



भारतीय सनदी लेखाकार संस्थान
(संसदीय अधिनियम द्वारा स्थापित)
THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA
(Set up by an Act of Parliament)

PPR/253/2018-DD/186/INF/2018/DC/1500/2021

[DISCIPLINARY COMMITTEE [BENCH-II (2024-2025)]
[Constituted under Section 21B of the Chartered Accountants Act, 1949]

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

[PPR/253/2018-DD/186/INF/2018/DC/1500/2021]

In the matter of:

CA. Sachin Madhukar Pachkhede (M. No. 104660)
Partner, M/s B P S D and Associates
Flat No- 301B, Yash Avenue,
Plot no- 51 C, Sector 20
Navi Mumbai
Maharashtra- 410210.

.....Respondent

Members Present:-

CA. Ranjeet Kumar Agarwal, Presiding Officer (in person)
Mrs. Rani S. Nair, IRS (Retd.), Government Nominee (through VC)
Shri Arun Kumar, IAS (Retd.), Government Nominee (in person)
CA. Sanjay Kumar Agarwal, Member (in person)
CA. Cotha S Srinivas, Member (in person)

Date of Hearing: 19th March, 2024

Date of Order: 9th May, 2024

1. That vide Findings under Rule 18(17) of the Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007, the Disciplinary Committee was, inter-alia, of the opinion that **CA. Sachin Madhukar Pachkhede (M. No. 104660)** (hereinafter referred to as the '**Respondent**') is **GUILTY** of Professional Misconduct falling within the meaning of Item (5), (6), (7) and (9) of Part-I of the Second Schedule to the Chartered Accountants Act 1949.

2. That pursuant to the said Findings, an action under Section 21B(3) of the Chartered Accountants (Amendment) Act, 2006 was contemplated against the Respondent and a communication was addressed to him thereby granting an opportunity of being heard in person / through video conferencing and to make representation before the Committee on 19th March, 2024.

3. The Committee noted that on the date of the hearing held on 19th March 2024, the Respondent was present through video conferencing and made his verbal representation on the Findings of the Disciplinary Committee. He admitted that mistakes had happened. However, he requested the Committee not to consider them as misconduct as his intention was never to hide any information. The Committee also noted that the Respondent in his written representation, inter-alia, stated as under:

(a) an inadvertent error though typographical error should be viewed as minor negligence as there was no occurrence of financial implication on the sole user of the financial statements as the impugned Company was a wholly owned subsidiary of SICOM Ltd. which is a non-listed Company since inception.

CA. Sachin Madhukar Pachkhede (M. No. 104660)



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(b) The mistakes/errors were only that of disclosure and presentation. True and fair view was not affected. Even if a particular thing was not disclosed at a particular place, it was stated somewhere else in another context. Due to these reasons, the Respondent was absolved from a few charges like Cash Flow statement.

(c) Thus, the Respondent requested for a sympathetic view for considering the case for full exoneration.

4. The Committee considered the reasoning as contained in the Findings holding the Respondent Guilty of Professional Misconduct vis-à-vis written and verbal representation of the Respondent.

5. Keeping in view the facts and circumstances of the case, material on record including verbal and written representations on the Findings, the Committee held that there are non-compliances in General Purpose Financial Statements of M/s SICOM Investments and Finance Limited for financial year 2012-13 audited by the Respondent with regard to AS-15, AS-16, AS-18, SA-700, Paragraph 4(i)(c), Paragraph 4(iii) (e) to (g) and Para 4(iv) of Statement on Companies (Auditors Report) Order, 2003, Note 6(F), Note 6(G), Note 6(K)(i), Note 6(L), Note 6(P), Note 6(R) of 'General Instructions for preparation of Balance Sheet' given in Part-I of the Revised Schedule VI to the Companies Act, 1956, Clause 5(vi)(c) of 'General Instruction for preparation of Statement of Profit and Loss' given in Part-II of the Revised Schedule VI to the Companies Act, 1956. Hence, professional misconduct on the part of the Respondent is clearly established as spelt out in the Committee's Findings dated 7th February 2024 which is to be read in consonance with the instant Order being passed in the case.

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

7. Thus, the Committee ordered to remove the name of CA. Sachin Madhukar Pachkhede (M. No. 104660) from the Register of Members for a period of 3(three) months and also imposed a Fine of Rs. 1,00,000/- (Rs. One Lakh only) upon him payable within a period of 60 days from the date of receipt of the Order.

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

sd/-
(MRS. RANI S. NAIR, IRS RETD.)
GOVERNMENT NOMINEE

sd/-
(SHRI ARUN KUMAR, IAS RETD.)
GOVERNMENT NOMINEE

sd/-
(CA. SANJAY KUMAR AGARWAL)
MEMBER

sd/-
(CA. COTHA S. SRINIVAS)
MEMBER

CONFIDENTIAL

DISCIPLINARY COMMITTEE [BENCH – II (2023-2024)]

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

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

File No: [PPR/253/2018-DD/186/INF/2018/DC/1500/2021]

In the matter of:

CA. Sachin Madhukar Pachkhede (M. No. 104660)

Partner, M/s B P S D and Associates

Flat No- 301B, Yash Avenue,

Plot no- 51 C, Sector 20

Navi Mumbai

Maharashtra- 410210

.....Respondent

MEMBERS PRESENT:

CA. Ranjeet Kumar Agarwal, Presiding Officer (Present in Person)

Mrs. Rani S. Nair, I.R.S. (Retd.), Government Nominee (Present in Person)

Shri Arun Kumar, I.A.S. (Retd.), Government Nominee (Present in Person)

CA. Sanjay Kumar Agarwal, Member (Present in Person)

DATE OF FINAL HEARING : 09.01.2024 (through physical / video conferencing mode)

PARTIES PRESENT:

Respondent : CA. Sachin Madhukar Pachkhede (Through ICAI BKC, Mumbai)

Counsel for Respondent: Mr. S. G. Gokhale (Through ICAI BKC, Mumbai)

BACKGROUND OF THE CASE: -

The brief background is that a letter dated 10th May, 2018 was received from Financial Reporting Review Board (FRRB) which was filed against CA. Sachin Madhukar, Partner of M/s BPSD and Associates (hereinafter referred to as the “**Respondent**” and “**Respondent Firm**” respectively). FRRB observed various non-compliances in General Purpose Financial Statements of **M/s SICOM Investments and Finance Limited** (hereinafter referred to as the ‘**Company**’) for financial year 2012-13 audited by the Respondent with regard to AS-3, AS-15, AS-16, AS-18, AS-20, AS-26, SA-700, Paragraph 4(i)(c) and Paragraph 4(iii) (e) to (g) of Statement on Companies (Auditors Report) Order, 2003, Note 6(K)(i), Note 6(L), Note 6(P), Note(6R) of ‘General Instructions for preparation of Balance Sheet’ given in Part-I of the Revised Schedule VI to the Companies Act, 1956, Clause 5(vi)(c) of ‘General Instruction for preparation of Statement of Profit and Loss’ given in Part-II of the Revised Schedule VI to the Companies Act, 1956.

CHARGES IN BRIEF: -

1. The Committee noted that various instances of professional misconduct were highlighted by the Informant which are as under:

S. No.	Allegations	View of Director (Discipline)
1 (a)	Non-adjustment of Depreciation as non-cash item in Cash Flow Statement which is non-compliance of Paragraph 20 of AS-3.	Held Guilty
1 (b)	Non-reconciliation of Cash and Cash equivalents shown in Note 13 and Cash Flow Statement which is non-compliance with the requirements of Paragraph 42 of AS-3.	Held Guilty
2(a)	Non-disclosure of accounting policy and employee benefits in relation to Gratuity and Leave encashment.	Held Guilty

2(b)	Liability arising out of encashment of un-availed leave has been provided on payment basis which is non-compliance of AS 15 and Section 209 (3) (b) of Companies Act, 1956.	Held Guilty
2(c)	Separate disclosure of salaries and wages, contribution to provident and other funds was neither disclosed by way of separate line item neither in statement of profit and loss nor in notes to account	Held Guilty
3.	Non-compliance with the requirement of Paragraph 23 (a) of AS-16 'Borrowing Costs'.	Held Guilty
4.	Remuneration paid to Managing Director not reported under Related Party Disclosures as required by AS-18.	Held Guilty
5.	Outstanding balance pertaining to related party transactions not disclosed under Related Party Disclosures as required by AS-18.	Held Guilty
6.	Non-compliance with the requirement of Paragraph 8 read with Paragraph 48 (i) (ii) of AS-20 'Earning Per Share'	Held Not Guilty
7.	Non-compliance with the requirement of Paragraph 90(a) of AS-26 'Intangible Assets'.	Held Not Guilty
8.	Non-compliance with requirements of Note 6(F) of 'General Instructions for Preparation of Balance Sheet' of Part I of Revised Schedule VI to the Companies Act, 1956.	Held Guilty
9.	Non-compliance with the requirements of Note 6 (G) of 'General Instructions for Preparation of Balance Sheet' of Part I of Revised Schedule VI to the Companies Act, 1956.	Held Guilty
10 (a)	Non-compliance with the requirement of Note 6 (K) (i) of Part I of Revised Schedule VI to the Companies Act, 1956.	Held Guilty

10(b)	Disclosure of 'Share application money paid' under the head 'Non-Current Investments' rather than under the head 'Non-Current Assets' as required by Part I of Revised Schedule VI to the Companies Act, 1956.	Held Guilty
11.	Non-compliance with requirements of Note 6(L) of 'General Instructions for Preparation of Balance Sheet' of Part I of Revised Schedule VI to the Companies Act, 1956.	Held Guilty
12.	Non-compliance with requirements of Note 6(P) of 'General Instructions for Preparation of Balance Sheet' of Part I of Revised Schedule VI to the Companies Act, 1956.	Held Guilty
13.	Non-compliance of Note 6(R) of 'General Instructions for Preparation of Balance Sheet' of Part I of the Revised Schedule VI to the Companies Act, 1956.	Held Guilty
14 (a)	Fixed Assets not segregated between Tangible and Intangible Assets	Held Guilty
14 (b)	Comparative figures of the previous year relating to fixed Assets have not been disclosed.	Held Guilty
14(c)	The Company has reported the note as "Schedule" instead of "Note No." and has reported the note heading as "Fixed Assets" instead of "Tangible Assets.	Held Guilty
15.	Non-compliance with requirements of Clause 5(vi) (c) of 'General Instructions for Preparation of Statement of Profit and Loss' of Part II of the Revised Schedule VI to the Companies Act, 1956.	Held Guilty
16.	Non-compliance with the requirements of Paragraph 21 of SA-700.	Held Guilty

17.	Non-compliance with the requirements of Paragraph 23 of SA-700.	Held Guilty
18.	Non-compliance with the requirements of Paragraph 4(i) (c) of Companies (Auditor's Report) Order, 2003.	Held Guilty
19.	Non-compliance with the requirements of Paragraph 4 (iii) (e) to (g) of Companies (Auditor's Report) Order, 2003.	Held Guilty
20.	Non-compliance with the requirements of Paragraph 4 (iv) of Companies (Auditor's Report) Order, 2003.	Held Guilty
21.	Non-compliance with the requirements of Paragraph 4 (ix) (b) of Companies (Auditor's Report) Order, 2003.	Held Not Guilty
22.	Non-compliance with the requirements of Paragraph 4 (xxi) of Companies (Auditor's Report) Order, 2003	Held Not Guilty

2. The Committee noted that the Respondent at the stage of PFO had, inter-alia, mentioned as under in respect of allegations in which he was held guilty: -

- 2.1 That the Respondent w.r.t **allegation 1 (a) and (b)** had submitted that Cash Flow Statement presented and reviewed by him during the audit had no such difference. He further stated that the difference between Cash and cash equivalent as per Cash Flow Statement was due to the impaired link between excel sheets of Cash Flow Statement and balance sheet notes. He further submitted that when such anomaly was noticed then correct copy of rectified cash flow statement was submitted to the Company.
- 2.2 That the Respondent w.r.t **allegation 2** had submitted that the Company had neither announced any ex-gratia nor paid or provided for any leave encashment during the financial year 2012-13. He further stated that amount under "Salary, Allowances and ex-gratia" amounting to INR 85,36,567/- includes salary and allowances paid to its employees. Hence, there was no deviation from the specified provisions of AS-15.

