	Remarks
Mr. Madan Mohan Sharma, father of Anil Kumar Sharma	1/04/2008 to 31/03/2009	3,29,745	Paid through bank
Mr. Anil Kumar Sharma	31/3/2013	67,416	Paid in cash
MSB Software Technology Private Limited	31/3/2013	67,416	Paid in cash
Mr. Anil Kumar Sharma	31/3/2014	1,34,832	Adjusted with Ultra Home Construction Private Limited
MSB Software Technology Private Limited	31/3/2013	67,416	Paid in cash
Mr. Anil Kumar Sharma	31/3/2015	67,416	Still outstanding
Total		7,34,241	

Hence, it's clear that the firm was booking bogus expenses against rent and paying in cash to Anil Kumar Sharma."

It was noted that forensic report also contained clip of journal entry passed as follows:

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Amrapali Homes (2000)

Journal Voucher

No. : 741 Date : 31.3.2018

Particulars	Debit	Credit
Deemed Purchases	₹ 65,57,500.00	
To Anil Kumar Sharma (Imp)		16,47,500.00
To Santosh Sharma (Imp)		7,00,000.00
To Ajay Kumar Imp Ak		6,00,000.00
To Animesh & Imp		20,30,000.00
To Mohit Gupta		35,20,000.00
	₹ 65,57,500.00	₹ 65,57,500.00

On Account of:
booking amount of imprest
amt transfer to deemed
purchases with details
discussion with sir &
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From the above, it is noted that the entity was paying its rental income rent in cash to Mr. Anil Kumar Sharma and related persons/entities and bogus expenses in the form of 'deemed purchases' were being booked against it (A-561 to 562). The narration to the said journal entry clearly state 'the amount of imprest account transferred to deemed purchases with detail discussion with sir and Santosh.'

It was noted that the Respondent has stated to have not understood the context of objections raised in prima facie opinion for advances to Vrindavan Buildcon Pvt Ltd and Vrindavan Homes and claimed that there was no truth in the claim that the firm was booking bogus expenses. However, in view of the aforesaid adjustments made for booking deemed purchases through journal entries alongwith contradictions of facts given in respect of advances given to Company wherein the Respondent's relatives were director questions not only degree of independence exercised by him while auditing the financials but also indicates that he had failed to perform his professional duties diligently when he did not report such adjustments being made in the books of the entity. Accordingly, the Respondent is held prima facie guilty of

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'Professional and Misconduct' falling within the meaning of Items (5), (6), (7) and (8) of Part I of Second Schedule to the Chartered Accountants Act, 1949.

IX In respect of M/s Amrapali Mahi Developers Private Limited (A-564) which was incorporated on 22nd December, 2011 and the Respondent was its auditor from financial year 2011-12 to 2013-14. It is alleged against the Respondent that being auditor, he failed to report the following irregularities in his audit report:

- (i) The company has not paid audit fees for 3 years amounting to Rs 33,708 (as on 31st March 2014).
- (ii) The company has paid rent to MSB Software Technologies Private Limited amounting to Rs 67,416 in cash in FY 2013-14.

Respondent's Submissions:

The Respondent submitted that arrears in audit fees was a fact, but it did not exceed the prescribed limit leading to disqualification of auditors. Therefore, the point was irrelevant.

Further, rent paid to MSB Software Technologies was for actual use of property and there was no violation of law in cash payment as individual payments were within legal limit for cash payment.

Supreme Court Observation:

As observed by the Apex Court in Paragraph 60 point (i) pg 85, of its order dated 23rd July, 2019:

"Amrapali Mahi Developers Pvt Ltd - The company received share capital in cash and all the expenses were paid in cash only

Observation of the Committee

On perusal of forensic report, it is noted that as per MCA database, the company was stricken off and date of last balance sheet was for the period ended on 31st March 2014. The company did not have any bank account from beginning till the stage of strike off. The company had received share capital in cash and all the expenses were paid in cash only. The company had paid rent to MSB Software Technologies Private Limited amounting Rs 67,416 in cash in FY 2013-14 and the same amount was shown as accrued rent to Anil Kumar Sharma amounting Rs 67,416 in FY 2013-14. Further, the audit fees was never paid to the Respondent.

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It was noted that the Respondent had argued that arrears in audit fees was within the prescribed limit and that entering into cash transactions was not any violation of law. However, it was noted that the fact that the Respondent had never received the audit fees

It was noted that in para 290.195 of Code of Ethics- 2009, Fees overdue should be considered as one of the self interest threat. It states that

A self-interest threat may be created if fees due from an assurance client for professional services remain unpaid for a long time, especially if a significant part is not paid before the issue of the assurance report for the following year. Generally, the payment of such fees should be required before the report is issued. The following safeguards may be applicable:

- Discussing the level of outstanding fees with the audit committee, or others charged with governance.
- Involving an additional professional accountant who did not take part in the assurance engagement to provide advice or review the work performed.

The firm should also consider whether the overdue fees might be regarded as being equivalent to a loan to the client and whether, because of the significance of the overdue fees, it is appropriate for the firm to be re-appointed.

Since the Respondent had not received fees it had become a loan to the company and accordingly, he should have withdrawn himself from being auditor of a company. The fact that the Respondent continued to render service despite the concern/ auditee being loanee to him for his audit fees create doubt on degree of independence exercised by him while conducting audit. Further, such entity was undertaking only cash transactions with no bank account ever opened and that even the share capital was received in cash which raises the question as to how the Respondent was verifying the transactions recorded in the books of accounts. It was noted that the Respondent had neither provided any substantive defense nor produced any working papers stating that the same were kept in the premises of his client which again raised question on his independent role. Accordingly, the Respondent is held prima facie guilty of 'Professional and Misconduct' falling within the meaning of Items (5), (6), (7) and (8) of Part I of Second Schedule to the Chartered Accountants Act, 1949.

X In respect of M/s Amrapali Homes Projects Private Limited (A-582), incorporated on 27th September, 2004 for which the Respondent was the auditor of the

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Company for financial year 2007-08 to 2014-15, it was alleged that Respondent being the auditor of the Company failed to report the following irregularities:

- (i) The money was given to directors without any business reason and same was booked after 2 days as insurance expense. Similarly, excess payment to Anil Kumar Sharma (One of the Director) was subsequently booked as Preliminary expense (INR 1.3 Lakh on 31st March 2009) and Professional fee (INR 9 Lakh on 31st March 2010).
- (ii) The company transferred funds to and from with several parties which did not have any substance.

Respondent's Submissions:

The Respondent stated that the fact that payments were given to directors without any business reasons was an opinion of the Forensic Auditor, based on his outlook. As per him, the insurance expenses were booked upon receipt of documents and that till then the advance paid was in imprest account. Further, the amount charged to preliminary expenses were of that nature only as it was unrepresented by any assets and it was to be written off as per AS 26. Charging professional fees and that too to related parties were not violation of any law or norm. He argued that there was no truth in the aspersion that expenses were not booked properly. Those were baseless charges.

Supreme Court Observation:

As observed by the Apex Court in Paragraph 60 point (i) pg 87 of its order dated 23rd July, 2019:

"Amrapali Homes Projects Private Limited: It has been observed that Mr. Prem Mishra was given INR 12.40 crore (under several ledgers) for purchase of land since 1st April 2008, out of which INR 10 crore are still receivable from him. The project was sold by Prem Mishra to various parties and received amount in his name. We are yet to complete the audit of Prem Mishra in Indore project. The company transferred funds to and fro with several parties which do not have any substance. It has several small and big debit balances as on date."

Observation of the Committee

On perusal of forensic report, the Committee noted as follows:

"It was observed that money was given to directors without any business reason. For example, imprest given to Anil Sharma on 28th March 2011 for INR 10 Lakhs was

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booked after 2 days as insurance expense. Similarly, excess payment to Anil Kumar Sharma was subsequently booked as Preliminary expense (INR 1.3 Lakh on 31st March 2009) and Professional fee (INR 9 Lakh on 31st March 2010)"

Further, it was stated that

"The company transferred funds to and fro with several parties which do not have any substance. It has several small and big debit balances as on date. List of parties with whom debit balances above INR 10 Lakh are lying as per Tally data as on 15th June 2018 enclosed herewith in Annexure 1 (excluding amounts recoverable within the group). Total of such recoverable amounts to INR 55.87 crore (approx). Out of the above stated recoverables, INR 20.75 crore pertains to advances against land which has not been charged to cost of construction."

It is viewed by the Committee that firstly such payments to Mr. Anil Kumar Sharma, director of the Company, were in nature of personal payments or part of salaries paid to whole time/ managing director. Further, the papers based on which the Respondent verified such alleged payments as insurance, preliminary, or professional expenses could have been investigated on receipt of any information from the Respondent. In the absence of any information, it raises the doubt about the quality of audit being conducted by the Respondent. It is coming out that in many companies Mr Anil Kumar Sharma was taking excessive cash payments in guise of professional charges or in other forms. Even in case of M/s Amrapali Homes he was taking cash payment on receipt of rental income by it. So, expenses were not being recorded correctly and the Respondent failed to report the same in his audit report.

As regard the Respondent questioning the forensic auditor's outlook, it was noted that the findings of the Forensic Audit have been approved by the Supreme Court as observed by it in paragraph 152 of the judgment and that the Forensic Audit findings once approved by the Supreme Court would become the findings of the Supreme Court. It was, further, noted that the Respondent had failed to bring on record any review petition filed by him on the said Supreme Court decision. Hence, the submissions of the Respondent to state that findings of the Forensic Audit were outlook of the forensic auditors could not be accepted.

It was noted that the Respondent had neither provided any substantive defense nor produced any working papers stating that the same were kept in the premises of his client which again raised question on his independent role. Accordingly, the

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Respondent is held prima facie guilty of 'Professional and Misconduct' falling within the meaning of Items (5), (6), (7) and (8) of Part I of Second Schedule to the Chartered Accountants Act, 1949.

- XI In respect of M/s Amrapali Leisure Valley Private Limited (A-549), the Respondent was the auditor of the Company for financial year 2010-11 to 2015-16 and accordingly it is alleged that Registered office of company was premises of the Respondent (A-549 read with A-793).**

It is noted that the allegation is already discussed in paragraph 8(i) above.

- XII In respect of M/s Ultra Home Construction Private Limited (UHCPL) (A-585), incorporated on 7th April, 2003, the Respondent was the auditor of the Company for financial year 2007-08 to 2014-15 wherein it is alleged that being the auditor of the Company he failed to report the following irregularity:**

- (i) Misappropriation of funds of homebuyers in other entities/projects to pay for allotment of shares in UHCPL by shareholders who did not bring capital of their own.

Respondent's Submissions:

In respect this charge, the Respondent submitted that amounts paid by Amrapali Sapphire Developers P Ltd were ICD to Amrapali Infrastructure Ltd., forensic auditor has attempted to link this with payment by the latter to UHCPL, because of closeness in dates between these transactions. Further, he stated that shares allotted by UHCPL to Anil Kumar Sharma and Shiv Priya were against payments received from Amrapali Infrastructure Ltd which were loans to directors by the latter as per the resolutions passed. As all these transactions were within the group Companies, hence, he had no reason to form a negative opinion on those transactions that these were prejudicial to the interest of the Company at that point of time, for the purpose of section 143(1)(b).

Supreme Court Observation:

As observed by the Apex Court in Paragraph 60 point (i) pg 86-87 of its order dated 23rd July, 2019:

"Ultra Home Construction Pvt Ltd- Shareholders did not bring capital of their own, but used funds of home buyers in other entities/projects to pay for allotment of shares in UHCPL. Mr. Anil Kumar Sharma was allotted shares at premium for an amount of Rs.22,82,40,810 on 4th Nov 2010 and Rs.25,84,05,470 on 2nd March 2011 by

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adjusting receipts from Amrapali Infrastructure Ltd which further received from Amrapali Sapphire Developers Pvt Ltd, which received from homebuyers. Few instances are hereunder:

Received in Amrapali Sapphire Developers Pvt Ltd primarily from home buyers	Transferred to Amrapali Infrastructure Ltd	Transferred to Ultra Home Construction Pvt Ltd
INR 5.47 crore as on 4th March 2010	INR 2 crore on 5th March 2010	INR 2 crore on 5th March 2010
INR 1.90 crore on 5th and 6th March 2010	INR 2 crore on 8th March 2010	INR 2 crore on 8th March 2010
INR 1.13 crore on 8th March 2010	INR 2 crore on 9th March 2010	INR 2 crore on 9th March 2010

Observation of the Committee

On perusal of the Forensic Report, it was noted to state as follows (A-585 to A-586):

"Shareholders did not bring capital of their own, but used funds of home buyers in other entities/projects to pay for allotment of shares in UHCPL. Details are as under:

(i) Mr. Anil Kumar Sharma was allotted shares at premium for an amount of INR 22,82,40,810 on 4th Nov 2010 and INR 25,84,05,470 on 2nd March 2011 by adjusting receipts from Amrapali Infrastructure Ltd which further received from Amrapali Sapphire Developers Pvt Ltd, which received from homebuyers.

Few instances are hereunder:

Received in Amrapali Sapphire Developers Pvt Ltd primarily from home buyers	Transferred to Amrapali Infrastructure Ltd	Transferred to Ultra Home Construction Pvt Ltd
INR 5.47 crore as on 4th March 2010	INR 2 crore as on 5th March 2010	INR 2 crore as on 5th March 2010
INR 1.90 crore on 5th and 6th March 2010	INR 2 crore on 8th March 2010	INR 2 crore on 8th March 2010
INR 1.13 crore on 8th March 2010	INR 2 crore on 9th March 2010	INR 2 crore on 9th March 2010

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(ii) Similarly, Mr. Shiv Priya was allotted shares at premium for an amount of INR 8,87,59,810 on 4th Nov 2010 and INR 11,60,95,460 on 2nd March 2011 by adjusting receipts from Amrapali Infrastructure Ltd which further received from Amrapali Sapphire Developers Pvt Ltd, which received from homebuyers.

(iii) Gaurisuta Infrastructure Pvt Ltd was allotted shares at a premium for an amount of INR 131,99,99,300 on 31st March 2015 by receiving funds from related entities in those companies.

(iv) Amrapali Spring Valley Pvt Ltd was allotted shares at premium for an amount of INR 168,57,69,790 on 31st March 2015 by receiving funds from home buyers in those companies."

It was noted that the Respondent provided the defense stating that the Forensic Auditors had interpreted as such due to close dates when the transactions took place and that the amounts taken from other companies were treated as shares subscription money of directors because latter had been given the loans by such companies. Further, they were inte-group company transactions.

It was viewed that while putting forth any argument in his defense the Respondent had failed to provide any evidence in respect of the same. It was noted that the findings of the Forensic Audit have been approved by the Supreme Court as observed by it in paragraph 152 of the judgment and that the Forensic Audit findings once approved by the Supreme Court would become the findings of the Supreme Court. It was, further, noted that the Respondent had failed to bring on record any review petition filed by him on the said Supreme Court decision. Hence, the submissions of the Respondent to state that findings of the Forensic Audit were outlook of the forensic auditors could not be accepted.

It was noted that the Respondent had neither provided any substantive defense nor poroduced any working papers stating that the same were kept in the premises of his client which again raised question on his independent role.

Thus, the Committee was of the view that shareholders did not bring capital of their own, but used funds of home buyers in other entities/projects to pay for allotment of shares in UHCPL and details reproduced above(A-585 to A-586). It is viewed that shares could be allotted only when the shareholders contribute to the capital. Incorporating companies and creating shareholders by adjusting the amounts

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received from other group companies is a medium to exercise control on assets of such company and also an evidence that diversion of funds were taking place among the Amrapali group of Companies which the Respondent did not report.

In view of discussion held above, it was observed that while reporting in audit report the Respondent had failed to disclose material facts, in fact he failed to report the material misstatement that existed in the financial statements and also the audit opinion expressed was not correct. The Respondent had failed to disclose the nature of significant wrong doings taking place in the Company which was unbecoming of the Chartered Accountant. Accordingly, the Respondent is **GUILTY** of 'Professional and Other Misconduct' falling within the meaning of Items (5), (6), (7) and (8) of Part I of Second Schedule and Item (2) of Part IV of the First Schedule to the Chartered Accountants Act, 1949, read with Section 22 of the said Act

XIII In respect of M/s Amrapali Grand (A-591), the Respondent was the auditor of the said partnership firm from financial year 2007-08 to 2014-15 and being the auditor of the firm it was alleged that he failed to report the following irregularities:

- Biharijilspat Udyog Limited being one of the partners of Amrapali Grand always had negative capital.
- Audit fee payable to the Respondent was outstanding since 2012-13 total amounting to Rs 3,37,360/- and thus questioned his independent role as statutory auditor

Respondent's Submissions:

It is noted that the Respondent has submitted that he discontinued as auditors in year 2014 -15, and heavy dues of fees payable was a reason. Independence of auditors was not compromised because of outstanding fees. Negative balance in capital account of the partner was not a matter to be reported by him. Transactions mentioned in Para 11.15.1 of PFO were viewed by forensic auditor as diversions and adjustments. As auditor the Respondent had seen those transactions for which counterparties had agreed to and duly corresponded in their books of accounts.

As per the Respondent the said charges were made without any evidences that there was no illegality in the transactions or failure on the part of the Respondent. Fees overdue could be a self-interest threat. But there is no prescription that auditor shall not accept assignments in all circumstances where there are self interest threats. The respondent had resigned in year 2014-15, unintended crossing of Code of Ethics, may be viewed with leniency.

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Observation of the Committee:

In respect of above, the Committee noted that the Forensic Audit contain screenshots of the ledger account of M/s. Biharijilspat Udyog Limited in the books of M/s Amrapali Grand (A-591 to A-592) and accordingly observed as under:

*"Out of **INR 12 crore** given to Biharijilspat Udyog Limited, they returned INR 6.45 crore through bank and the balance amount was adjusted against receivables from Ultra Home Construction Pvt Ltd and **against capital contribution** by Biharijilspat Udyog Ltd.*

Further, out of INR 6,45,00,000 repaid by Biharijilspat Udyog Limited to Amrapali Grand, INR 4,14,03,000 was diverted to Amrapali Silicon City Private Limited & INR 1,79,17,800 was diverted to Amrapali Leisure Valley Developers Private Ltd, which was used by the respective companies to make payment for purchase of land for their projects to Noida authorities"

As the Respondent in above submissions has requested for leniency, it is coming out that Biharijilspat Udyog Ltd had always withdrawn much more than what they brought into the business. In fact, it had withdrawn money prior to bringing capital which effectively lead to a situation that it had returned the money taken which was treated as capital contributed by it. The Respondent failed to report such diversion of funds. With respect to non-payment of audit fees to the Respondent since 2012-13, it was noted that the Respondent was the statutory auditor till FY 2014-15 but had not received audit fees. It was further noted that in para 290.195 of Code of Ethics- 2009, Fees overdue should be considered as one of the self interest threat. It states that

A self-interest threat may be created if fees due from an assurance client for professional services remain unpaid for a long time, especially if a significant part is not paid before the issue of the assurance report for the following year. Generally, the payment of such fees should be required before the report is issued. The following safeguards may be applicable:

- (a) Discussing the level of outstanding fees with the audit committee, or others charged with governance.
- (b) Involving an additional professional accountant who did not take part in the assurance engagement to provide advice or review the work performed.

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The firm should also consider whether the overdue fees might be regarded as being equivalent to a loan to the client and whether, because of the significance of the overdue fees, it is appropriate for the firm to be re-appointed.

Since the Respondent had not received fees since long period it had become a loan to the company and accordingly, he should have withdrawn himself from being auditor of a company. The fact that the Respondent continued to render service despite the concern/ auditee being loanee to him for his audit fees create doubt on degree of independence exercised by him while conducting audit. Thus, the Committee did not absolve him from these charges.

It was noted that the Respondent has sought evidence for charges made against him. It was noted that the findings of the Forensic Audit have been approved by the Supreme Court as observed by it in paragraph 152 of the judgment and that the Forensic Audit findings once approved by the Supreme Court would become the findings of the Supreme Court. It was, further, noted that the Respondent had failed to bring on record any review petition filed by him on the said Supreme Court decision. Hence, the submissions of the Respondent that observations of the Forensic Audit were without evidence could not be accepted. It was backed with thorough evaluation of facts available on record which was accepted by the Honorable Supreme Court.

It was noted that the Respondent had neither provided any substantive defense nor produced any working papers stating that the same were kept in the premises of his client which again raised question on his independent role.

Thus, the Committee was of the view that while reporting in audit report the Respondent had failed to disclose material facts, in fact he failed to report the material misstatement that existed in the financial statements and also the audit opinion expressed was not correct. The Respondent had failed to disclose the nature of significant wrong doings taking place in the Company which was unbecoming of the Chartered Accountant. Accordingly, the Respondent is **GUILTY** of 'Professional and Other Misconduct' falling within the meaning of Items (5), (6), (7) and (8) of Part I of Second Schedule and Item (2) of Part IV of the First Schedule to the Chartered Accountants Act, 1949, read with Section 22 of the said Act

XIV In respect of M/s Amrapali Eden Park Developers Private Limited (A-597), the following are the allegations against the Respondent:

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- There is no substance in the nature of transactions carried on by the company. The funds are merely routed from one entity to another for hidden objective.
- Audit fee payable to the Respondent was outstanding since 2013. How an auditor can be independent, who is working without receipt of payment of his work for number of years.