- 2.3 That the Respondent w.r.t **allegation 3** had submitted that total Borrowing Cost incurred during the financial year 2012-13 was INR 119,527,363 which was fully debited to Profit and Loss Account. He further stated that Company had not capitalised any borrowing cost during financial year 2012-13. Since no borrowing cost was capitalised, so no disclosure requirement was escaped. He further stated that Company was a Non- Banking Financial Company and followed accrual system of accounting and the accounts had been prepared in accordance with relevant accounting standards. He further stated that the interest on borrowing was the largest and direct expense.
- 2.4 That the Respondent w.r.t **allegation 4** had submitted that the remuneration of Rs. 42,65,736 paid to Managing Director was disclosed under Note-20, Point No. II Notes to Accounts sub point no. 4 and the transactions with SICOM Ltd (Holding Company) were disclosed under sub point no.5 of Note-20, Point No. II- Notes to Accounts. He further stated that sub point no.4 and 5 were to be read in conjunction for disclosure requirement under AS-18.
- 2.5 That the Respondent w.r.t **allegation 5** had submitted that the outstanding Balance was nil in case of Rent, reimbursement of office establishment expenses, Interest on ICD (hereinafter referred to as Intercompany Deposit), remuneration to Managing Director, which are related party transactions as per AS-18. He further stated that the balance receivable from SICOM Ltd as at year end towards management consultancy fees Rs. 31,56,085 has been disclosed in Note-12 under the head 'Trade Receivables' and there was no element of doubtful debt pertaining to this balance, hence no disclosure was made in the Notes to Accounts as per AS-18.
- 2.6 That the Respondent w.r.t **allegation 8** had submitted that the Company has disclosed Inter Company Deposit from SICOM Ltd amounting to INR 10 crores in Notes to Accounts as per the requirement AS-18 'Related Party Disclosures', so no need to separately disclose Loans from Related Party as per the requirement of Part I of Revised Schedule VI to the Companies Act, 1956. The Respondent further stated that the Company has not provided any security against the short-term borrowings amounting to INR 10 crores

from SICOM Ltd.

- 2.7 That the Respondent w.r.t **allegation 9** had submitted that “Other Current Liabilities” includes Interest in advance amounting to INR 27,73,599, PT Payable amounting to INR 800, TDS Payable amounting to INR 5,29,290. He further stated that none of the above heads could be exactly classified as per the heads provided by Revised Schedule VI to the Companies Act, 1956 and therefore all the above heads were most appropriately grouped under other current liabilities.
- 2.8 That the Respondent w.r.t **allegation 10** had submitted that –
- a. The Company has classified the Investment in shares as Quoted or Unquoted in line with the AS-13 ‘Accounting for Investments’ which amply implied the same meaning as traded and non-traded. The depiction in a different head with the same meaning does not in any way distort the underlining purpose.
 - b. The Board of directors of the Company and Borrowers had approved the conversion of Loan given by the Company into equity share capital. He further stated that it was amply clear that the investment made as share application would definitely be converted into investments in shares.
- 2.9 That the Respondent w.r.t **allegation 11** had submitted that the Loans and Advances (Secured) disclosed was not in the nature of Capital Advance, Security Deposit, Loans and Advances to Related Parties and Others. Therefore, all the lending was specifically and separately disclosed by the Company under the heading Loans and Advances (Secured) in the Balance Sheet of the Company for the financial year 2012-13.
- 2.10 That the Respondent w.r.t **allegation 12** had submitted that the amount of trade receivables were of less than 6 months and receipts of the same was also before the date of signing of the balance sheet which clearly shows that trade receivables were good.
- 2.11 That the Respondent w.r.t **allegation 13** had submitted that the Company is a Non-Banking financial Company in the business of lending money and the loan given by Company is towards its sole business activity. He further stated that entire amount of loan granted was secured and was correctly shown under the head “Loans and Advances (Secured). He further stated that out of amount shown under the head “Other” which constitutes 53.38%

of entire short-term Loans and Advances, 98.72% pertains to TDS deducted by the parties and 1.28% pertains to other miscellaneous advances.

2.12 That the Respondent w.r.t **allegation 14** had admitted the error and submitted that this was an inadvertent error which could be condoned.

2.13 That the Respondent w.r.t **allegation 15** referred the Foot Note of 'General Instructions for preparation of Statement of Profit and Loss' of Part II of the Revised Schedule VI to the Companies Act, 1956, which states as under -

"Note: - Broad Heads shall be decided taking into account the concept of materiality and presentation of true and fair view of financial statements."

The Respondent further stated that rent paid amounting to INR 26,23,065/- for the financial year 2012-13 was less than 1% of total revenue, which is a non-material value.

2.14 That the Respondent w.r.t **allegation 16** had admitted that the word "Independent" has escaped from the format of Auditors Report, which happened inadvertently.

2.15 That the Respondent w.r.t **allegation 17** had submitted that non-mentioning of cash flow statement in the audit report is an error of omission which happened inadvertently.

2.16 That the Respondent w.r.t **allegation 18** had submitted that there was a disposal of fixed assets namely computer equipment having Gross Block value amounting to INR 342,920 during the financial year 2012-13, this disposal was in no way disposal of substantial nature having impact on the going concern status of Company. Therefore, mention of it was not made.

2.17 That the Respondent w.r.t **allegation 19** had submitted that there was no loan taken by the Company which was required to be reported under the Paragraph 4(iii) (e) to (g) of Companies (Auditor's Report) Order, 2003. He further stated that while drafting the CARO report, the typographical error occurred resulting into missing out the word "taken" and this happened inadvertently.

2.18 That the Respondent w.r.t **allegation 20** above had submitted that non mentioning of *"the sale of goods and services"* in the audit report seems to be a typographical error and happened inadvertently. He further stated that the point of adequate internal control has been specifically reported under point (vii) of the same CARO report.

3. The Director (Discipline) had, in his Prima Facie Opinion, held the Respondent prima facie **Guilty** on following allegations:

- (i) **Point (a) of First Charge (S. No. 1(a) of above table) relating to Non-adjustment of Depreciation as non-cash item in Cash flow statement which is non-compliance of Paragraph 20 of AS-3:-** The Director (Discipline) in the prima-facie opinion observed that in terms of paragraph 20 of AS-3, while computing the 'Cash flow from Operating Activity', non-cash item such as depreciation is required to be adjusted from net profit or loss for the period. In the instant case, it was noted that the Company had charged depreciation for the financial year 2012-13 amounting to INR 4,56,010 which was shown in statement of Profit and Loss for the financial year 2012-13. On the perusal of cash flow statement for the financial year 2012-13, it was noted that while computing the cash flow from the operating activity, there was no adjustment made in respect of depreciation in the cash flow statement. Further, the Respondent's contention that there was an impaired link between excel sheets of cash flow and balance sheet was not tenable. It is the responsibility of an auditor to either plug in such impaired links or report otherwise in Audit Report when he states that financial statements have been prepared in accordance with accounting standards. Therefore, the Respondent was held prima facie **GUILTY** of Professional Misconduct falling within the meaning of Items (5), (6) and (7) of Part I of the Second Schedule to the Chartered Accountants Act, 1949.
- (ii) **Point (b) of First Charge (S. No. 1(b) of above table) relating to non-reconciliation of Cash and Cash equivalents shown in Note 13 and Cash Flow Statement which is non-compliance with the requirement of paragraph 42 of AS-3:-** The Director (Discipline) in the prima-facie opinion observed that total amount of cash and cash equivalents had been disclosed as Rs. 22,003,432/- in the Notes -13 to the financial statements of the Company. It was further noted that the same had been disclosed as Rs.109,353,759/- in the Cash Flow Statement. Thus, a difference of Rs.8,73,50,327/- existed in respect of cash and cash equivalents as stated in the Balance Sheet vis a vis cash flow statement. It was further observed that the differential amount of Rs. 8,73,50,327/- amounts to 4 times of correct cash and cash equivalents i.e., Rs. 2,20,03,432/- and thus, had a

material impact on the financial statement. It was viewed that the defence adopted by the Respondent that due to errors occurred on management's part, the same was wrongly disclosed in the cash flow statement signed by him, could not be accepted as an auditor signs the audit report and Financial Statement after the management has signed on it. Accordingly, the Respondent was held prima facie **GUILTY** on this charge for his failure to draw attention to his deviation in his Audit Report for professional misconduct falling within the meaning of Items (5), (6) and (7) of Part I of Second Schedule to the Chartered Accountants Act, 1949.

(iii) **Point (a) of Second Charge (S. No. 2 (a) of above table) relating to non-disclosure of accounting policy and employee benefits in relation to Gratuity and Leave encashment:-**

The Director (Discipline) in the prima-facie opinion observed that as per Paragraph 120 of AS-15 'Employee Benefits' the Company is required to disclose the information regarding the nature and type of defined benefit plan. From Note 17 of notes to accounts for the year ended 31st March 2013, it was noted that the Salaries, Allowances and Ex-gratia was shown under the broad head 'Employee Benefit Expenses'. Further, in Note 20 under Significant Accounting Policies in point II, it was mentioned that *'the liability arising out of encashment of unavailed leave has been provided on payment basis. The ex-gratia is provided as and when actually announced'*. In this regard, the Respondent had stated that the amount of encashment of unavailed leave and ex-gratia was Nil. It was noted from Para 24 and 25 of AS-15 that gratuity is a part of employment benefit which should be classified as defined contribution plan or defined benefit plan based on terms of employment and that irrespective of the said classification the provision for gratuity liabilities be made each year as and when services rendered by the employee. It was noted that the Respondent failed to report the departure from the provisions of AS-15 in his Audit Report. Thus, the Respondent was held prima facie **GUILTY** of professional Misconduct falling within the meaning of item (7) of Part I of Second Schedule to the Chartered Accountants Act, 1949.