Respondent's Submissions:

It is noted that the Respondent in his submissions has stated that observation that there was no substance in transactions with Nirala Developers P Ltd is not accurate. Date of transactions and difference in their nature apart from associated documents only would establish whether the Respondent as auditor should have reported those transactions in his audit report. Allegation of abuse of bank loans lacks merit in the absence of corroboration that the lender bank was aggrieved of the same. The forensic auditor must be asked to corroborate this with evidence. Further, regarding outstanding fees since 2013 the Respondent argued that he did not continue after 2014-15. It was not the choice of the Respondent to turn a creditor, but was because of non-payment, which was never a loan.

Observation of the Committee:

In view of submissions of the Respondent, the Committee took a perusal of forensic report, which states that (A-597)

"As per the Tally data as on 1st April 2018, the company received inter corporate deposits from Nirala Developers Pvt Ltd amounting to INR 1.15 crore and at the same time it invested INR 1 crore in Nirala Developers Pvt Ltd.

2. Banks were financing not the construction activity but loans and advances to third parties. For example: Eden Park Developers Pvt Ltd received term loan of INR 45 crore for development of project 'Amrapali Eden Park' in March 2013 from Corporation Bank. However, these funds were diverted for purposes other than development of project, to parties (A-597) stated hereunder as soon as received...."

"3. Further, payment made to Ishaan Housing & Construction, Ishaan Infotech, Ishaan Infraestates India Private Limited & Reinfo Tech Estates Private Limited amounting to INR 4 crore was repaid by them after an year without any interest.

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It was noted that the Respondent has put forth his defense stating about inaccurate observation of the forensic auditors, inadequate evidences to corroborate the charges made against him.

It was noted that the findings of the Forensic Audit have been approved by the Supreme Court as observed by it in paragraph 152 of the judgment and that the Forensic Audit findings once approved by the Supreme Court would become the findings of the Supreme Court. It was, further, noted that the Respondent had failed to bring on record any review petition filed by him on the said Supreme Court decision. Hence, the submissions of the Respondent that observations of the Forensic Audit were without evidence could not be accepted. It was backed with thorough evaluation of facts available on record which was accepted by the Honorable Supreme Court.

It was noted that the Respondent had neither provided any substantive defense nor produced any working papers stating that the same were kept in the premises of his client which again raised question on his independent role. Further the Respondent had also not received fees since long period it had become a loan to the company and accordingly, he should have withdrawn himself from being auditor of a company. The fact that the Respondent continued to render service despite the concern/ auditee being loanee to him for his audit fees again questions his independent role in conducting audit.

Thus, the Committee was of the view that indeed the extant company was used for diversion of the funds and that the Respondent had failed to disclose material facts, and also the audit opinion expressed was not correct. The Respondent had failed to disclose the nature of significant wrong doings taking place in the Company which was unbecoming of the Chartered Accountant. Accordingly, the Respondent is **GUILTY** of 'Professional and Other Misconduct' falling within the meaning of Items (5), (6), (7) and (8) of Part I of Second Schedule and Item (2) of Part IV of the First Schedule to the Chartered Accountants Act, 1949, read with Section 22 of the said Act

XV In respect of M/s Shalimar Colonisers Private Limited (A-604), incorporated on 12th December, 2004 and the Respondent was the auditor of the Company from financial year 2007-08 to 2014-15, the following is the allegation:

- Forensic auditor was not provided access to the books of accounts maintained by the company in Tally ERP 9. The same was even informed to Mr. Anil Kumar Sharma and the Respondent, however, they also did not provided the same.

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Respondent's Submissions:

In this regard, the Respondent submitted that the allegation made had no connection with the role of the Respondent as statutory auditor. Books of accounts were in the custody of the Company Management, thus, there was no basis to cast aspersions on the Respondent with regard to custody of any books of accounts particularly when all the records were handed to forensic auditor as per the court orders.

Observation of the Committee:

In respect of this charge, the Committee noted that the forensic auditors have provided the screenshot of the communication held seeking the information, which raises suspicion as to whether the books were actually maintained by the Company as same were not been able to be produced before Forensic Auditors. It was noted that the Respondent had not submitted any working papers to defend the fact that he did the audit diligently. On the contrary, the Respondent has submitted that being auditor for a various entities of Amrapali Group, he had retained one room as its camp office, within the premises of Amrapali office. He contended that a large number of records that were part of past and current audit working papers were in that office. When the said Office premises were locked up by the police, by reaching directly from the Court after getting its orders on 9th Oct 2018, had the unintended effect on account of which they were unable to retrieve their audit working files and documents from the camp office within the premises of Amrapali office. It was viewed that when the Respondent had decided to keep its audit documentation in space provided by its client, then effectively the Respondent had lost its ownership on audit documentation to its auditee client i.e. Amrapali Group. As a result when default was caused on account of management action, as being argued by the Respondent, he had already lost his control therefore unable to timely obtain its copies. In any case, it was further viewed that even if his audit working papers were confiscated by police on account of Supreme Court Order, firstly the Respondent had a right to obtain its copies and finally it was noted that such documentation obtained were handed over to independent forensic auditors who find them insufficient at pointed out alleged differences. To conclude, the Respondent had although stated that extant charge could not be raised against him being lapse on the part of the management of the Company but looking at the entire gamut of non-compliances/ non-observance of statutory obligations across the entire Amrapali Group, it would not be wrong to say that his inability to defend himself based on working papers either before the Supreme Court or the Committee raises suspicion on audit conducted by the Respondent and hence the Respondent cannot be exonerated at this stage on this allegation. Further, it was viewed that the forensic audit was being

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conducted under the directions of the Supreme Court and therefore the Respondent was required to co-operate with the forensic auditors in which was an act unbecoming of a Chartered Accountant.

Accordingly, the Respondent is **GUILTY** of 'Other Misconduct' falling within the meaning of Item (2) of Part IV of the First Schedule to the Chartered Accountants Act, 1949, read with Section 22 of the said Act

XVI In respect of M/s STUNNING CONSTRUCTION PRIVATE LIMITED(A-611),the Respondent was Statutory Auditor for the financial year 2014-15 and accordingly it is alleged following:-

- This premise belongs to the Statutory Auditor of the Company.
- Non-compliance of statutory obligations in respect of annual return.
- No statutory records have been maintained relating to register of directors and shareholders, register of related party contracts and minutes book.

It is noted that the above charges has been discussed in detail above in paragraph 8(i) and 8(iv).

XVII In respect of M/s AMRAPALI SAPPHIRE DEVELOPERS PRIVATE LIMITED (A-617), the Respondent was the auditor of the Company for financial year 2014-15 where following irregularities have been alleged which the Respondent failed to report:

- Sale of Flats was done at significantly lower prices (Under-Valued Transactions)
- The Company Management as well as Statutory Auditor(s) and CFO had failed in their duty to follow the Accounting Standards relating to recording the valuation of Work in Progress as per ICAI guidelines applicable to Real Estate Company.
- Discrepancy in cash in hand.
- Diversion of Home Buyer Funds
- Advance Recoverable from Non-Related Parties as on 31st March, 2015.
- The Company had made cash payments to various parties exceeding INR 20,000 in contravention to The Income Tax Act 1961.

Respondent's Submissions:

In response to above charges, the Respondent stated that sale of flat at low price was not concerned with him. It was a commercial decision of the Management. The Respondent was nowhere involved in operational or management matters of the company. Accounting Standards related to valuation of Work in progress was not followed was a baseless and unsubstantiated charge. The Respondent had




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conducted physical verification of cash at the year end up to FY 2014-15. Thereafter the Respondent had quit the audit of the company. Offering any comment about the status of cash after 2014-15 was not feasible.

Further, he submitted that the Funds raised from home buyers was transferred within the group companies as per applicable provision of ICDs, which was duly reported in audited balance sheet. Decisions of ICDs were of the company management and the Respondent found no non-compliance of law in those transactions. There was no merit in the allegation that there was diversion of funds of Rs 113.96 Crs. The company gave advances to vendors in normal course of business particularly for procurement of materials. These were matters of management decisions. The Respondent had no evidence or reason to view them negatively. There is no truth in the observation of Director (Discipline) that Rs. 45768482.00 was paid in cash. Forensic Auditor while commenting that there were cash payment in excess 20000, also added that assessment of income tax department did not result in any addition on account of this. Therefore, the observation of Director (Discipline) on this point has no basis.

Further, as the Respondent discontinued as auditor after FY 2014-15, it was not possible to comment about advances recoverable and outstanding Rs 26.27 Crs. and forensic auditor be summoned to substantiate his observations, in order to identify whether the Respondent had erred in discharging his responsibility.

Observation of the Committee:

On perusal of Forensic Audit Report, it was observed that the forensic auditors have stated that

"While scrutinizing the record for sale of flats, we have observed that 315 number of the flats have been sold at low prices as compared to the prices existing on or near to those dates and on which rates sales were made to other home buyers. It is further submitted that some of the flats have been sold even at rates as low as INR 1,000 - INR 1,400 per square feet which is even lower than the cost of construction. No satisfactory explanation has been given to us for the same. Possibility of taking cash outside the books of accounts cannot be ruled out. Total amount involved in under-valued transactions in respect of Sapphire I and Sapphire II are INR 76.02 Crores. List of all such instances have been enclosed as Annexure 26-A.

Note: These calculations are based upon the rates, where the sale consideration of the flat is less by more than 25% of the average sale price of the project."

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"While scrutinizing the Audited Financial Statements of this Company for the Financial Year 2013-14, it was observed that no additional income has been shown. There is only jugglery of Accounting transactions where sales have been shown by way of part completion method and the relevant cost is also debited to this part completion sale by **changing the Accounting Method** which was being followed by the Amrapali Group of Companies in the earlier years. This method of Accounting was changed for 2 financial years only i.e for Financial Year 2012-13 and Financial Year 2013-14. This method was changed just to make adjustment in accordance with the letter of surrender. In fact, there is no surrender of additional income, **it only amounts to preponement of sale** being shown in these years instead of in the latter years."

"That letters were also written to various home buyers in various schemes who had paid paltry amounts against home bookings and who had been allotted flats at low prices as compared to normal standard prices existing on the date of allotment as compared to the rate of flats allotted to other home buyers."

"There were 419 Home buyers to whom letters were sent and have been received back or not replied by them. These Home Buyers may not be genuine and may be looked into."

"The Company has shown the following amounts as inventories in their Audited Balance Sheet as on 31st March, 2015.

	Amount (in crores)
Value of Inventory shown i.e. Cost of Land & Building and Value of Flats and Commercial Area	1039.63
Less: Liability Payable to NOIDA Authorities	265.70
Sundry creditors payable	88.43
Term Loans from Banks	17.58
Debenture of ICICI	13.87
Debentures of Ultra Home Constructions Private Limited	28.26
	413.84

	625.79
Advance taken from Home Buyers shown in other Current Liabilities	680.72

Shortfall	54.93"

"Furthermore, it is observed that the Company Management as well as Statutory Auditors and CFO have failed in their duty to follow the Accounting Standards relating to recording the valuation of Work in Progress as per ICAI guidelines applicable to

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Real Estate Companies. It is also pointed out that the CFO has not signed any Audited Financial Statements for reasons best known to them. But according to the statement recorded by us of various employees and suppliers as well as home buyers, we are informed that he was the main person handling Finance and every meeting was held with him only."