(iv) **Point (b) of Second Charge (S. No. 2 (b) of above table) regarding liability arising out of encashment of un-availed leave provided on payment basis:-**

The Director (Discipline) in the prima-facie opinion observed that in terms of Section 209(3)(b) of the Companies Act, 1956, it was noted that the Company was required

to keep books of accounts on accrual basis otherwise it was deemed that proper books of accounts were not kept by the Company. However, on perusal of Notes to accounts of the Company, it was noted that liability arising out of encashment of unavailed leave had been provided on payment basis which is not in accordance with the provision of section 209(3)(b) of Companies Act, 1956. Thus, the Respondent was held prima facie **GUILTY** of professional Misconduct falling within the meaning of item (5), (6) and (7) of Part I of Second Schedule to the Chartered Accountants Act, 1949.

(v) **Point (c) of Second Charge (S. No. 2 (c) of above table) regarding expenses incurred against defined contribution plan and other funds not disclosed by way of separate line item neither in Statement of Profit and Loss nor in Notes to Account:-**

The Director (Discipline) in the prima-facie opinion observed that in terms of paragraph 5 of General Instructions for preparation of statement of Profit and Loss given under Part II, Revised Schedule VI to the Companies Act, 1956, that there was requirement of separate disclosure of salaries and wages and contribution to Provident and other funds which was not complied with and the Respondent had failed to report on the said provision of Revised Schedule VI. Accordingly, the Respondent was held prima facie **GUILTY** of professional misconduct falling within the meaning of Item (5), (6) and (7) of Part I of Second Schedule to the Chartered Accountants Act, 1949.

(vi) **Third Charge (S. No. 3 of above table) related to non-compliance with the requirements of paragraph 23 (a) of AS-16 'Borrowing Costs':-**

The Director (Discipline) in the prima-facie opinion observed that as per Paragraph 23 of AS-16, the financial statements should disclose the accounting policy adopted for borrowing cost and the amount of borrowing costs capitalised during the period. However, in the instant case, whole amount of interest and finance charges amounting to Rs. 119,527,363 was debited to Statement of Profit and Loss account and no amount of borrowing cost was capitalised. The Company had failed to disclose the accounting policy adopted for borrowing cost. It was noted that not only AS-16 but Paragraph 24 of AS-1 also requires disclosure of significant accounting policies. The Respondent had explained that being NBFC the borrowing cost was its significant expenditure. Hence, non- disclosure of the same lead to non-

compliance of various Accounting Standards which Respondent failed to report in his Audit Report. Accordingly, the Respondent was held prima facie **GUILTY** on this charge for his failure to draw attention to this deviation in his Audit Report for professional misconduct falling within the meaning of Item (7) of Part I of Second Schedule to the Chartered Accountants Act, 1949.

- (vii) **Fourth Charge (S. No. 4 of above table) relating to remuneration paid to Managing Director not reported under Related Party Disclosure as required by AS-18:-** The Director (Discipline) in the prima-facie opinion observed that Particulars of Key Management Personnel along with their name, relationship, nature of transaction and amount was required to be disclosed in Notes to Accounts as per requirements of Paragraphs 14, 21 and 23 of AS-18. However, none of the said disclosures with respect to Key Management Personnel was made in the Financial Statements in the Notes to Accounts of the Company. It was noted that in the instant case, the Company had paid salaries and allowance for the financial year 2012-13 amounting to Rs.42,65,736 as disclosed under Note-20, Point No. II Notes to Accounts sub point no. 4 'Remuneration to the Managing Director'. Hence, disclosure of the name of the related party i.e., Managing Director and other related details were required to be disclosed under the requirements of AS 18 which was not complied with, and the Respondent had failed to report the said non-compliance in his audit report. Accordingly, the Respondent was held prima facie **GUILTY** on this charge for the failure to draw attention to this deviation in his Audit Report for professional misconduct falling within the meaning of Items (5), (6) and (7) of Part I of Second Schedule to the Chartered Accountants Act, 1949.
- (viii) **Fifth Charge (S. No. 5 of above table) related to outstanding balance pertaining to related party transactions not disclosed under 'Related Party Disclosure' as required by AS 18:-** The Director (Discipline) in the prima-facie opinion observed that the Company in the notes on accounts for the year ending 31st March, 2013 had disclosed the details of related party transactions along with name of party, volume of transactions but the outstanding balance pertaining to such related party was not disclosed. It was noted that there was outstanding balance of ICD with SICOM Ltd, holding Company, reported under the head trade receivables but the same was not disclosed separately under 'Related Party

Disclosures' which was clear non-compliance of Paragraph 23 of AS-18. Thus, the Respondent was held prima facie **GUILTY** for the instant charge for the failure to draw attention to this deviation in his Audit Report for professional misconduct falling within the meaning of Items (5), (6) and (7) of Part I of Second Schedule to the Chartered Accountants Act, 1949.

- (ix) **Sixth Charge (S. No. 8 of above table) related to Non-compliance with requirement of Note 6(F) of 'General Instructions for Preparation of Balance Sheet' of Part I of Revised Schedule VI to the Companies Act, 1956:-** The Director (Discipline) in the prima-facie opinion observed that Revised Schedule VI and AS-18 requirements are separate and independent. While the former prescribes the format of Balance Sheet and contents of profit and Loss statement whereas the latter is dealt by way of notes to accounts providing all information relating to related parties, transactions and outstanding balance thereof. Hence, the content of Balance Sheet or statement of Profit and Loss as prescribed under Revised Schedule VI could not be compromised stating that related information was provided under related party disclosure under Notes to Accounts. It was noted that a separate disclosure regarding the Loans and advances from related parties was required to be made in the Balance Sheet irrespective of borrowings, however, in the instant case borrowings so taken from SICOM Ltd (Holding Company) was not classified. The Respondent as auditor also failed to report this fact. Thus, the Respondent was held prima facie **GUILTY** for the instant charge for the failure to draw attention to this deviation in his Audit Report for professional misconduct falling within the meaning of Items (6) and (7) of Part I of Second Schedule to the Chartered Accountants Act, 1949.
- (x) **Seventh Charge (S. No. 9 of above table) related to non-compliance of the requirements of Note 6 (G) of 'General Instructions for Preparation of Balance Sheet' of Part I of Revised Schedule VI to the Companies Act, 1956:-** The Director (Discipline) in the prima-facie opinion observed that as per Note 6(G) of 'General Instructions for preparation of Balance Sheet' Part I of Revised Schedule VI to Companies Act, 1956, nature of current liabilities should be disclosed which was not disclosed and the Respondent being auditor also failed to report the said non-compliance. Thus, the Respondent was held prima facie **GUILTY** for

professional misconduct falling within the meaning of Items (6) and (7) of Part I of Second Schedule to the Chartered Accountants Act, 1949.

- (xi) **Point (a) of Eighth Charge (S. No. 10 of above table) related to non-compliance with the requirement of Note 6 (K) (i) of Part I of Revised Schedule VI to the Companies Act, 1956:-** The Director (Discipline) in the prima-facie opinion observed that Revised Schedule VI prescribes to classify the investments into 'Trade' and 'Other' investments, AS-13 prescribes to classify the investments as Quoted and Unquoted investments. It was viewed that argument of the Respondent that classification of investments as Quoted and Unquoted also indicate whether it was trade investment or otherwise is not tenable as quotation of an investment indicate it to be a listed investment whereas trade investment indicates the intention of an entity to make the said investment for the purpose of business whether the said investment is listed or not. Hence, it was viewed that the requirements of Revised Schedule VI were not complied with which the Respondent had failed to report in his audit report. Thus, the Respondent was held prima facie **GUILTY** for this leg of instant charge for professional misconduct falling within the meaning of Item (6) and (7) of Part I of Second Schedule to the Chartered Accountants Act, 1949.
- (xii) **Point (b) of Eighth Charge (S. No. 10 of above table) relating disclosure of 'Share application money paid' under the head 'Non-Current Investments' rather than 'Non-Current Assets' as required by Part I of Revised Schedule VI to the Companies Act, 1956:-** The Director (Discipline) in the prima-facie opinion observed that share application money pending for allotment may not give any benefits to the Company (neither dividend, interest, rentals nor capital appreciation) and therefore does not meet the criteria of term 'Investments'. It was noted that in extant case, share application money paid amounting to INR 154,600,000/- was reflected under the heading 'Non- Currents Investments' in the Balance Sheet of the Company. The Respondent had stated that the investment made as share application would definitely be converted into investments in shares. However, it was noted that the Respondent did not provide any satisfactory evidences to substantiate his claim in this regard. Thus, it was viewed that in the absence of any evidence documenting certainty in issue of shares against application money, the

Respondent was prima facie **GUILTY** for the instant charge for the failure to draw attention to this deviation in his Audit Report for professional misconduct falling within the meaning of Items (5) (6) and (7) of Part I of Second Schedule to the Chartered Accountants Act, 1949.

- (xiii) **Ninth Charge (S. No. 11 of above table) related to non-compliance with requirements of Note 6(L) of 'General Instructions for Preparation of Balance Sheet' of Part I of Revised Schedule VI to the Companies Act, 1956:-** The Director (Discipline) in the prima-facie opinion observed that the Company had "Loans and Advances" (secured) amounting to Rs 1,385,797,462 which was reflected under the heading 'Long Term loans and Advances' in the Balance Sheet of the Company for the financial year 2012-13. However, the Company was required to separately disclose the same under the heading 'Long Term Loans and Advances' in its sub-heading (d) 'Other loans and advances' and also specifying the nature of such loans and advances in the financial statements of the Company for the financial year 2012-13. However, the requirement of Revised Schedule VI was not complied with which the Respondent as auditor also failed to report the same. Thus, the Respondent was held prima facie **GUILTY** for the instant charge for the failure to draw attention to this deviation in his Audit Report for professional misconduct falling within the meaning of Items (5), (6) and (7) of Part I of Second Schedule to the Chartered Accountants Act, 1949.
- (xiv) **Tenth Charge (S. No. 12 of above table) related to non-compliance with requirements of Note 6(P) of 'General Instructions for Preparation of Balance Sheet' of Part I of Revised Schedule VI to the Companies Act, 1956:-** The Director (Discipline) in the prima-facie opinion observed that outstanding Trade Receivables for a period exceeding six months from the date they are due for payment are required to be disclosed separately from others apart from their classification being doubtful or otherwise. However, in the instant case, Respondent claimed that at the time of signing of financial statements as on 17th June, 2013 outstanding amount of trade receivables was received. However, it was noted that firstly Respondent had not brought on record the documentary evidence to substantiate his stand taken in his written statement and secondly the payment made after the Balance Sheet date did not signify that it was outstanding as on

Balance Sheet date for more than six months or otherwise. Further, in view of Note 6(P) of 'General Instructions for Preparation of Balance Sheet' of Part I of Revised Schedule VI, the Company was also required to sub-classify the trade receivable into secured, unsecured or doubtful. But in the instant case, trade receivables were not classified as such. Thus, the Respondent was held prima facie **GUILTY** for the instant charge for the failure to draw attention to this deviation in his Audit Report for professional misconduct falling within the meaning of Items (6), and (7) of Part I of Second Schedule to the Chartered Accountants Act, 1949.