"The management has diverted the Home Buyers' funds from one Company to another Company in a very clever, pre-planned and clandestine manner. The management could not have done this without the full support of its CFO and the Statutory Auditors. As per the submissions made, many companies were controlled by CFO and the Statutory Auditors to which huge funds have been transferred. It can therefore, be easily said that both CFO and the Statutory Auditor were Master Mind behind these types of planning for diversion and the misuse of funds. It may be important to mention here that funds were transferred from one Company to another and to third and to fourth and so on thereby absolutely confusing any person to find out the real trail where the money has gone, since there are more than 100 Companies through which these funds have been routed over the period."

"The Company has given advances exceeding INR 30 Lakhs to various parties amounting to INR 26.27Crores during the period 1st April, 2008 to 31st March, 2015. The said advances that were given by the Company were neither adjusted nor squared off against any future purchases or services. No details regarding Pan, Address and Nature of Advance has been given to us."

"The Company has made cash payments to various parties exceeding INR 20,000 in contravention to The Income Tax Act 1961, to the tune of INR 45,768,482. Most of these payments are not supported by evidence."

It was observed that significant undertaking undervalued sales transactions, unidentified customers to whom such sales were made, the major sources of funds being inter corporate loans or home buyers money but major funds were applied only in diverting the said money to group companies. Further, many transactions being in cash raises the quality of audit conducted by the Respondent.

It was noted that the Respondent has put forth his defence stating about inaccurate observation of the forensic auditors, inadequate evidences to corroborate the charges made against him or that under-valued sales transactions being management's decision. However, if the customers were not being identified or majority of sales were

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being undervalued then it was prejudicial to the interest of the Company and the respondent being auditor was under the obligation to report on the same.

It was noted that the findings of the Forensic Audit have been approved by the Supreme Court as observed by it in paragraph 152 of the judgment and that the Forensic Audit findings once approved by the Supreme Court would become the findings of the Supreme Court. It was, further, noted that the Respondent had failed to bring on record any review petition filed by him on the said Supreme Court decision. Hence, the submissions of the Respondent that observations of the Forensic Audit were without evidence could not be accepted. It was backed with thorough evaluation of facts available on record which was accepted by the Honorable Supreme Court.

It was noted that the Respondent had neither provided any substantive defense nor produced any working papers stating that the same were kept in the premises of his client which again raised question on his independent role. Accordingly, it was viewed that there were enough evidence about the scam taking place wherein the Company was one of the vehicle through which funds were diverted but the Respondent being Statutory Auditor chose to remain silent at the time of signing the audit report.

Thus, the Committee was of the view that indeed the extant company was used for diversion of the funds and that the Respondent had failed to disclose material facts, and also the audit opinion expressed was not correct. The Respondent had failed to disclose the nature of significant wrong doings taking place in the Company which was unbecoming of the Chartered Accountant. Accordingly, the Respondent is **GUILTY** of 'Professional and Other Misconduct' falling within the meaning of Items (5), (6), (7) and (8) of Part I of Second Schedule and Item (2) of Part IV of the First Schedule to the Chartered Accountants Act, 1949, read with Section 22 of the said Act

XVIII In respect of M/s AMRAPALI LEISURE VALLEY DEVELOPERS PRIVATE LIMITED-(A-635), the Respondent was reported to be the statutory auditor of the Company from for financial year 2014-15 and accordingly it is alleged as under:

- (i) There was no Valuation Certificate or any documentary evidence regarding physical verification (Cash, Inventory etc) with the company or in the Statutory Auditor's file.
- (ii) It was informed by the Respondent, the statutory Auditor of the Company that Mr. Chandan Kumar is employee in his office and Mr. Sushil Mittal is his relative.




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- (iii) It is alleged that the funds have been routed to the companies controlled by the statutory Auditor i.e. the Respondent from Amrapali Leisure Valley Developers Private Limited and that an amount of INR 140,000,000 should be recovered from the Statutory Auditor.

Respondent's Submissions:

It is noted that the Respondent has submitted that physical verification report of cash and inventory was not available in the file was not acceptable. The Respondent's file had all the documents, as part of audit working papers.

Further, he submitted that it is a fact that the Company had undertaken transactions with three companies that were managed by brother of the Respondent in which Chandan Kumar employee of the Respondent and Mr. Sushil Mittal brother of the Respondent, were directors. It is also a fact that Rs 14.00 Crores worth advance transactions had taken place between those three companies and the Company. However, it is denied that there was any fund diversion to the tune of Rs 14.00 crores as alleged by the forensic auditor. The Forensic Auditor had examined accounts of the Company up to 2014-15 only, but as per the accounts of those three companies this amount was settled in 2017 and for the same the Respondent had submitted the copy of statement of account to Forensic Auditor. It is a matter of record that the Hon Supreme Court had examined these allegations and concluded that an amount of Rs 47.00 lakhs only were due from those companies. It is also a matter of fact that as per directions given by Hons. Supreme Court, he was asked to pay Rs. 47 Lakh to Amrapali group, which he had duly paid. Hence nothing was payable by him or his relatives. So the claim of Rs. 14,00,00,000/- was not correct and denied.

The opinion of the Director (Discipline) is without merit in the observation suggesting that the auditor had failed in obtaining management representation letters, or in conducting verification of inventory. It has already been explained that Respondent was not in possession of any records after handing over all the records to Forensic Auditor consequent to directives by Hon Supreme Court and after the seizure of laptop, hard disks, pen drive etc by Economic offence Wing.

Observation of the Committee:

On perusal of the Forensic Report, it was noted that the Report states as follows:




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"A sum of INR 527.18 Crores has been shown as Inventories as on 31st March 2015. There is no Valuation Certificate or any documentary evidence regarding physical verification with the company or in the Statutory Auditors file (A-637) .

"The following advances made to the companies which are controlled by Statutory Auditor (as the registered office address of the company is that of the Statutory Auditor) as per the details given below (A-640):

Name	Date of Advance	Amount	Remarks
Chandan homes Private Limited	20/11/2010	40,000,000	Still outstanding
Mittal Homes Private Limited	20/11/2010	50,000,000	
Surbhi Build Home Private Limited	20/11/2010	50,000,000	

A sum of INR 4,000,000 has been advanced to M/s Chandan Homes Private Limited on 20/11/2010 which remain unadjusted/unrecovered up to 31/03/2018. While verifying the master data of these companies on MCA web portal, we have observed that these companies have common directors as per the details given below:

Director Name	DIN Number
Sushil Mittal	00407479
Chandan Kumar	02237621

It was informed by Mr. Anil Mittal, the statutory Auditor of the Company that Mr. Chandan Kumar is employee in his office and Mr. Sushil Mittal is his relative. Thus, it is clear that these companies are controlled by the statutory Auditor and the funds have been routed to these companies From Amrapali Leisure Valley Developers Private Limited. Thus, this amount of INR 140,000,000 should be recovered from the Statutory Auditor."

"16. Non-Compliance of Statutory Obligations (A-643)

c) No Statutory records have been maintained by the company and produced before us relating to the following:

- i. Fixed Assets Register
- ii. Register of Directors and shareholders
- iii. Register of related party contracts for minute book of Director and Shareholders

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iv. Charges register in respect of loans taken from Banks and others"

Committee's Observation

It was noted that Section 141 of the Companies Act, 2013 deals with the eligibility, qualifications and disqualifications of auditors. It appears that by functioning as an auditor of the Companies where directors were related to Respondent, there is a clear violation of provisions related to the disqualifications as prescribed in the aforesaid Act especially section 141(3)(f) of the Companies Act, 2013.

It was further noted that Shri Sushil Mittal who was one of the Director of the Company. The Respondent has stated (as above) that he was his brother (in earlier submissions he stated that Sushil Mittal is his distant relative) and is not relative within meaning of section 2(41) of the Companies Act, 1956. It is further noted that since the balance sheet is related to F.Y 2014-15 section 2(77) of the Companies Act, 2013 shall be applicable in instant case. As Respondent admitted that Mr. Sushil Mittal is his brother and Chandan Kumar is his employee and these both persons shared the same addresses that of the Respondent, it is viewed that Directors are falling within definition of term 'relative' as given in the Companies Act, 2013 still the fact that the Respondent was sharing the same address as that of said directors and that the registered office of the Company being located at his premises definitely disqualifies him to be the auditor of the Company under Section 141 of the said Act. Further, the Respondent has admitted that the Companies under the control of his relatives owed money to the client itself signifies that he conducted audit despite being disqualified under section 141(3)(f) of the Companies Act, 2013.

It was also noted that the Respondent has put forth his defence stating about inaccurate observation of the forensic auditors. It was noted that the findings of the Forensic Audit have been approved by the Supreme Court as observed by it in paragraph 152 of the judgment and that the Forensic Audit findings once approved by the Supreme Court would become the findings of the Supreme Court. It was, further, noted that the Respondent had failed to bring on record any review petition filed by him on the said Supreme Court decision. Hence, the submissions of the Respondent that observations of the Forensic Audit were without evidence could not be accepted. It was backed with thorough evaluation of facts available on record which was accepted by the Honorable Supreme Court.

Further, it was also noted that the Respondent had failed to bring his working papers in his defense stating that the same were kept in the premises of his client which again raised question on his independent role. Accordingly, it was viewed that there

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were enough evidence about the scam taking place wherein the Company was one of the vehicle through which funds were diverted but the Respondent being Statutory Auditor chose to remain silent at the time of signing the audit report.

Thus, the Committee was of the view that indeed the extant company was used for diversion of the funds and that the Respondent had failed to disclose material facts, and also the audit opinion expressed was not correct. The Respondent had failed to disclose the nature of significant wrong doings taking place in the Company which was unbecoming of the Chartered Accountant. Accordingly, the Respondent is **GUILTY** of 'Professional and Other Misconduct' falling within the meaning of Items (5), (6), (7) and (8) of Part I of Second Schedule and Item (2) of Part IV of the First Schedule to the Chartered Accountants Act, 1949, read with Section 22 of the said Act

XIX In respect of M/s AMRAPALI DREAM VALLEY PRIVATE LIMITED (A-660), the Respondent was the auditor of the Company for financial year 2014-15 and accordingly it is alleged that the Respondent being statutory auditor failed to report in respect of following and also to exercise his independent role:

- Registered office being premises of the Respondent (A-660 read with A-793).
- Sale of flats at lower price.
- Non-Compliance of Statutory Obligations. Like annual return, TDS payment, service tax etc.

It is noted that the charge with respect to registered office and non-compliance of statutory obligations have been discussed in detail above in paragraph 8(i) and 8(iv) above.

As regards sale of flats at lower price, it was noted that

Respondents Submission

The Respondent stated that sale of flat at low price was not concerned with him. It was a commercial decision of the Management. The Respondent was nowhere involved in operational or management matters of the company. The scope of statutory audit did not cover examination of individual booking of flats. The Forensic Auditors be summoned to substantiate the allegations.