- (xv) **Eleventh Charge (S. No. 13 of above table) relating to non-compliance of Note 6(R) of 'General Instructions for Preparation of Balance Sheet' of Part I of the Revised Schedule VI to the Companies Act, 1956:-** The Director (Discipline) in the prima-facie opinion observed that the Loans and Advances is required to be separately disclosed as per its nature. It was viewed that if the Respondent could provide the clarification in respect of the said advances whether deduction of TDS or otherwise the same was required to be used for classification as required under Schedule VI. Further, such Loans and Advances are also required to be classified into secured, unsecured and doubtful as per the requirement of Note 6(R) of 'General Instructions for Preparation of Balance Sheet' of Part I of the Revised Schedule VI. However, the said classification was also not done which the Respondent as auditor failed to report. Thus, the Respondent was held prima facie **GUILTY** for the instant charge for the failure to draw attention to this deviation in his Audit Report for professional misconduct falling within the meaning of Items (5), (6) and (7) of Part I of Second Schedule to the Chartered Accountants Act, 1949.
- (xvi) **Point (a) of Twelfth Charge related to Fixed Assets not segregated between Tangible and Intangible Assets:-** The Director (Discipline) in the prima-facie opinion observed that Fixed Assets is required to be segregated between Tangible and Intangible Assets. However, on the perusal of financial statements of the Company for the financial year 2012-13, it was noted that the Fixed Assets were not classified as 'Tangible' and 'Intangible Assets' when both the nature of assets were existing as on the date of balance sheet. Accordingly, the Respondent was held prima facie **GUILTY** for the instant charge for the failure to draw attention to this deviation in his Audit Report for professional misconduct falling within the

meaning of Item (7) of Part I of Second Schedule to the Chartered Accountants Act, 1949.

- (xvii) **Point (b) of Twelfth Charge related to non disclosure of comparative figures of the previous year relating to fixed assets:-** The Director (Discipline) on perusal of notes to accounts of the financial statements of the Company for the financial year 2012-13, noted that the comparative figures of the aggregate value of gross block of fixed assets, accumulated depreciation, net block of fixed assets for the immediately preceding financial year 2011-12 has been shown in Schedule 9 "Fixed Assets". However, similar information for each item of fixed asset was not given in the fixed asset schedule forming part of the balance sheet. Thus, the Respondent was held prima facie **GUILTY** for the instant charge for the failure to draw attention to this deviation in his Audit Report for professional misconduct falling within the meaning of Item (7) of Part I of Second Schedule to the Chartered Accountants Act, 1949.
- (xviii) **Point (c) of Twelfth Charge is that the Company has reported the note as "Schedule" instead of "Note No." and has reported the note heading as "Fixed Assets" instead of "Tangible Assets :-** The Director (Discipline) in the prima-facie opinion observed that in the financial statements of the Company for the financial year 2012-13, the Company had reported the "Schedule" instead of reporting "Note No" and also report the note heading "Fixed Assets" instead of "Tangible Assets". It was noted that while usage of term 'Schedule' instead of 'Note' may be considered as inadvertent error as being pleaded by the Respondent but classification of assets as 'Tangible Assets' and 'Intangible' was a mandatory requirement. Hence, the Respondent was held prima facie **GUILTY** for the instant charge for the failure to draw attention to this deviation in his Audit Report for professional misconduct falling within the meaning of Item (7) of Part I of Second Schedule to the Chartered Accountants Act, 1949.
- (xix) **Thirteenth Charge (S. No. 15 of above table) related to non-compliance with requirement of Clause 5(vi) (c) of 'General Instructions for Preparation of Statement of Profit and Loss' of Part II of the Revised Schedule VI to the Companies Act, 1956:-** The Director (Discipline) in the prima-facie opinion

observed that as per Clause 5(vi) (c) of 'General Instructions for Preparation of Statement of Profit and Loss' of Part II of the Revised Schedule VI to the Companies Act, 1956, the Company was mandatorily required to disclose Rent Paid amounting to INR 26,23,065 separately. However, from the perusal of financial statements of the Company for the financial year 2012-13, it was noted that the Rent paid amounting to INR 26,23,065 has been clubbed under the heading of miscellaneous expenses in Note 19. Respondent's contention that amount of Rent Paid is not material is not maintainable in the instant case because clause (5) (vi) (c) of Part II of Revised Schedule VI specifically mentioned that Rent expenses is required to separately disclosed. However, the Company has failed to do so which the Respondent as auditor also failed to report. Thus, the Respondent was held prima facie **GUILTY** for the instant charge for the failure to draw attention to this deviation in his Audit Report for professional misconduct falling within the meaning of Items (5), (6) and (7) of Part I of Second Schedule to the Chartered Accountants Act, 1949.

- (xx) **Fourteenth Charge (S. No. 16 of above table) related to non-compliance with the requirements of Paragraph 21 of SA-700:-** The Director (Discipline) in the prima-facie opinion observed that as per Paragraph 21 of SA-700, the Respondent was required to give Title of Audit Report "Independent audit report". However, the Respondent had failed to do so. It was viewed that standard prescribes mandatory requirements and as such the Respondent was held prima facie **GUILTY** for professional misconduct falling within the meaning of Item (7) of Part I of Second Schedule to the Chartered Accountants Act, 1949.
- (xxi) **Fifteenth Charge (S. No. 17 of above table) related to non-compliance with the requirement of Paragraph 23 of SA 700:-** The Director (Discipline) in the prima-facie opinion observed that SA-700 prescribes the consideration of cash flow statement in the opening or the introductory paragraph of the auditor's report on financial statements. However, the Respondent had failed to mention the said facts in his Audit Report, accordingly, he was held prima facie **GUILTY** of professional misconduct falling within the meaning of Item (7) of Part I of Second Schedule to the Chartered Accountants Act, 1949.

(xxii) **Sixteenth Charge (S. No. 18 of above table) related to non-compliance with requirement of Clause 4 (i) (c) of Companies (Auditor's Report) Order, 2003:-**

The Director (Discipline) in the prima-facie opinion observed that there is a situation about non-applicability of any clause, the same is required to be appropriately reported stating about non-applicability as discussed in Paragraph 80 of statement on CARO, 2003 issued by ICAI rather than staying silent. Thus, the Respondent was held prima facie **GUILTY** of professional misconduct falling within the meaning of Item (7) of Part I of Second Schedule to the Chartered Accountants Act, 1949 in instant case for the violation of SA-700.

(xxiii) **Seventeenth Charge (S. No. 19 of above table) related to non-compliance with requirement of Clause 4 (iii) (e) to (g) of Companies (Auditor's Report) Order, 2003:-**

The Director (Discipline) in the prima-facie opinion observed that the Respondent was required to mention in his Audit Report the loan (secured or unsecured) taken by the Company from Companies, firms or other parties covered in the register maintained under section 301 of the Act which was covered under clauses 4 (iii) (e) to (g) of CARO, 2003. However, on perusal of the report issued by the Respondent under CARO, 2003, it was seen that the Respondent had failed to give his report on the loan taken by the Company as required in Paragraph 4(iii) (e) to (g) of CARO, 2003 and had reported only in respect of loan given by the Company as required in Paragraph 4(iii) (a) to (d). Accordingly, the Respondent was held prima facie **GUILTY** of professional misconduct falling within the meaning of Item (7) of Part I of Second Schedule to the Chartered Accountants Act, 1949.

(xxiv) **Eighteenth Charge (S. No. 20 of above table) related to non-compliance with requirement of Clause 4 (iv) of Companies (Auditor's Report) Order, 2003 :-**

The Director (Discipline) in the prima-facie opinion observed that the Respondent was required to report on the adequacy of internal control system with regard to purchase of inventory and fixed assets and for sale of goods and services. However, on the perusal of report issued by the Respondent under CARO, 2003, it was seen that the Respondent had used the word "other items" in his Audit Report instead of "sale of goods and services". It was viewed that CARO, 2003 defines the specific aspects on which an auditor is required to report and usage of such general phrases instead of specific aspects as being required under law indicates the

casual approach with which the Respondent is reporting w.r.t. CARO requirements. Accordingly, the Respondent was held prima facie **GUILTY** of Professional Misconduct for this part of instant allegation. Further, with respect to using the word 'internal control procedure' instead of 'internal control system' in the audit report for the financial year 2012-13 is material, since it signifies the depth of verification and degree of compliance with respect to specific reporting requirement as such. Hence, the Respondent was held prima facie **GUILTY** of professional misconduct falling within the meaning of items (7) and (9) of Part I of Second Schedule to the Chartered Accountants Act, 1949.

4. Accordingly, the 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, held the Respondent Prima-facie **Guilty** of Professional Misconduct falling within the meaning of Items (5), (6), (7) and (9) of Part I of Second Schedule to the Chartered Accountants Act, 1949. The said items in the Schedule to the Act states as under:-

Item (5) of Part I of Second Schedule:

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

(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;

Item (6) of Part I of Second Schedule

(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;

Item (7) of Part II of Second Schedule:

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

Item (9) of Part II of Second Schedule

(9) Fails to invite attention to any material departure from the generally accepted procedure of audit applicable to the circumstances.”

SUBMISSIONS OF THE RESPONDENT ON THE PRIMA-FACIE OPINION

5. The Committee noted that the Respondent in his submissions dated 15th January 2022 after Prima Facie Opinion had, inter-alia, mentioned as under:-
- (i) The auditee company is a NBFC. It is a subsidiary of SICOM, a government of Maharashtra undertaking. This was his first year of audit of this company. The audit for the immediately preceding year (F.Y. 2011-12) was carried out by a very senior and reputed firm. Therefore, on certain points he relied upon the views taken by the said firm and the presentation made by them.
 - (ii) That many of the points were too technical in nature or very trivial. Those discrepancies occurred mainly out of accidental omission or oversight. Hardly any point had any significant impact on the true and fair view of the financial statements.
 - (iii) It is very relevant to note before arriving at the conclusion of gross negligence that –
 - (a) The company is a 100% subsidiary of a government company. SICOM is the sole shareholder.
 - (b) The directors of both the companies are practically the same.
 - (c) There are only 5 employees, all of whom are on deputation from SICOM.
 - (iv) There was no outside person who would have been affected by the alleged discrepancies. He does not mean that this justifies the technical lapses. However, he only means that nobody was adversely affected or aggrieved.
 - (v) In the table attached along with his submissions, the Respondent has summarized all the points and his response to the same in relation to the PFO. The Respondent further submitted that he does appreciate the

meticulousness with which the FRRB has reviewed the financial statements. However, as per him, nature of the alleged discrepancies is not very serious.