Committee's Observation



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It was observed that significant undertaking undervalued sales transactions, unidentified customers to whom such sales were made, the major sources of funds being inter corporate loans or home buyers money but major funds were applied only in diverting the said money to group companies raises the quality of audit conducted by the Respondent.

It was noted that the Respondent has put forth his defence stating to examine the forensic auditors for the allegation made. It was noted that the Respondent was given opportunity to examine the Forensic Auditors but he did not avail the same. It was also viewed that the sales were being undervalued then it was prejudicial to the interest of the Company and the Respondent being auditor was under the obligation to report on the same.

It was also noted that the findings of the Forensic Audit have been approved by the Supreme Court as observed by it in paragraph 152 of the judgment and that the Forensic Audit findings once approved by the Supreme Court would become the findings of the Supreme Court. It was, further, noted that the Respondent had failed to bring on record any review petition filed by him on the said Supreme Court decision. Hence, the submissions of the Respondent that observations of the Forensic Audit were without evidence could not be accepted. It was backed with thorough evaluation of facts available on record which was accepted by the Honorable Supreme Court.

It was noted that the Respondent had neither provided any substantive defense nor produced any working papers stating that the same were kept in the premises of his client which again raised question on his independent role. Accordingly, it was viewed that there were enough evidence about the scam taking place wherein the Company was one of the vehicle through which funds were diverted but the Respondent being Statutory Auditor chose to remain silent at the time of signing the audit report.

Thus, the Committee was of the view that indeed the extant company was used for diversion of the funds and that the Respondent had failed to disclose material facts, and also the audit opinion expressed was not correct. The Respondent had failed to disclose the nature of significant wrong doings taking place in the Company which was unbecoming of the Chartered Accountant. Accordingly, the Respondent is **GUILTY** of 'Professional and Other Misconduct' falling within the meaning of Items (5), (6), (7) and (8) of Part I of Second Schedule and Item (2) of Part IV of the First Schedule to the Chartered Accountants Act, 1949, read with Section 22 of the said

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XX In respect of M/s AMRAPALI HOSPITALITY SERVICES PRIVATE LIMITED (A-766), wherein the Respondent was the auditor for financial year 2014-15 and following were the allegations:

- Basis for finalising balance sheet of 2014-15 when audited financial statements for 2013-14 not available (A-766)
- Advances long pending and not being adjusted against purchases or services but against purchase of land (A-767)
- Rent expensed but no agreement exists.
- No statutory Records maintained viz Fixed Assets Register, Register of Directors and shareholders, Register of related party contracts, Minute book of Director and Shareholders, Charges register in respect of loans taken from Banks and others.

It is noted that allegation in respect of non-maintaining statutory records has been discussed in detail in paragraph 8(iv) above.

Respondent's Submissions:

In respect of remaining charges, the Respondent stated that grievance of Forensic Auditor that audited records of 2013-14 were not made available to him by the Company is a matter between them. As per him, the amount recoverable from KMP was originated after 31st March 2015 and hence it was not concerned with the Respondent. He argued that allegation of advances being were adjusted without documentary evidences was related 2015-16, when he was not auditor. He stated that the observation of the Forensic Auditor that rent agreement did not exist was incorrect as rents were paid on the basis of agreements.

Observation of the Committee:

In view of above submissions of the Respondent, it is noted that there is no corroborated evidence or statement to counter the charges on the part of the Respondent. It is noted, on perusal of forensic audit report, which report that

"The Company has given advances of INR 12.08 Crores during the period 1st April, 2008 to 31st March, 2015. The said advances which were given by the Company were neither adjusted/ squared off against any future purchases or services. A detailed party wise breakup reflecting the all such recoverable along with the month/ year in which the advance was given has been enclosed below:

Name of company	Amount till 31/03/2016	Date of advance given	Date of adjustment of advance
Archana Davi	1,500,000	15/06/13	31/03/16

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Arvind Singh	1,500,000	29/05/13 & 03/06/13	31/03/16
Avinash Kumar	1,500,000	10/06/13	31/03/16
Mithilesh Singh	1,500,000	19/05/13	31/03/16
Niranjana Kumar	3,000,000	2013-14	31/03/16
Ramanand Singh	1,500,000	09/05/13	31/03/16
Rekha Davi	1,500,000	05/06/13	31/03/16
Shiv Kumar Sharma	1,500,000	17/05/13	31/03/16
Total	13,500,000		

Note: These advances were adjusted by showing them as purchase of land without and documentary evidence and are all in the nature of book entries and need to be recovered from the Directors of the Company.

"Rent

The rent has been Paid to under-mentioned parties on various date as per details given below:

<i>Name of the Party</i>	<i>Date of Transaction</i>	<i>Amount</i>
Anil Kumar Sharma	31/03/13	134,832
Anil Kumar Sharma	31/03/14	60,000
MSB Properties Private Limited	31/03/14	60,000
MSB Software Technology Private Limited	10/03/15	60,000
MSB Software Technology Private Limited	31/03/15	288,413
Anil Kumar Sharma	31/03/15	60,000
		Total 663,245

Note: There are no agreements regarding the rent paid. Rent Paid to Mr. Anil Sharma and other does not seems to be genuine and this amount should be recovered from them."

It was noted that the Respondent had merely denied charges made against him stating that charges pertained to the period when he was not the auditor. However, on consideration of facts, as stated above, it was noted that the advances were continued without any transaction being held against them. Further, as regards rent paid the Respondent has stated that same was charged based on rental agreements. It was noted that nothing was produced on record by the Respondent to corroborate his defense either in respect of pending advances being carried forward or rents charged. It is a fact that there were entities in the Amrapali Group that were paying rental income to these common parties. Hence, it becomes all the more important transaction wherein substantive evidence relied upon by the respondent be produced. In the absence of the same, it was viewed that the findings of the Forensic Audit have been approved by the Supreme Court as observed by it in paragraph 152 of the

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judgment and that the Forensic Audit findings once approved by the Supreme Court would become the findings of the Supreme Court. It was, further, noted that the Respondent had failed to bring on record any review petition filed by him on the said Supreme Court decision. Hence, the submissions of the Respondent that observations of the Forensic Audit were without evidence could not be accepted. It was backed with thorough evaluation of facts available on record which was accepted by the Honorable Supreme Court.

It was noted that the Respondent had neither provided any substantive defense nor produced any working papers stating that the same were kept in the premises of his client which again raised question on his independent role. Accordingly, it was viewed that there were enough evidence about the scam taking place wherein the Company was one of the vehicle through which funds were diverted but the Respondent being Statutory Auditor chose to remain silent at the time of signing the audit report.

Thus, the Committee was of the view that indeed the extant company was used for diversion of the funds and that the Respondent had failed to disclose material facts, and also the audit opinion expressed was not correct. The Respondent had failed to disclose the nature of significant wrong doings taking place in the Company which was unbecoming of the Chartered Accountant. Accordingly, the Respondent is **GUILTY** of 'Professional and Other Misconduct' falling within the meaning of Items (5), (6), (7) and (8) of Part I of Second Schedule and Item (2) of Part IV of the First Schedule to the Chartered Accountants Act, 1949, read with Section 22 of the said Act

XXI In respect of M/s Mums Mega Food Park Pvt. Ltd. (A-777), the Respondent was the auditor of the Company for financial year 2014-15 wherein the Respondent has failed to report the following irregularities:

- Audited Financials do not reconcile with tally data with respect to understatement of loss Capitalisation of Rs.1.58 Cr to Building under construction without any basis [A-787]
- Title deeds of land purchased was not available with respect to land of Rs.7.53 cr purchased against cash
- No fixed asset register to verify Plant and machinery purchased for Rs. 4.16 Cr
- Purchases made from MAA Supplier in Feb 2015 was not genuine (A-780)

Respondent's Submissions:



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The Respondent in his submissions submitted that there was no merit in the charge that audited accounts of FY2013-14 did not reconcile with the books of accounts. The Respondent had ensured during audit of FY 2013-14 that the accounts and final accounts were duly reconciled. The Forensic Auditor seemed to have not been able to obtain completed accounts and there is no merit in the charge that title deeds were not available for land bought. The Forensic Auditor seemed to have not been able to obtain complete records. The respondent denied that there was no Fixed asset register in the company. The Respondent had verified these during audit.

The Respondent denied that purchases from MAA Supplier in Feb 2015 were not genuine. MAA Supplier was the most prominent vendor who used to get done through various suppliers for construction of Food park. The company had made direct payments to some of those vendors. Writing off the liability without making payment did not put any loss to the company. The Respondent is unable to recollect specifics about the audit now and all the records had been handed to the Forensic Auditor.

Observation of the Committee:

It is noted that the charges about differences in tally data and audited financial statements and that of non-maintenance of records like fixed register were discussed in detail above in paragraph 8 (iii) and (iv). In respect of remaining charges, the Committee refer the Forensic Audit Report, which states as under :

"Review of Audited Financial Statements

"Building under Construction (A-779)

The company had Building under Construction amounting to INR 76,680,314. As per Video and Images of the building do not support such high value of expenditure on building under construction. This building under construction may be done by the approved valuer"

"Plant & Machinery (A-780)

The company had purchased Plant & Machinery amounting to INR 41,663,471. There is no Fixed Asset Register to verify the inventory of plant and machinery installed at the premises."

Land (A-779)

[PPR/NP/076/18/DD/204/INF/18/DC/1375/2020]

The company had purchased Land amounting to INR 75,363,890 and an amount of INR12,376,420 paid in cash for purchasing of Land to different parties. A detailed party wise breakup reflecting the all such payments is furnished below:

S. No	Name of the Party	Amount Paid
1	Samarath Singh	34,00,286
2	Ranjeet Singh	10,886
3	Bantu Singh	3,74,911
4	Janmjay Pratap Singh	1,08,571
5	Prabhu Dayal Singh	23,68,186
6	Registry Expenses	5,00,000
7	Registry Expenses	12,59,200
8	Registry Expenses	3,36,800
9	Registry Expenses	4,81,930
10	Ranjeet Singh & Sabnam Devi	60,400
11	Sandhya Singh	4,58,450
12	Ram Ikbil Singh	7,16,800
13	Registry Expenses	22,00,000
14	Registry Expenses	1,00,000
Total		1,23,76,420

"Note: Relevant documents for Title deed of land not made available, to verify the correctness of these cash payments..."

"MAA Supplier (A-780)

An amount of INR 20,194,554 was booked as Construction expense on account of bills received from M/s MAA Suppliers for the period from 20th February, 2015 to 25th February, 2015 as 5 bills serially numbered from 01/2014 to 05/2014. Further, not even a single payment has been made to this Vendor. Some of the payments made to third parties have been debited to this Vendor and the balance amount of INR 18,555,608 has been written off. This shows that all these bills were not genuine and there doesn't seem to be sufficient construction as shown by the Video films and pictures got received from the site. Copies of the ledger account and the pictures received are reproduced here under."

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"No Statutory records have been maintained by the company and produced before us relating to the following: (A-788)

- i. Fixed Assets Register*
- ii. Register of Directors and shareholders*
- iii. Register of related party contracts*
- iv. Minute book of Director and Shareholders"*

It is observed that Forensic Audit Report contains the pictures of the building under construction to show that the value at which it has been shown in the books of accounts is overvalued (A-782 to A-787). Further, it has also been observed that the ledger account of MAA supplier was also reproduced (A-781) wherein the bills raised by vendor has been charged as construction expenses and thereafter a portion of it is settled off by paying to third parties on behalf of vendor and rest was shown as damage for defective civil works. In other words, the transactions taking place herein raises doubt as to how a supplier who supplied for Rs. 2.01 Cr was able to survive when Rs.1.85 cr were shown as written off and remaining balance is paid to third parties except Rs. 2,00,000 which was also later returned. The Respondent simply denied all charges stating that all records were available with him, they tallied properly and all adjustments were done based on proper documents. However, it was noted the Respondent had neither provided any substantive defense nor produced any working papers stating that the same were kept in the premises of his client which again raised question on his independent role.

Further, it was also noted that the findings of the Forensic Audit have been approved by the Supreme Court as observed by it in paragraph 152 of the judgment and that the Forensic Audit findings once approved by the Supreme Court would become the findings of the Supreme Court. It was, further, noted that the Respondent had failed to bring on record any review petition filed by him on the said Supreme Court decision. Hence, the submissions of the Respondent that observations of the Forensic Audit were without evidence could not be accepted. It was backed with thorough evaluation of facts available on record which was accepted by the Honorable Supreme Court.

Thus, the Committee was of the view that the Respondent had failed to disclose material facts, and also the audit opinion expressed was not correct. The Respondent had failed to disclose the nature of significant wrong doings taking place in the Company which was unbecoming of the Chartered Accountant. Accordingly, the Respondent is **GUILTY** of 'Professional and Other Misconduct' falling within the meaning of Items (5), (6), (7) and (8) of Part I of Second Schedule and Item (2) of Part IV of the First Schedule to the Chartered Accountants Act, 1949, read with Section 22 of the said Act

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XXII In respect of M/s Gaurisuta Infrsolution Pvt Ltd. (A-759), the Respondent was the auditor of the Company for financial year 2014-15:

- Chandan Kumar, Office boy being Director of Company from August 2010 to January 2015:

Respondent's Submission:

The Respondent stated that it is a fact that Chandan Kumar's name was given to the company, particularly to Shri Chander Wadhwa CFO, to be used as a director of GIPL. Chandan Kumar would vouch that the Respondent had not played any role in the functioning of the company and he was working under the instructions of the CFO. In retrospect the Respondent regrets that it was a wrong decision with no intent of taking any advantage.

Supreme Court Observation:

As observed by the Apex Court in Paragraph 60 point (d) pg 87 of its Order dated 23rd July, 2019:

"Gaurisuta Infrsolution Private Limited: Flats in Amrapali Silicon City Private Limited, booking of bogus expenditure of Rs.1.07 crore".

Observation of the Committee:

It is noted that the Respondent had admitted the fact that Mr. Chandan Kumar who was his employee was also acting as director of the Company. Hence, it was viewed that Respondent was disqualified for appointing Auditor of the Company under Section 141 of the Companies Act, 2013 and had also not complied with the Guidance note on 'Independence of Auditors'. . Detail findings has been given above in paragraph 8(v).

Accordingly, the Respondent was held Guilty of professional misconduct falling within the meaning of Item I of Part II, Second Schedule to the Chartered Accountants Act, 1949 and Item (2) of Part IV of the First Schedule to the Chartered Accountants Act, 1949, read with Section 22 of the said Act

XXIII In respect of M/s MSB Software Technology Pvt Ltd. (A-754), the Respondent was the auditor of the Company for financial year 2014-15. The following irregularities have been pointed out in respect of this Company:

- Registered office being premises of the Respondent (A-754 read with A-793)

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- The Company has not been carrying on any business activities as mentioned in the Memorandum of Association. The Company is earning only rental income from the other group Companies. It has been observed that cash in hand available with the Company as per Audited Financial Statements as on 31st March, 2015 was INR 70,64,656. This cash in hand at such a high level doesn't seem to be genuine in view of the fact that the Company is not carrying on any business except rental income (A-755-756).
- Audited Financial Statements are incorrect and not reliable (A-757).
- No statutory Records maintained viz Register of Charges, Register of Directors and shareholders, Register of related party contracts, Minute book of Director and Shareholders.

It is noted that the charges about registered office, company not carrying any business and statutory records not being maintained were discussed in detail above in paragraph 8 (i), (ii) and (iv) respectively. In respect of remaining charges, the following was noted:

Respondent's Submissions:

The Respondent has submitted that he had obtained management representation that cash balance was physically available. The cash was under the custody of the management of the group. The Respondent did not agree with the observation that the Audited Financial Statements were incorrect and were not reliable. He further argued that during the tenure of the Respondent as auditor, the company had duly complied with all statutory requirements.

Observation of the Committee:

The Committee refer the Forensic Audit Report, which states as under :

Cash in Hand

"It has been observed that cash in hand available with the Company as per Audited Financial Statements as on 31st March, 2015 was INR 70,64,656. This cash in hand at such a high level doesn't seem to be genuine in view of the fact that the Company is not carrying on any business activity except rental income. The cash in hand balance as per tally data up till 31st January, 2016 is also same as above.

It has also been observed that funds are being transferred from the bank account of Ultra Home Construction Private Limited to meet the monthly expenses while the company is already having cash in hand of more than INR 7,000,000 approximately. This shows that this cash in hand is not available physically and seems to be

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embezzled by the management of the Company. This amount should be recovered from the directors of the Company."

Review of Audited Financial Statements

Audited Financial Statements are not reliable in view of the following observations noted by us:

- a. Security deposit as per electricity bill is INR 442,470 but as per books of account, security with electricity department is INR 1,458,073.*
- b. Shares held by the holding company that is Ultra Constructions Private Limited is not shown separately as required by Schedule III of the Companies Act 2013.*
- c. Expenses Payable due as on 31 March 2015, on account of electricity Expense has not been provided.*
- d. The Company is carrying out the business of leasing its building to group Companies. During the course of audit, no agreements were made available to us in order to verify the genuineness of these transactions.*
- e. Depreciation has not been provided on the building in contravention of the provisions of the Companies Act, 1956, now Companies Act, 2013.*
- f. During the financial year 2014-15 a sum of INR 452,137 has been debited to LPG Charges. This expense on account of use of LPG is not justified since there are no employees in the Company. Even the expense vouchers relating to all these expenses have not made available to us.*

Thus, the Audited Financial Statements are incorrect and not reliable.

It is noted that the Respondent has simply denied all charges stating that all records were available with him, they tallied properly and all adjustments were done based on proper documents. However, it was noted the Respondent had neither provided any substantive defense nor produced any working papers stating that the same were kept in the premises of his client which again raised question on his independent role.

Further, it was also noted that the findings of the Forensic Audit have been approved by the Supreme Court as observed by it in paragraph 152 of the judgment and that the Forensic Audit findings once approved by the Supreme Court would become the findings

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of the Supreme Court. It was, further, noted that the Respondent had failed to bring on record any review petition filed by him on the said Supreme Court decision. Hence, the submissions of the Respondent that observations of the Forensic Audit were without evidence could not be accepted. It was backed with thorough evaluation of facts available on record which was accepted by the Honorable Supreme Court.

Thus, the Committee was of the view that the Respondent had failed to disclose material facts, and also the audit opinion expressed was not correct. The Respondent had failed to disclose the nature of significant wrong doings taking place in the Company which was unbecoming of the Chartered Accountant. Accordingly, the Respondent is **GUILTY** of 'Professional and Other Misconduct' falling within the meaning of Items (5), (6), (7) and (8) of Part I of Second Schedule and Item (2) of Part IV of the First Schedule to the Chartered Accountants Act, 1949, read with Section 22 of the said Act

XXIV In respect of M/s Amrapali Buddha Developers Pvt Ltd. (A-750), the Respondent was the auditor of the Company for financial year 2014-15, and his independent role of being auditor was questioned being:

- Registered office of the Company was premises of the Respondent (A-750 read with A-793).

It may be noted that the charge has been discussed in detail above in paragraph 8 (i).

XXV In respect of M/s Hawthorne Intellact Management Solutions Pvt Ltd (A-742) wherein the Respondent was the auditor of the Company for financial year 2014-2015, it is alleged that the Respondent had failed to report the following irregularity and also questioned his independent role:

- Registered office being premises of the Respondent (A-742 read with A-793)
- The Company has accumulated losses to INR 2.33 Crores as on 31.03.2015 as against the Paid- Up Capital of INR 1 lakh. The entire net worth of the Company stands eroded and the auditor does not qualify to be a going concern. It is reported that expenses have been booked to inflate the expense heads and to wipe off the various Loans and Advances received from Sister Concerns (A-745)
- Statutory records not being maintained (A-746)

It is noted that the charges about registered office and statutory records not being maintained are discussed in detail above in paragraph 8 (i) and 8 (iv) respectively. In respect of remaining charges, the following was noted:

Respondent's Submissions

The Respondent has submitted that the financial statements of the Company have reflected the true and fair position of the state of affairs of the company by presenting the losses. He argued that if the Forensic auditors made a view that he feel "the expenses are inflated" then he must be asked to substantiate the rationale behind their view. The Respondent as auditor had not found anything in the nature of inflation of expenses.

Supreme Court Observation:

As observed by the Apex Court in Paragraph 60 point pg 86 of its Order dated 23rd July, 2019:

"Hawthorne Intellect Management Solutions Pvt Ltd –Company was providing Management Consultancy Services (Recruitment Services) and taking nominal professional fee. In turn, the Company has incurred more expenses in the last few years on account of Salary, Wages and other administrative expenses thereby resulting in net loss to the Company which has accumulated to INR 2.33 Crores as on 31.03.2015. All these entries seem to be in nature of dubious entries and no voucher are available. This amount of loss of 2.33 Crores needs to be recovered from the Directors as they have wiped of the amount of the Home Buyers funds diverted as Home Buyers Money to the Company. Apart from the above companies, there were several companies which were incorporated by employees, auditors of Amrapali group. Shareholding as well as investment/assets of these companies shall be Attached."