- (vi) **In response to the first charge**, he submitted that there was an error of omission as incorrect cash flow was printed by the auditee. Further, corrected cash flow was taken on record immediately on the next day, but the auditee still published incorrect CFS. The Respondent has brought on record copy of an email wherein the auditee has acknowledged the presence of correct CFS on their record.
- (vii) **In response to second charge**, he submitted the following:-
- a) *Employee Benefits" defined under AS-3 (*sic* AS 15) not applicable as:-
- Payment of Gratuity Act not Applicable as auditee had less than 5 employees since incorporation.
- (viii) **In response to third charge**, he submitted that the auditee primarily operates as a Non-Banking Financial Company (NBFC), with lending and borrowing activities constituting its core business. The Respondent further stated that sufficient disclosure has already been made in Note-20, under Significant Accounting Policies, vide point no. 1 and 2 under 'System of Accounting' and "Revenue Recognition". The Respondent further stated that total borrowing cost Rs. 119,527,363/- was fully debited to Profit and loss account and no capital cost was capitalised during 2012-13.
- (ix) **In response to fourth charge**, he submitted that as per AS-18 there were only two related parties of the auditee with whom the Auditee entered into the transactions which are as under:
- SICOM Ltd (Holding Company)
 - Mr. M D Thakur (Managing Director)

The Respondent stated that the remuneration of Rs. 42,65,736/- paid to Managing Director had been explicitly disclosed under Note-20, Point No. II Notes to Accounts, sub point no. 4. Therefore, as the said deviation was

insignificant and did not compromise the true and fair view, it did not lead the Respondent to comment on in his Independent Auditor's Report.

- (x) **In response to fifth charge**, he submitted that disclosures made to enable Financial Statement as a whole provide the relevant material information. The related party transactions have been disclosed in Note-20, Point No. II - Notes to Accounts, sub point no. 4 and 5. Further, balances outstanding in case of related party transactions were NIL in case of Rent, Reimbursement of Office Establishment Expenses, Interest on ICD and Remuneration to Managing Director. The Respondent further stated that balance receivable from SICOM Ltd as at year end towards Management Consultancy Fees Rs. 31,56,085/- has been disclosed in Note-12 Trade Receivables.
- (xi) **In response to sixth charge**, he submitted that the auditee has disclosed Inter corporate Deposit (ICD) from SICOM Ltd at Rs. 10,00,00,000/- in Note-20, Point no. II, under sub point no. 5 as per AS-18 - Related Party Transactions. Further, the said deviation did not compromise the true and fair view.
- (xii) **In response to seventh charge**, he submitted that the amounts under “Other Current liabilities” was less than 1% of total sum of balance sheet items which is Rs. 227.48 crores. Accordingly, the said deviation was not material.
- (xiii) **In response to eighth charge**, he submitted that the auditee has classified the investment in shares as Quoted or Unquoted in line with the AS-13, Accounting for Investments, which amply implied the same meaning as traded and non-traded. Further, the share application money was not to be refunded or converted back to Loan but was to be converted into investments in shares.
- (xiv) **In response to ninth charge**, he submitted that all its advances were given in course of lending business and were grouped under Loans and Advances (Secured) amounting to Rs. 1,385,797,462/- and were Secured Loans given to borrowers in normal course of business of lending. Thus, the loans

extended by the Auditee to its borrowers could not have been depicted in a better way than by showing them as "Loans and Advances (Secured)".

- (xv) **In response to tenth charge**, he submitted that all the balances receivable as on 31.03.2013 pertained to the month of March 2013. Further, all these receivables were recovered before the date of signing of the financial statements, i.e. 17.06.2013. The Respondent further stated that there were only two parties and both were of less than 6 months.
- (xvi) **In response to eleventh charge**, he submitted that 98.72% of the amount of Short Term Loans and Advances classified as "others" pertains to TDS and the remaining 1.28% to other miscellaneous. The Respondent stated that the same was clearly mentioned under the sub-note to Note no. 14 and the remaining amounts were immaterial.
- (xvii) **In response to twelfth charge**, he submitted that missing out on exact heading 'tangible and intangible assets' might not align with the requirement of the statute but it is clear from the line items description of the "fixed assets" schedule that all the items of fixed assets in the financial statements were Tangible in nature.
- (xviii) **In response to thirteenth charge**, he submitted that total value of Rent expense incurred was Rs. 26.23 lakhs which is less than 1% of total revenue of the auditee for 2012-13. Further, the aforesaid amount was disclosed under Note-20 point no. 5.
- (xix) **In response to fourteenth charge**, he submitted that mentioning of the word 'Independent' before Auditors Report as required by provisions of SA 700 has totally escaped from his attention due to oversight.
- (xx) **In response to fifteenth charge**, he submitted that mentioning of the "Cash Flow Statement" in introductory paragraph of Auditors Report has totally escaped from his attention due to oversight.

- (xxi) **In response to sixteenth charge**, he submitted that disposal of fixed assets consists of computer equipment and the disposal was in no way substantial in nature.
- (xxii) **In response to seventeenth charge**, he submitted that a typographical error occurred while drafting the CARO report. The word, "taken" was missed out inadvertently. Further, the company had not taken any loans to be specifically reported.
- (xxiii) **In response to eighteenth charge**, he submitted that the word "other items" was wrongly and inadvertently reflected instead of the correct word "the sale of goods and services" due to typographical error. Further, point of adequate internal control has been specifically reported under point (vii) of the CARO report.

BRIEF FACTS OF THE PROCEEDINGS:

6. The Committee noted that the instant case was fixed for hearing on following dates:

S. No.	Date	Status of Hearing
1.	31.05.2023	Adjourned on request of the Respondent
2.	22.06.2023	Part heard and Adjourned
3.	17.11.2023	Part heard and Adjourned
4.	09.01.2024	Heard and concluded.

7. On the day of first hearing held on 31st May 2023, the Committee noted that the Respondent vide email dated 30th May 2023 sought an adjournment to have sufficient time to prepare his case. Thereafter, the Committee, on account of natural justice, decided to provide one more opportunity to the Respondent and accordingly adjourned the case to a future date.
8. On the day of second hearing held on 22nd June 2023, the Committee noted that the Respondent was present through Video Conferencing Mode. The Committee noted

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

9. On the day of third hearing held on 17th November 2023, the Committee noted that the Respondent along with his counsel Mr. S.G. Gokhale was present from BKC Mumbai. The Committee further noted that the matter pertains to a reference received from FRRB, ICAI wherein there were 22 allegations against the Respondent out of which the charges were framed against 18 allegations.
10. The Committee on consideration of the facts of the case directed the Respondent to submit the following documents: -
 - a. Chart mentioning the reference pages along with the charge established against the Respondent and his written submissions/defense to this regard.

With this, the hearing in the matter was partly heard and adjourned.

11. The Committee noted that the Respondent vide letter dated 6th December, 2023 has submitted his submissions, inter-alia, mentioned as under:-
 - (i) **In response to first charge**, he submitted that publishing of incorrect cash flow statement was indeed an inadvertent mistake on part of the Auditee in spite of having correct cash flow statement on their record at the very time and before publishing it, as the error was immediately rectified. Moreover, cash flow statement for the previous year 2011-12 depicted all the aspect very correctly as required by AS-3, then how allegations could be made that these facts were not considered while preparing the cash flow for the matter which should be year 2012-13.

- (ii) **In response to second charge**, he submitted that the provisions of Payment of Gratuity Act 1972 and The Employees Provident Fund and Miscellaneous Provisions Act, 1952 are applicable to a Company only when it employs more than 10 persons anytime during a financial year. The auditee did not have more than 10 employees anytime since its inception. SFIL did not have any Leave Encashment Policy during 2012-13 for its employees. It is important to note here that there was no payment of any Leave Encashment during financial year 2012-13. Therefore, the Gratuity Act, 1972 and The Employees Provident Fund and Miscellaneous Provisions Act, 1952 were not applicable to the auditee. Similarly, by virtue of para 3 (a) of "Scope" of AS-15, since Leave Encashment Policy did not form part of any formal agreement between SIFL and its employees, the same cannot be classified under "Employee benefit" and hence separate disclosure or/and provision of same was not mandated by AS-15 for 2012-13.
- (iii) **In response to third charge**, he submitted that no Interest Cost is capitalized during the year under audit and in his opinion the capitalized amount, if any, is only to be reported. Accordingly, the alleged non-disclosures were not in violation of AS-16 provisions.
- (iv) **In response to fourth charge**, he submitted that mere non-mention of the text, "AS-18 Related Party Disclosures" in the header of a disclosure Para such as Disclosure under Note-20, Point No II- Notes to Accounts, sub point no 4 should not be construed as amounting to Non-Disclosure.
- (v) **In response to fifth charge**, he submitted that the alleged non-disclosure by the Auditee did not compromise the true and fair view of the financial statements whatsoever and no financial implication occurred due to such omission.
- (vi) **In response to sixth charge**, he submitted that non-disclosure by the Auditee was not significant enough to comment in Audit Report.

- (vii) **In response to seventh charge**, he submitted that more appropriate and precise classification according to the General Instructions for Preparation of Balance Sheet Part I of Revised Schedule VI to Companies Act, 1956 should have been made by the auditee while drawing the financial statements. Further, in his opinion all these amounts were not that significant enough to comment upon.
- (viii) **In response to point (a) of eighth charge**, he submitted that he believed in the validity of his perspective, leading to the unintentional oversight of accurately classifying assets as 'traded and non-traded.' Further, implicit classification made by the auditee as Quoted or Unquoted in line with the AS-13 as per Accounting for Investments, was maintained without being reported otherwise.
- (ix) **In response to point (b) of eighth charge**, he submitted that the auditee being Finance and Investment Company, had held an amount of Rs. 154,600,000/- as Share Application Money as at 31.03.2013. This amount was to be surely converted into Shares thereby making the auditee eligible for earning dividends. In case, hypothetically, if at all the Shares could not have been allotted and the application money was to be converted back to Debt, even then the Auditee would have been entitled to recover interest on the same as per the Share Holding Agreement. Therefore, even if the balance of Rs 154,600,000/- was Share Application Money as on 31.03.2013, it was bound to earn the Auditee either dividend or interest based on the circumstances.
- (x) **In response to ninth charge**, he submitted that all the Loans and Advances (Secured) depicted in the balance sheet were secured Loans and Advances and were depicted correctly and there was hardly any point on which additional disclosure was warranted.
- (xi) **In response to tenth charge**, he submitted that there were only two parties having receivable balance, out of which substantial amount as high as 84% was of SICOM Limited and the remaining balance of 16% was of other, and

both these balances were received before the signing of the balance sheet and therefore, there was no point on which additional disclosure could have made any difference.

- (xii) **In response to eleventh charge**, he submitted that TDS Receivable cannot be classified as doubtful/secured/unsecured. Further, remaining amounts were immaterial sums compared to the balance sheet size of Rs. 227.48 crores and hence, the said deviation was not regarded as significant enough to comment upon in his Audit Report as it did not disturb the true and fair view of the financial statement in any way and was also not a major disclosure lapse by the Auditee leading to hiding of material facts and figures.
- (xiii) **In response to twelfth charge**, he submitted that disclosure requirement of Revised Schedule VI to the Companies Act, 1956 in case of Tangible Assets has escaped from his attention due to oversight.
- (xiv) **In response to thirteenth charge**, he submitted that non-disclosure of Rent Expense, being of non- material value, as suggested under Clause 5 (vi) (c) of 'General Instruction for preparation of Statement of Profit and Loss' given in Part II, Revised Schedule VI to the Companies Act, 1956 would in no way compromise the true and fair view of the financial state of the Auditee.
- (xv) **In response to fourteenth charge**, he submitted that mentioning of the word "Independent" before Auditors Report as required by provisions of SA 700 has totally escaped from his attention due to oversight.
- (xvi) **In response to fifteenth charge**, he submitted that mention of the "Cash Flow Statement" in introductory paragraph of Auditors Report has totally escaped from his attention due to oversight which was totally unintentional.
- (xvii) **In response to sixteenth charge**, he submitted that the fixed assets namely computer equipment which were disposed were not of substantial nature which could have affected the going concern. The aforesaid provision requires the Auditor to comment on the "Going Concern" status of the

Auditee, only in case of substantial disposal of its Fixed Assets, which was not the case of the auditee.