Observation of the Committee:

The Committee with respect to financial statements of FY 2014-15 noted that the Forensic audit Report, inter-alia, states as under:

"From the perusal of the Profit and Loss account of the Company, it is observed that the Company has been providing Management Consultancy Services (Recruitment Services) and taking nominal professional fee. In turn, the Company has incurred more expenses in the last few years on account of Salary, Wages and other administrative expenses thereby resulting in net loss to the Company which has accumulated to INR 2.33 Crores as on 31.03.2015 as against the Paid Up Capital of INR 1 lakh. The entire net worth of the Company stands eroded and the Company does not qualify to be a going concern. There is no report remark either by the management or by the auditors regarding the concept of going concern and also as to why the administrative costs are high and receipts are meagre. We feel all these



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expenses have been booked to inflate the expense heads and to wipe of the various Loans and Advances received from Sister Concerns, basically:

- Ultra Home Construction Pvt Ltd -	Rs. 0.85 Crores
- Gaurisuta Infrastructure Pvt Ltd -	Rs. 1.19 Crores
- Others -	Rs. 0.25 Crores -
Total	Rs. 2.29 Crores

All these entries seem to be in nature of dubious entries and no voucher are available. This amount of loss of 2.33 Crores needs to be recovered from the Directors as they have wiped of the amount of the Home Buyers funds diverted as Home Buyers Money to the Company."

It is noted by the Committee that the Respondent is silent both regarding verification of various components as alleged and also with respect to reporting on uncertainty for the Company to continue as going concern. Further, it is noted that there is a **reporting requirement under Section 143(3)(f) of the Companies Act:**

3. The relevant extracts of section 143(3)(f) of the Act are reproduced below:

"(3). The auditor's report shall also state

.....
(f) the observations or comments of the auditors on financial transactions or matters which have any adverse effect on the functioning of the company;"

Accordingly, the Respondent should had reported that Company is suffering huge losses which would affect its going concern. Further, he was under an obligation to conduct audit as per SA 570, Going Concern to report about the uncertainty about the Company to continue as going concern. However, the Respondent had failed to report the same. Further, the Respondent had failed to bring any working papers to justify about the audit conducted by him to verify the genuineness of the expenses booked. . It was noted the Respondent had neither provided any substantive defense nor produced any working papers stating that the same were kept in the premises of his client which again raised question on his independent role.

Thus, the Committee was of the view that the Respondent had failed to disclose material facts, and also the audit opinion expressed was not correct. The Respondent had failed to disclose the nature of significant wrong doings taking place in the Company which was unbecoming of the Chartered Accountant. Accordingly, the Respondent is **GUILTY** of 'Professional and Other Misconduct' falling within the

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meaning of Items (5), (6), (7) and (8) of Part I of Second Schedule and Item (2) of Part IV of the First Schedule to the Chartered Accountants Act, 1949, read with Section 22 of the said Act

XXVI In respect of M/s Amrapali Power and Cement Pvt Ltd. (A-738), the Respondent was the auditor of the Company for financial year 2014-15 and following are allegations:

- Registered office being premises of the Respondent (A-738 read with A-793)
- Capital WIP shown at Rs.23.40 lakh but no land was allotted to it for the project (A-741)

It is noted that the charge about registered office is discussed in detail above in paragraph 8 (i). In respect of remaining charge, the following was noted:

Respondent's Submissions:

In respect of this charge, the Respondent submitted that the Company was in the process of setting up a cement plant, and the amount capitalized was startup cost that would be capitalized in accordance with AS 10. He further stated that the forensic auditor must be asked to substantiate on what basis he held an adverse opinion.

Supreme Court Observation:

As observed by the Apex Court in Paragraph 60 pg 87 of its order dated 23rd July, 2019:

"Amrapali Power & Cement Pvt Ltd : Land from Charu Rai yet to be identified, Land from UPSIDC yet to be identified."

Observations of the Committee:

In view of above, the Committee observed that as per Forensic Report a sum of Rs. 23.40 lakhs had been shown as capital Work in Progress as on 31st March, 2015 in the audited financial statement. However, there was no such asset instead it constituted money spent for future projects on consultancy fees and bank guarantee commission etc. The company was not allotted any land for the project.

It was viewed that AS 10, Accounting for Fixed Assets, states as follows:

"9.2 Administration and other general overhead expenses are usually excluded from the cost of fixed assets because they do not relate to a specific fixed asset. However,

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in some circumstances, such expenses as are specifically attributable to construction of a project or to the acquisition of a fixed asset or bringing it to its working condition, may be included as part of the cost of the construction project or as a part of the cost of the fixed asset."

From a wholesome reading of the above paragraphs of AS 10, the Committee is of the view that the basic principle to be applied while capitalising an item of cost to a fixed asset/project under construction/expansion is that it should be directly attributable to the construction of the project/fixed asset for bringing it to its working condition for its intended use. However, in extant case, the expenses were made but there was no identifiable project or asset for which it was being incurred. Hence, the said expenses were not eligible for capitalization and there was non-compliance of AS 10 which the Respondent failed to report.

It was noted that the balance sheet of the Company only amounts to Rs.1.41cr and hence the given value of CWIP was significant and the Respondent asked to examine the Forensic auditor but failed to avail the opportunity.

Thus, the Committee was of the view that the Respondent had failed to disclose material facts, and also the audit opinion expressed was not correct. The Respondent had failed to disclose the nature of significant wrong doings taking place in the Company which was unbecoming of the Chartered Accountant. Accordingly, the Respondent is **GUILTY** of 'Professional and Other Misconduct' falling within the meaning of Items (5), (6), (7) and (8) of Part I of Second Schedule and Item (2) of Part IV of the First Schedule to the Chartered Accountants Act, 1949, read with Section 22 of the said Act

XXVII In respect of M/s Navodaya Properties Pvt Ltd (A-733), the Respondent was the auditor of the Company for financial year 2014-15 and following are the allegations:

- Registered office being premises of the Respondent (A-733 read with A-793)
- Differences in Audited financials and tally data in context of Share application money (A-735-736) and Share capital (A-736-737)
- Statutory records not being maintained (A-746) so basis of audit and non-reporting of same (A-737)

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It is noted that the charges about registered office, difference in tally data and audited financial statements as well as statutory records not being maintained were discussed in detail above in paragraph 8 (i), (iii) and (iv) respectively.

XXVIII In respect of M/s Sangam Colonizers Pvt Ltd (A-727), wherein the Respondent was the auditor of the Company for financial year 2014-15, it is alleged that the Respondent has failed to report the following irregularities:

- No document in auditors working file to verify the valuation of WIP (A-729)
- No information of Advance from Mr. Manmohan Gupta of Rs.15 lakh as on March 2015.
- Audited financial statements of 2014-15 does not tally with the books of accounts in context of cash in hand and expenses payable (A-731)
- Statutory records not being maintained (A-746) so basis of audit and non-reporting of same (A-731)

It is noted that the charges about difference in tally data and audited financial statements as well as statutory records not being maintained were discussed in detail above in paragraph 8 (iii) and (iv) respectively. As regards remaining allegations, it is noted that

Respondent's Submissions:

To defend above charges, the Respondent submitted that Audit working files provided to the Forensic auditor had all relevant documents. Audit working papers were primarily internal noting about the various audit evidences that were relied up on with their complete details. The Respondent had to hand over all the files in his custody to the Forensic Auditor after he complained to the Hon'ble Supreme Court that he was not getting records. The Forensic Auditor collected all the records from the Respondent without making any index of documents in the files that were handed to him. The Forensic Auditor must be examined before taking any view against the respondent on the matter of correctness of closing inventory in the financials of Sangam Colonizers P Ltd. As auditor, the Respondent had no evidences to form any adverse view on the advance given to Mr Man Mohan Gupta as it was in the normal course of business. The Forensic auditor may be asked to substantiate the basis of casting aspersion on the point of advances, in order to ascertain whether there was any merit in casting doubt on the role of respondent as auditor.

Supreme Court Observation:

As observed by the Apex Court in Paragraph 60 pg 87 of its order dated 23rd July, 2019:

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“Sangam Colonisers Pvt Ltd.: The Company has received an amount of Rs.10.51 crore as advance against plots. However, despite repeated requests we have not been provided with the complete database reflecting Number of Plots, Name of the buyers, Amount of Sale Consideration, Amount Received, Amount Outstanding, Unsold plots etc. Hence, we are not in the position to comment upon the same. As informed to us during the course of audit, the remaining portion of the land available with the Company has been attached by Hon'ble Supreme Court of India and put to auction by DRT.”

Observations of the Committee:

The Committee observed that in respect of above issues, Forensic Audit report states as follows

“II. Closing Inventory as per Audited Financial Statement as on 31st March, 2015

It has further been observed that the Work in Progress valued at the INR 8.73 Crores as on 31st March, 2015 including Land of Sangam value of INR 1.17 Crores. There is no document in the file of the statutory auditors or any document available with the company to verify the valuation of Work-in-Progress.

While verifying the accounting records, it was observed that general administration cost, selling and distribution expenses have also been transferred to Work in Progress in contravention with the guidance note issued by Institute of Chartered Accountants of India.”

“Advance Recoverable from Non-Related Parties as on 31st March, 2015

The Company has given an advance of INR 1,500,000 to Mr. Man Mohan Gupta during the period 1st April, 2008 to 31st March, 2015. The said advance given by the Company was neither adjusted/ squared off against any future purchases or services under taken by the Company from the said party nor was received back by the Company. In other words, the said advance is still standing to the debit (recoverable from party) in the books of the Company. It is worthwhile to mention that this amount has been increased to INR 1,950,000 in financial year 2017-18.

No details of Mr. Man Mohan Gupta are available with the Company such as Address, PAN Number and nature of Advance etc. The Company Management does not even remember as to why this Advance had been made in the first place. It is therefore, presumed that all these advances are in the nature of Book Entries and amount of

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INR 19.50 Lakhs should be recovered from the Management as they have failed to provide any details."

Review of Audited Financial Statements

i. For the Financial Year 2014-15 It has been observed that Audited Financial Statements don't tally with the books of accounts as per given below:

Particulars	Amount as per Audited Financial Statements	Amount as per Tally Data
Cash in hand (Dr Balance)	13,12,240	12,44,824
Expenses Payable (Cr Balance)	(435,099)	(367,683)

This clearly depicts that the cash in hand was artificially manipulated by increasing the balance in Expense Payable. Further, the advance against plot was again manipulated by increasing the balance of inter-corporate deposits."

The Committee noted that the Respondent failed to bring on record working papers relating to valuation of WIP. It was noted the Respondent had neither provided any substantive defense nor produced any working papers stating that the same were kept in the premises of his client which again raised question on his independent role.

Further, it was also noted that the findings of the Forensic Audit have been approved by the Supreme Court as observed by it in paragraph 152 of the judgment and that the Forensic Audit findings once approved by the Supreme Court would become the findings of the Supreme Court. It was, further, noted that the Respondent had failed to bring on record any review petition filed by him on the said Supreme Court decision. Hence, the submissions of the Respondent that observations of the Forensic Audit were without evidence could not be accepted. It was backed with thorough evaluation of facts available on record which was accepted by the Honorable Supreme Court.