- (xviii) **In response to seventeenth charge**, he submitted that disclosure of loans taken has totally escaped from his attention due to oversight.
- (xix) **In response to eighteenth charge**, he submitted that while drafting the CARO report the typographical error occurred wherein the word "other items" was wrongly and inadvertently inserted of the correct word "the sale of goods and services" and the same had happened inadvertently.

12. The Committee noted that the Respondent vide letter dated 2nd January, 2024 has submitted the tabular summary of all charges which are as under:-

- (i) **In response to first charge**, he submitted that wrong print out was taken by the management and the same has been signed by the Respondent inadvertently. Thereafter, when the Respondent noticed the above discrepancies, he has pointed out to the management via corrected page as signed by the Respondent. The Respondent further stated that the management does not appear to have uploaded the correct copy on the MCA website. The Respondent also stated that letter dated 09.12.2023 from Ex-MD confirming the mistake at their end on account of impaired link is already mailed to the Committee.
- (ii) **In response to point (a) of second charge**, he submitted that there were only 5 employees on deputation from SICOM. The Respondent stated that Gratuity Act is not applicable to the Company. Therefore no-provision has been made for the same on accrual basis.
- (iii) **In response to point (b) of second charge**, he submitted that for leave encashment / Ex-gratia there is no defined policy, hence, debited on actual basis and the amount would not be material.
- (iv) **In response to point (c) of second charge**, he submitted that Gratuity and PF is not applicable to the Company. Further, all expenses were only on salary and wages.

- (v) **In response to third charge**, he submitted that as the Company is a NBFC the entire amount has been debited to profit and loss account and no interest has been capitalised during the year. He also submitted that the same has been disclosed in Note 20 in point 1 and 2.
- (vi) **In response to fourth charge**, he submitted that there were only two related parties namely SICOM (Holding Company) and Mr. M.D. Thakur. The Respondent further stated that the remuneration of Rs. 42,65,736/- paid to Managing Director has been explicitly disclosed under Note-20, Point No. II Notes to Accounts, sub point no. 4.
- (vii) **In response to fifth charge**, he submitted that SICOM is the only related party. Further, out of items mentioned under Note-20, Point No. II Notes to Accounts, sub point no. 5, there were no outstanding for 3 items i.e., (4,6,7) and 1,2,8 not applicable. The Respondent further stated that item 3 is disclosed in Note No.5 and item 4 stands disclosed in Note 12.
- (viii) **In response to sixth charge**, he submitted that SICOM is the only related party and reference of the same is included in Note-20, Point no. II, under sub point no. 5.
- (ix) **In response to seventh charge**, he submitted that there was no liability required to be specifically disclosed under particular head except under head "Others". The same was correctly disclosed under the head "Others". Any remaining details were further segmented under specific sub-categories within the broader classification of "Others". The said bifurcation is as follows:-

S. No	Particulars	Amount (Rs.)
1.	Interest in advance	27,73,599
2.	PT Payable	800
3.	TDS Payable	5,29,290
	Total	33,03,689

The Respondent stated that total of Rs 33,03,689 is less than 1% of Balance Sheet Size.

- (x) **In response to point (a) of eighth charge**, he submitted that Investments were mentioned as quoted/ unquoted implying the same meaning as traded / non-trade.
- (xi) **In response to point (b) of eighth charge**, he submitted that as per agreement allotment of shares was obligatory pending formal act of allotment. Further, the Respondent has also brought on record copy of draft agreement while making submissions dated 06th December, 2023.
- (xii) **In response to ninth charge**, he submitted that all loans to borrowers were not falling under any specific category including related party. SICOM is related party but no loan is given to it.
- (xiii) **In response to tenth charge**, he submitted that only two parties were having receivable balance, out of which substantial amount as high as 84% was of SICOM Limited.
- (xiv) **In response to eleventh charge**, he submitted that 98.72% of (Rs. 23.56 Crores) "Others" is only of TDS. Further, remaining 1.28% consists of service tax input, staff housing loans, Telephone deposit, Prepaid expenses, prepaid insurance. The remaining amounts of 1.28% are immaterial compared to Balance Sheet size of Rs 227.48 crores, and the amount of Rs 20.57 crores is already disclosed as secured.
- (xv) **In response to twelfth charge**, he submitted that all the assets are of tangible nature and break up is given in main Balance Sheet.
- (xvi) **In response to thirteenth charge**, he submitted that Rent was paid only to SICOM and the same was mentioned under Note-20, Point No. II Notes to Accounts, sub point no. 5. Further, amount of Rent is Rs. 26.23 lacs which is less than 1% of the revenue.

- (xvii) **In response to fourteenth charge**, he submitted that word "Independent" was not written in the heading of audit report which is an unintentional and inadvertent error.
- (xviii) **In response to fifteenth charge**, he submitted that mention of the "Cash Flow Statement" in introductory paragraph of Auditors Report was an unintentional and inadvertent error.
- (xix) **In response to sixteenth charge**, he submitted that missing of word 'substantial' was an inadvertent and unintentional. Further, computer equipment of Rs. 3.43 lacs was disposed of which were not substantial in nature.
- (xx) **In response to seventeenth charge**, he submitted that there was no loan taken except from SICOM which is 100% holding Company.
- (xxi) **In response to eighteenth charge**, he submitted that while drafting the CARO report, the typographical error occurred.

13. On the day of final hearing held on 9th January 2024, the Committee noted that the Respondent along with his Counsel was present from BKC office of ICAI at Mumbai. Thereafter, on the directions of Committee, the Respondent's Counsel made his detailed submission. The Committee, upon consideration of documents and submissions on record, noted that there are 22 allegations out of which the Respondent was held Prima Facie Not Guilty for 4 allegations and Guilty for the remaining 18 allegations. The Committee noted that out of 18 allegations, the Respondent pleaded Guilty on 16 charges. With regard to rest of the charges, the Committee, after consideration of the detailed oral and written submissions, held the Respondent Not Guilty on 2 charges mentioned in Para no. 5.1 and 5.4 of prima-facie opinion of the Director (Discipline). Accordingly, the Committee held the Respondent GUILTY of Professional Misconduct falling within the meaning of Items (5), (6), (7) and (9) of Part I of the Second Schedule to the Chartered Accountants Act, 1949 on 16 charges.

FINDINGS OF THE COMMITTEE

FIRST CHARGE BY DIRECTOR (DISCIPLINE)

14. The Committee noted that **point (a) of the first charge** related to non-adjustment of depreciation as non-cash item in Cash flow statement which is non-compliance with the requirement of Paragraph 20 of AS-3. The Committee noted that relevant extracts of paragraph 20 of AS-3 'Cash Flow Statements' states as under:-

"20. Under the indirect method, the net cash flow from operating activities is determined by adjusting net profit or loss for the effects of:

(a) changes during the period in inventories and operating receivables and payables;

*(b) non-cash items such as **depreciation**, provisions, deferred taxes, and unrealised foreign exchange gains and losses; and*

*(c) all other items for which the cash effects are investing or financing cash flows.
(Emphasis added)"*

- 14.1 The Committee noted that from the above requirements, it is amply clear that while computing the 'Cash flow from Operating Activity', non-cash item such as depreciation is required to be adjusted while computing net profit or loss for the period.

- 14.2 The Committee noted from the submissions of the Respondent that wrong printout of Cash Flow Statement was taken by the Management and on noticing such discrepancy, the same was pointed out by the Respondent. It also noted that the Respondent has brought on record letter of undertaking dated 09th December, 2023 duly signed by former Managing Director namely Mr. Manoj D. Thakur. In the said letter, Mr. Manoj D. Thakur, Ex MD admitted that an inadvertent error had occurred due to the introduction of new technology, leading to an impaired link between the excel sheets of the cash flow and Balance Sheet and also referred email dated 13th

November, 2021 sent by Shri Ajit Vora, erstwhile employee and in-charge of all Accounts and related matters therein of Sicom Investments and Finance Ltd.

- 14.3 The Committee further noted from an e-mail dated 13th November, 2021 brought on record by the Respondent wherein corrected cash flow has been attached. The Committee noted that attached Cash Flow Statement is duly signed by the Ex-Managing Director namely Manoj D. Thakur and one more director i.e., Mr. G. Venkatraman. It is further noted that adjustment of depreciation as non-cash item has been made in the attached Cash Flow Statement.
- 14.4 The Committee observed that since the management has accepted their mistake and the same has been confirmed by letter of undertaking dated 09th December, 2023, benefit is extended to the Respondent and the Respondent is held **NOT GUILTY** of professional misconduct falling within the meaning of item (5), (6) and (7) of Part I of Second Schedule to the Chartered Accountants act, 1949.
15. The Committee noted that **point (b) of the first charge** related to non-reconciliation of Cash and Cash equivalents shown in Note 13 and Cash Flow Statements which is non-compliance with the requirement of Paragraph 42 of AS-3. The Committee noted that relevant extracts of Paragraph 42 of AS-3 states as under:-
- “42. An enterprise should disclose the components of cash and cash equivalents and should present a reconciliation of the amounts in its cash flow statement with the equivalent items reported in the balance sheet.”*
- 15.1 The Respondent in his submissions before the Committee stated that the Company mistakenly generated an inaccurate printout of the cash flow statement, which was subsequently forwarded to the Respondent for signature. The Respondent clarified that upon discovering this error, he promptly sent a corrected copy of the cash flow statement to the management.
- 15.2 The Committee noted the submissions of the Respondent as given in first leg of this charge regarding confirmation letter from Ex MD namely Mr. Manoj D. Thakur and

proof of submitting the correct Cash Flow Statement to the company when he noticed that wrong Cash Flow has been uploaded.

- 15.3 The Committee observed from evidence submitted by the Respondent that total of Cash and Cash equivalents as Rs. 22,003,432 are matching at both places i.e. Note 13 to the financial statements of the Company and Cash flow statement which was attached to an e-mail dated 13th November, 2021.
- 15.4 The Committee observed that since the management has accepted their mistake and the same has been confirmed by letter of undertaking dated 09th December, 2023, benefit is extended to the Respondent and the Respondent is held **NOT GUILTY** of professional misconduct falling within the meaning of item (5), (6) and (7) of Part I of Second Schedule to the Chartered Accountants act, 1949.

SECOND CHARGE BY DIRECTOR (DISCIPLINE)

16. The Committee noted that **point (a) of second charge** is related to the non-disclosure of accounting policy and employee benefits in relation to Gratuity and Leave encashment. The Committee noted that relevant extracts of paragraph 119 and 120 of AS-15 "Employee Benefits" which read as under:-

119. An enterprise should disclose information that enables users of financial statements to evaluate the nature of its defined benefit plans and the financial effects of changes in those plans during the period.