Thus, the Committee was of the view that the Respondent had failed to disclose material facts, and also the audit opinion expressed was not correct. The Respondent had failed to disclose the nature of significant wrong doings taking place in the Company which was unbecoming of the Chartered Accountant. Accordingly, the Respondent is **GUILTY** of 'Professional and Other Misconduct' falling within the meaning of Items (5), (6), (7) and (8)

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of Part I of Second Schedule and Item (2) of Part IV of the First Schedule to the Chartered Accountants Act, 1949, read with Section 22 of the said Act

XXIX In respect of M/s Amrapali Infrastructure Pvt. Ltd. (A-706), following are the allegations:

- (i) The Company has given an advance of INR 1,135,401,040 to Directors, during the period 1st April, 2008 to 31st March, 2015. Details being:

Sr. no.	Name of the Director	Amount Receivable
1	Ajay Kumar	51,403,977
2	Anil Kumar Sharma	732,450,557
3	Shiv Priya	351,546,506
	Total	1,135,401,040

It is reported that said debit balance was on account of shares allotted of Ultra Home Construction Private Limited to the directors without receiving any money from the directors during the Financial Year 2010-11. Hence, basis of shares allotment was without actual consideration (A-708).

- (ii) The company has diverted funds received from various home buyers Companies to their other group companies namely - Ultra home Construction Private Limited (Loan), Amrapali Homes Projects Private Limited, Amrapali Hospitalities Private Limited, Amrapali Foundation, Amrapali Buddha Developers Private Limited, Amrapali Centurian Park Private Limited (Precast), Amrapali Dream valley Private Limited (Precast), Amrapali Eden Park Developers Private Limited (RMC), Amrapali Grand, Amrapali Zodiac Developers Pvt Limited- (Rent Sector-120), Hi-Tech City Developers Private Limited. (Amrapali Empire), La-Residentia Developers Private Limited (Trading A/c), Amrapali Leisure Valley Private Limited, Amrapali Maintenance and support, Amrapali Princely Estate Private Limited (A-709).
- (iii) Advances to Non-related parties. It is reported that advances were given to parties amounting to Rs. 13.64 Crores during the period 1st April, 2008 to 31st March, 2015. Parties being - Nirala Infracity Ajmer Pvt Ltd, Synergy Freightways Private Limited, Prime Gold International, RKG International Private Limited, B.S Promoters, Saumya traders, Shree Cements Limited, Usha Martin Limited, RV Akash Ganga Infrastructure Limited, Tech Towards Pvt Ltd. The said advances were stated to be neither

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adjusted/ squared off against any future purchases or services. Other observations related to said advances were:

- (i) In fact advance given to RV Akash Ganga was subsequently written off.
- (ii) The company made cash payments of Rs. 1,812,370 to "Tech Towards" during the period 2011-12 against Operation and Maintenance charges. Also, no payments were made to it for the period April' 2012 to March' 2015. However, on 31st March 2015 credit balance were appearing amounting to Rs. 3,297,777 which were written off. These entries were reported to be book adjustments. buildcraft
- (iii) M/s Synergy Freightways Private Limited was reported to be an Associate Company of M/s Jotindra Steel and Tubes Limited and that there were no business transactions with the said party except routing of funds.
- (iv) It is reported that Amrapali Infrastructure was having dealings mostly with Amrapali Group of Companies & Jotindra Steels and Tubes Limited and their Associates. As per forensic auditors, the bills of Shriv Buildmat Private Limited were mere accommodation entries only. In other words, they raised the doubt on the basis which various entries were verified (A-712). Further, it was reported that during demonetisation, use of Specified Bank Notes (SBN-500, 1000 denomination Notes) for making payment to third parties was not permitted. Still, it was paid to parties (A-713). When one of the reported third parties was called upon, it denied. So such transaction was not genuine.

- **Bogus Purchases:**

- (i) Purchase bills were accounted for in the books of accounts without receipt of physical goods and purchase bills were accounted for of suppliers who did not exist (A-714).
- (ii) It was reported that purchases from suppliers like M/s B S Promoters, Kanodia Cements (A-715), M/s Jotindra Steel and Tubes Ltd. were not genuine.

- Unaccounted cash transactions between Amrapali Group of Companies and (Jotindra Steel and Tubes Limited (JSTB) Group of Companies (A-720-721)
- Basis for verifying Share Premium on shares issue transactions held during 2013 and 2014 (A-722-723).
- Basis for verifying closing inventories of Rs.25.72 Cr as on March 31, 2015 (A-723)
- Basis for capitalising building account by Rs.80.34 cr during 2013-14.
- Land of Rs. 32.86 Cr without title deed (A-724)
- Revenue earned by way of 'Hire Charges received' amounting (A-725) Rs.170.15 cr during the period 2008-15 were made on arbitrary basis.
- Statutory records not being maintained (A-725) so basis of audit and non-reporting of same

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Respondent's Submissions:

The Respondent stated that the forensic auditor be examined to substantiate various opinion/observations made in order to ascertain whether there was any merit in casting doubt on the role of the respondent as auditor

Observation of the Committee:

Regarding advances of Rs. 1135 cr (approx.) being shown as made to directors but it is amount due from one of Amrapali Group of companies - Ultra Home Construction Private Limited to which shares were allotted without receiving money, it is viewed that allotment of shares without receiving money was in contravention to provisions of the Companies Act and considering the amount involved it cannot be accepted that the Respondent was diligently conducting audit. Further, there was mass diversion of funds to Group companies amounting Rs.397 cr (approx.), to Non-related parties amounting Rs.13 cr (approx). Moreover there are allegations of accommodation entries, unaccounted cash transactions between Amrapali Group of Companies & Jotindra Steels and Tubes Limited, basis of verifying closing inventories or capitalising building accounts. The Respondent failed to bring any working paper to support the basis on which he verified the various components of financial statements. It was noted the Respondent had neither provided any substantive defense nor produced any working papers stating that the same were kept in the premises of his client which again raised question on his independent role. Further, he contended to examine the forensic auditors on the observations made. An opportunity was given to him to examine them but he failed to avail the same.

Further, it was also noted that the findings of the Forensic Audit have been approved by the Supreme Court as observed by it in paragraph 152 of the judgment and that the Forensic Audit findings once approved by the Supreme Court would become the findings of the Supreme Court. It was, further, noted that the Respondent had failed to bring on record any review petition filed by him on the said Supreme Court decision. Hence, the submissions of the Respondent that observations of the Forensic Audit were without evidence could not be accepted. It was backed with thorough evaluation of facts available on record which was accepted by the Honorable Supreme Court.

Thus, the Committee was of the view that the Respondent had failed to disclose material facts, and also the audit opinion expressed was not correct. The Respondent had failed to disclose the nature of significant wrong doings taking place in the Company which was unbecoming of the Chartered Accountant. Accordingly, the Respondent is **GUILTY** of 'Professional and Other Misconduct' falling within the

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meaning of Items (5), (6), (7) and (8) of Part I of Second Schedule and Item (2) of Part IV of the First Schedule to the Chartered Accountants Act, 1949, read with Section 22 of the said Act

XXX In respect of M/s Hi-Tech City Developers Pvt Ltd. (A-699), it is alleged that:

- (i) Registered office being premises of the Respondent (A-699 read with A-793)

It is noted that the charge has been discussed in detail above in paragraph 8 (i).

10. The gravity of the Respondent's involvement in the entire episode could be felt when the Court observed as follows:

"4. In the circumstances, we give one last opportunity to the Amrapali Group of Companies, particularly to all the Directors of the company and also those who have filed a reply in the Suo Motu Contempt. They have to file their further affidavits in compliance with the aforesaid directions as to what they have done and to make the disclosure as envisaged in various orders." We had also directed that any non-cooperation with the Forensic Auditors shall be viewed seriously. Statements of accounts of banks were also ordered to be issued by the banks. In order dated 5.12.2018 this Court observed that let the Amrapali group of companies and their Directors Mr. Chander Wadhwa, CFO and Mr. Anil Mittal to explain as to why criminal action be not initiated against them on the basis of affidavits, various documents and the statements made in this Court on various dates and why their conduct as projected in the case be not reported to the ICAI to inquire. We directed the production of details of immovable properties as well as the movables etc. This Court also noted that DRT has pointed out that there was non-cooperation and non-compliance on the part of Amrapali group of companies. It was also pointed out to this Court that certain buyers/companies who have booked the flats by making payment of a paltry amount for the purchase of several flats/plots, did not appear to be genuine buyers. We have directed the Forensic Auditors to look into this issue. We also directed all the Directors of companies, their relatives, family members, Mr. Chander Wadhwa, CFO and statutory auditors who were in receipt of money of home buyers, to deposit the same in this Court. The last opportunity was given to do so."

11. From the above observations, it is noted that the Respondent has been alleged for his professional work in respect of thirty four companies of Amrapali Group. It is noted that there are Amrapali Group Companies, the Registered office of which is the premises of the Respondent. Further, his office boy cum assistant is the director of many Group companies.

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Some of the companies have also paid money to the certain entities in which the Respondent was interested. In fact, the Respondent alongwith CFO of Amrapali Group of Companies were partner in Saffron Consultants LLP and as per the statement of Mr. Pankaj Mehta, ex-Company Secretary (A-613 & A-614), they were controlling the affairs of Amrapali Group of Companies. The Respondent has been charged to have connived with CFO of Amrapali Group to manipulate the accounts. The act committed by the Respondent is highly unbecoming of the chartered accountant. The Respondent is completely silent on all these aspects and claiming that all professional duties to various Group companies were rendered with high degree of integrity and independence. On review of all the matters it was observed that the Respondent had failed to disclose material facts, in fact he failed to report the material misstatement that existed in the financial statements. In the absence of working papers, it is also evident that the Respondent has failed to obtain sufficient audit evidence to express opinion on financial statements.

CONCLUSION

12. In light of above, the Committee is of the opinion that the Respondent is **GUILTY** of 'Professional and Other Misconduct' falling within the meaning of Items (5), (6), (7) and (8) of Part I of Second Schedule and Item (2) of Part IV of the First Schedule to the Chartered Accountants Act, 1949, read with Section 22 of the said Act.

Sd/-
(CA. Nihar N Jambusaria)

Presiding Officer

Sd/-
(Shri Arun Kumar, IAS (Retd.)
Government Nominee

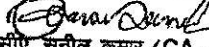
Approved and confirmed through email
(Ms. Nita Chowdhury, IAS(Retd.)
Government Nominee

Approved and confirmed through email
(CA. Manu Agarwal)
Member

Approved and confirmed through email
(CA. G, Sekar)
Member

Date : 11/2/2022

प्रमाणित सत्य प्रतिलिपि / Certified true copy


सी.ए. सुनील कुमार / CA. Suneel Kumar
सहायक सचिव / Assistant Secretary
अनुशासनात्मक निदेशालय / Disciplinary Directorate
इंस्टीट्यूट ऑफ चार्टर्ड एकाउंटेंट्स ऑफ इंडिया
The Institute of Chartered Accountants of India
आईसीएआई भवन, विश्वास नगर, शाहदरा, दिल्ली-110032
ICAI Bhawan, Vishwas Nagar, Shahdra, Delhi-110032