120. An enterprise should disclose the following information about defined benefit plans:

- (a) the enterprise's accounting policy for recognising actuarial gains and losses*
*(b) a **general description of the type of plan**..... (emphasis added)"*

- 16.1 The Committee noted from the above mentioned requirements that the Company is required to disclose the information regarding the nature and type of defined benefit plan in accordance with the requirement of prescribed paragraph 120 of AS-15 'Employee Benefits'.

- 16.2 The Committee noted from the submissions of the Respondent that there were only 5 employees on deputation from SICOM Ltd. i.e., Holding company and under scope of AS 15, the same cannot be covered under Employee Benefit as there was no formal agreement between SIFL and its employees. Hence, AS 15 is not applicable. Further, Gratuity Act is not applicable as the same is applicable when the company has more than 10 persons anytime during the financial year.
- 16.3 Further, with regard to Leave Encashment, no accounting policy was there for FY 2012-13. The Committee noted from the financial statements that disclosure with regard to gratuity and leave encashment has not been disclosed anywhere in the financial statements even if the same are not applicable on the company.
- 16.4 The Committee noted that the Respondent being statutory auditor of the Company failed to point out the aforementioned departure from the provisions of AS-15. Thus, the Committee viewed that the Respondent is **GUILTY** of professional misconduct falling within the meaning of Items (5), (6) and (7) of Part I of Second Schedule to the Chartered Accountants Act, 1949.
17. The Committee noted that **point (b) of second charge** is that liability arising out of encashment of un-availed leave has been provided on payment basis. The Committee noted that relevant extracts of Section 209 (3) (b) of the Companies Act, 1956 states as under:-
- “Section 209(3) For the purposes of sub- sections (1) and (2), proper books of account shall not be deemed to be kept with respect to the matters specified therein,-*
- (a) if there are not kept such books as are necessary to give a true and fair view of the state of affairs of the company or branch office, as the case may be, and to explain its transactions; and*
- (b) if such books are not kept on accrual basis and according to the double entry system of accounting.” (emphasis added)***

- 17.1 The Committee noted that from the above provision, it is amply clear that the Company was required to keep books of accounts on accrual basis otherwise it will be deemed that proper books of accounts were not kept by the Company.
- 17.2 The Committee noted that on perusal of point 1 of Part II 'Notes to Accounts' of Note 20, it has been observed that liability arising out of encashment of unavailed leave has been provided on payment basis which is not in accordance with the provision of section 209 (3) (b) of Companies Act, 1956. The Respondent submitted that there is no defined policy, hence debited on actual basis is not tenable as it is non-compliance of Companies Act, 1956.
- 17.3 Thus, the Committee viewed that the Respondent is **GUILTY** of professional misconduct falling within the meaning of Item (5), (6) and (7) of Part I of Second Schedule to the Chartered Accountants Act, 1949.
18. The Committee noted that **point (c) of second charge** is that separate disclosure of salaries and wages, contribution to provident and other funds was neither disclosed by way of separate line item in Statement of Profit and Loss nor in Notes to Accounts. The Committee noted that the relevant extracts of Paragraph 5 of General Instructions for preparation of Statement of Profit and Loss given under Part II, Revised Schedule VI to the Companies Act, 1956 to be read as under:-

"5. Additional Information

A Company shall disclose by way of notes additional information regarding aggregate expenditure and income on the following items:-

(i) (a) Employee Benefits Expense [showing separately (i) salaries and wages, (ii) contribution to provident and other funds, (iii) expense on Employee Stock Option Scheme (ESOP) and Employee Stock Purchase Plan (ESPP), (iv) staff welfare expenses]."

- 18.1 The Committee noted that there was a stipulated requirement for the separate disclosure of salaries and wages, as well as contributions to provident and other funds. The Committee observed that this obligation was not adhered to, and the

Respondent neglected to report on this provision of the Revised Schedule VI in his audit report.

- 18.2 Thus, the Committee viewed that the Respondent is **GUILTY** of professional misconduct falling within the meaning of Item (5), (6) and (7) of Part I of Second Schedule to the Chartered Accountants Act, 1949.

THIRD CHARGE BY DIRECTOR (DISCIPLINE)

19. The Committee noted that **the third charge** is related to non-compliance with the requirement of paragraph 23 (a) of AS-16 'Borrowing Costs'. The Committee noted that relevant extracts of Paragraph 23 (a) of AS-16 states as under:-

"23. The financial statements should disclose:

(a) The accounting policy adopted for borrowing cost and

(b) The amount of borrowing costs capitalised during the period."

- 19.1 The Committee noted that upon reviewing the financial statements of the Company for the financial year 2012-13, it has been observed that the Company has debited interest and finance charges amounting to INR 119,527,363 in the Statement of Profit and Loss Account. Notably, paragraph 23 of AS-16 stipulates that financial statements must disclose the accounting policy adopted for borrowing costs along with the amount of borrowing capitalized during the period.
- 19.2 The Committee further noted that, the Company neglected to disclose its accounting policy for borrowing costs, as mandated by both AS-16 and paragraph 24 of AS-1, which requires the disclosure of significant accounting policies.
- 19.3 The Committee noted that the Respondent while making his submissions before the Committee stated that disclosure regarding borrowings costs has been given under point No. 1 and point No. 2 of Note 20 'Significant Accounting Policies'. However, on perusal of the above points the Committee observed that the point No. 1 of Note-20 pertains to 'System of Accounting' and Point No. 2 of Note-20 pertains to 'Revenue Recognition'. The Committee further observed that there has been no

disclosure w.r.t accounting policy adopted for borrowing cost and the same has been accepted by the counsel of the Respondent during the proceeding.

19.4 The Committee further noted that the non-disclosure of accounting policy adopted for Borrowing cost lead to non-compliance of Paragraph 23 (a) of AS-16 'Borrowing Costs' as well as Paragraph 24 of AS-1 being significant accounting policy which Respondent failed to report in his Audit Report.

19.5 Thus, the Committee viewed that the Respondent is **GUILTY** of professional misconduct falling within the meaning of Item (7) of Part I of Second Schedule to the Chartered Accountants Act, 1949.

FOURTH CHARGE BY DIRECTOR (DISCIPLINE)

20. The Committee noted that **fourth charge** is that remuneration has been paid to Managing Director during the year and disclosed under the head 'Remuneration to Managing Director', however, no such transaction relating to Key Managerial Personnel was reported under Related Party Disclosure as required by AS-18. The Committee noted that Paragraph 14 along with Paragraph 21 and Paragraph 23 of AS-18 'Related Party Disclosures' provides as under:-

*"14. Key management personnel are those persons who have the authority and responsibility for planning, directing and controlling the activities of the reporting enterprise. For example, in the case of a company, **the managing director(s)**, whole time director(s), manager and any person in accordance with whose directions or instructions the board of directors of the company is accustomed to act, are usually considered key management personnel. **(Emphasis supplied)**"*

"21. Name of the related party and nature of the related party relationship where control exists should be disclosed irrespective of whether or not there have been transactions between related parties."

"23. If there have been transactions between related parties, during the existence of a related party relationship, the reporting enterprise should disclose the following:

- (i) *the name of transacting related party;*
- (ii) *a description of the relationship between the parties;*
- (iii) *a description of the nature of transactions;*
- (iv) *volume of the transactions either as an amount or as an appropriate proportion;*
- (v) *.....”*

20.1 The Committee noted that particulars of Key Management Personnel along with their name, relationship, nature of transaction and amount was required to be disclosed in Notes to Accounts as per abovementioned requirements of AS-18.

20.2 The Committee noted that though the Respondent has not given disclosure as required by AS-18 but there were only two related parties namely SICOM (Holding Company) and Mr. M.D. Thakur.

20.3 Further, remuneration of Rs. 42,65,736/- paid to Managing Director has been explicitly disclosed under Note 4 given under Note-20 (II): Notes to Accounts. The Committee noted that since there were only two related party and details w.r.t. remuneration paid to managing director has already been given under Note 4 under Notes to Accounts, benefit is extended to the Respondent as disclosure has been given in the Notes to Accounts.

20.4 Thus, the Committee viewed that the Respondent is **NOT GUILTY** of professional misconduct falling within the meaning of Items (5), (6) and (7) of Part I of Second Schedule to the Chartered Accountants Act, 1949.

FIFTH CHARGE BY DIRECTOR (DISCIPLINE)

21. The Committee noted that the **fifth charge** is related to non-compliance with the requirements of AS-18 ‘Related Party Disclosure’ as outstanding balance pertaining to Related Party transactions was not disclosed. The Committee noted that relevant extracts of Paragraph 23 of AS-18 ‘Related Party Disclosures’ states as under:-

“23. If there have been transactions between related parties, during the existence of a related party relationship, the reporting enterprise should disclose the following:

- (i) *the name of transacting related party;*
- (ii) *a description of the relationship between the parties*
- (iii) *a description of the nature of transactions*
- (iv) *volume of the transactions either as an amount or as an appropriate proportion;*
- (v) *.....*
- (vi) *The amounts or appropriate proportions of outstanding items pertaining to related parties at the balance sheet date and provisions for doubtful debts due from such parties at that date; and*
- (vii) *..... (emphasis added)*

21.1 The Committee noted that outstanding balance of ICD with SICOM Ltd, holding Company, amounting to INR 31,56,085 reported in Note 12 under the head 'Trade Receivables' but the same was not disclosed separately under 'Related Party Disclosures' which is clear non-compliance of AS-18. The Committee further noted from the submissions of the Respondent that Management Consulting charges received from SICOM Ltd has been disclosed as Trade Receivables in Note 12. The Committee is of the view that the nature of both heads is different and even the amount received is also different. Hence, the submission of the Respondent is not tenable.

21.2 The Committee viewed that the Respondent being statutory auditor of the Company failed to point out such deviation in his Audit Report.

21.3 Thus, the Committee viewed that the Respondent is **GUILTY** of professional misconduct falling within the meaning of Items (5), (6) and (7) of Part I of Second Schedule to the Chartered Accountants Act, 1949.

SIXTH CHARGE BY DIRECTOR (DISCIPLINE)

22. The Committee noted that the **sixth charge** is related to non-compliance with the requirement of Note 6 (F) of 'General Instructions for Preparation of Balance Sheet' of Part I of Revised Schedule VI to the Companies Act, 1956. The Committee noted that relevant extracts of Note 6 (F) of 'General Instructions for Preparation of

Balance Sheet' of Part I of Revised Schedule to the Companies Act, 1956 states as under:-

"F. Short-term borrowings

(i) *Short-term borrowings shall be classified as:*

(a) *Loans repayable on*

- *From banks*
- *From other parties*

(b) Loans and advances from related parties.

(c) *Deposits.*

(d) *Other loans and advances (specify nature).*

(ii) *Borrowings shall further be sub-classified as secured and unsecured.*

Nature of security shall be specified separately in each case". (emphasis added)

22.1 The Committee noted that the requirement of Revised Schedule VI and AS-18 requirements are separate and distinct. While the former prescribes the format of Balance Sheet and contents of profit and Loss statement whereas the latter deals with recognition and disclosure of Related party in the financial statements.

22.2 The Committee further noted that the content of Balance Sheet or Statement of Profit and Loss as prescribed under Revised Schedule VI could not be compromised merely stating that related information was provided under related party disclosure under Notes to Accounts.

22.3 The Committee also noted that a separate disclosure regarding the Loans and advances from related parties was required to be made under the head of Short Term Borrowings in the Balance Sheet , however, in the instant case, borrowings so taken from SICOM Ltd (Holding Company) was not classified as Related Party as per the requirement of Revised Schedule VI.

22.4 The Committee noted that the Respondent being statutory auditor of the Company failed to point out the said deviation in his report. Thus, the Respondent is held

GUILTY of professional misconduct falling within the meaning of Items (6) and (7) of Part I of Second Schedule to the Chartered Accountants Act, 1949.

SEVENTH CHARGE BY DIRECTOR (DISCIPLINE)

23. The Committee noted that the **seventh charge** is related to non-compliance with the requirement of Note 6 (G) of 'General Instructions for Preparation of Balance Sheet' of Part I of Revised Schedule to the Companies Act, 1956. The Committee noted that relevant extracts of Note 6 (G) of 'General Instructions for Preparation of Balance Sheet' of Part I of Revised Schedule to the Companies Act, 1956 states as under:-

"G. Other current liabilities

The amounts shall be classified as:

- (a) Current maturities of long-term debt;*
- (b) Current maturities of finance lease obligations;*
- (c) Interest accrued but not due on borrowings;*
- (d) Interest accrued and due on borrowings;*
- (e) **Income received in advance;***
- (f) Unpaid dividends*
- (g) Application money received for allotment of securities and due for refund and interest accrued thereon.*
- (h) Unpaid matured deposits and interest accrued thereon*
- (i) Unpaid matured debentures and interest accrued thereon*
- (j) **Other payables (specify nature); (emphasis added)"***

- 23.1 The Committee noted that the Respondent in his submissions stated that 'Other Current Liabilities' includes the followings:-

S. No	Particulars	Amount (Rs.)
1.	Interest in advance	27,73,599
2.	PT Payable	800
3.	TDS Payable	5,29,290
	Total	33,03,689

- 23.2 The Committee noted that the aforementioned nature of various liabilities could have been separately shown which was not done by the Company. It was further noted that income received in advance is specifically required to be disclosed separately. The Respondent being an auditor also failed to report the said non-compliance.
- 23.3 Thus, the Committee viewed that the Respondent is **GUILTY** offer for the instant charge for the failure to draw attention to this deviation in his Audit Report for professional misconduct falling within the meaning of Items (6) and (7) of Part I of Second Schedule to the Chartered Accountants Act, 1949.

EIGHTH CHARGE BY DIRECTOR (DISCIPLINE)

24. The Committee noted that the **point (a) of eighth charge** related to non-compliance with the requirement of Note 6 (K) (i) of Part I of Revised Schedule VI to the Companies Act, 1956. The Committee noted that relevant extracts of Note 6(K) (i) of 'General Instructions for preparation of Balance Sheet' of Part I of the Revised Schedule VI to the Companies Act, 1956 along with Paragraph 25 of AS-13 "Accounting for Investments" states as under:-

Note 6(K) (i) of 'General Instructions for preparation of Balance Sheet' of Part I of the Revised Schedule VI to the Companies Act, 1956

"K. Non- current investments

*(i) Non-current investments shall be classified as **trade investments and other investments** and further classified as :*

- (a) Investment property*
- (b) Investments in Equity Instruments*
- (c) Investments in preference shares*
- (d)*
- (e)*
- (f)*
- (g)*
- (h)*

*Under each classification, details shall be given of names of the bodies corporate (indicating separately whether such bodies are (i) subsidiaries, (ii) associates, (iii) joint ventures, or (iv) controlled special purpose entities) in whom investments have been made and the nature and extent of the investment so made in each such body corporate (showing separately investments which are partly-paid). In regard to investments in the capital of partnership firms, the names of the firms (with the names of all their partners, total capital and the shares of each partner) shall be given. **(emphasis added)***

Paragraph 25 of AS-13 “Accounting for Investments”

“25. The following disclosures in financial statements in relation to investments are appropriate:—

(a).....

(b)

(c)

(d) the aggregate amount of quoted and unquoted investments, giving the aggregate market value of quoted investments;

*(e) other disclosures as specifically required by the relevant statute governing the enterprise. **(Emphasis added)**”*

- 24.1 The Committee noted that Revised Schedule VI prescribes the classification of investments into ‘trade’ and ‘other’ investments, whereas AS-13 prescribes the classification of investments as Quoted and Unquoted investments. Both disclosures are separate and required to be disclosed in the financial statements.
- 24.2 The Committee noted that contention of Respondent that classification of investments as Quoted and Unquoted indicates whether it was trade investment or otherwise is not tenable because both investments has been classified for different purposes. A quoted investment indicates that it is listed/ quoted on Recognised Stock Exchange whereas trade investment indicates the intention of an entity to hold such investment for the purpose of business whether they are listed or not on Recognised Stock Exchange.
- 24.3 The Committee noted that the requirements of Revised Schedule VI were not complied with, which the Respondent had failed to report in his audit report.

24.4 Thus, the Committee viewed that the Respondent is **GUILTY** of professional misconduct falling within the meaning of Items (6) and (7) of Part I of Second Schedule to the Chartered Accountants Act, 1949.

25. The Committee noted that the **point (b) of eighth charge** is that 'Share application money paid' was disclosed under the head 'Non-Current Investments' as against the requirement to disclose under the head "Non-Current Assets" as required by Part I of Revised Schedule VI to the Companies Act, 1956. The Committee noted that relevant extracts of Paragraph 3 of AS 13 states as under:-

*"3.1 **Investments** are assets held by an enterprise for earning income by way of dividends, interest, and rentals, for capital appreciation, or for other benefits to the investing enterprise. Assets held as stock-in-trade are not 'investments'."*

25.1 The Committee noted that from the above, it is evident that the share application money pending for allotment lacks the potential to yield any benefits to the Company such as dividend, interest, rentals, capital appreciation. Therefore, it does not meet the criteria of term 'Investments'.

25.2 The Committee further noted that share application money paid amounting to INR 154,600,000 has been reflected under the heading 'Non- Currents Investments' in the Balance Sheet of the Company.

25.3 The Respondent during the proceedings before the Committee stated that the Company had given loan and some part of loan was converted into equity. Further, to support his contention, the Respondent has brought on record copy of a draft agreement for conversion of loan into equity shares with the borrower which is an unsigned document and cannot be construed as corroborative evidence to make the Respondent not guilty.

25.4 Thus, the Committee viewed that in the absence of any evidence documenting certainty in issue of shares against application money, the Respondent is **GUILTY** of the instant charge for the failure to draw attention to this deviation in his Audit

Report for professional misconduct falling within the meaning of Items (5) (6) and (7) of Part I of Second Schedule to the Chartered Accountants Act, 1949.

NINTH CHARGE BY DIRECTOR (DISCIPLINE)

26. The Committee noted that the **ninth charge** related to non-compliance of requirement of Note 6 (L) of 'General Instructions for preparation of Balance Sheet' of Part I of Revised Schedule VI to the Companies Act, 1956. The Committee noted that relevant extracts of Note 6 (L) of 'General Instructions for preparation of Balance Sheet' of Part I of Revised Schedule VI to the Companies Act, 1956 states as under:-

"L. Long-term loans and advances

(i) Long-term loans and advances shall be classified as:

(a)Capital Advances;

(b)Security Deposits;

(c)Loans and advances to related parties (giving details thereof);

(d)Other loans and advances (specify nature).

(emphasis added)"

- 26.1 The Committee noted that the Company has disclosed entire amount of Rs.1,385,797,462 under the head "Loans and Advances" (secured) in the Balance Sheet of the Company for the financial year 2012-13 without disclosing its nature as required under the above mentioned requirements.

- 26.2 The Respondent in his submission before the Committee stated that advances amounting to Rs 1,385,797,462 were given by the Company to borrowers in normal course of lending business.

- 26.3 The Committee noted that contention of the Respondent is not maintainable as the Company was required to separately disclose the same under the heading 'Long Term Loans and Advances' in its sub-heading (d) 'Other loans and advances' and also specifying the nature of such loans and advances in the financial statements of the Company for the financial year 2012-13.

- 26.4 The Committee observed that the requirement of Revised Schedule VI was not complied with and the Respondent being statutory auditor of the Company failed to point out the said deviation in his audit report.
- 26.5 Thus, the Committee viewed that the Respondent is **GUILTY** of professional misconduct falling within the meaning of Items (5), (6) and (7) of Part I of Second Schedule to the Chartered Accountants Act, 1949.

TENTH CHARGE BY DIRECTOR (DISCIPLINE)

27. The Committee noted that the **tenth charge** is related to non-compliance of Note 6 (P) of 'General Instructions for Preparation of Balance Sheet' of Part I of Revised Schedule VI to the Companies Act, 1956. The Committee noted that relevant extracts of Note 6 (P) of 'General Instructions for Preparation of Balance Sheet' of Part I of Revised Schedule VI to the Companies Act, 1956 states as under:-

P. Trade Receivables

- (i) Aggregate amount of Trade Receivables outstanding for a period exceeding six months from the date they are due for payment should be separately stated.*
- (ii) Trade receivables shall be sub-classified as:*
 - (a) Secured, considered good;*
 - (b) Unsecured considered good;*
 - (c) Doubtful*

- 27.1 The Committee noted that from the abovementioned requirements, it is evident that outstanding Trade Receivables for a period exceeding six months from the date they are due for payment are required to be disclosed separately from others apart from their classification being doubtful or otherwise. However, in the instant case Respondent contends that at the time of signing of financial statements as on 17th June, 2013 outstanding amount of trade receivables was received. The Respondent while making his submissions also stated that all the balances receivables as on 31.03.2013 pertained to the month of March, 2013.
- 27.2 The Committee further noted that the payment made after the Balance Sheet date did not signify that it was outstanding as on Balance Sheet date for more than six

months or otherwise. Further, in view of the above Paragraph, the Company was also required to sub-classify the trade receivable into secured, unsecured or doubtful. But in the instant case, trade receivables were not classified as such.

27.3 The Committee noted that the Respondent has failed to point out the aforesaid deviation in his Audit Report.

27.4 Thus, the Committee viewed that the Respondent is **GUILTY** of professional misconduct falling within the meaning of Items (6), and (7) of Part I of Second Schedule to the Chartered Accountants Act, 1949.

ELEVENTH CHARGE BY DIRECTOR (DISCIPLINE)

28. The Committee noted that the **eleventh charge** is related to non-compliance of Note 6 (R) of 'General Instructions for Preparation of Balance Sheet' of Part I of Revised Schedule VI to the Companies Act, 1956 that Others loans and advances amounting Rs 23.56 crores which constitute 53.38% of total short term loans and advances has been disclosed without specifying its nature and further, loans and advances has not classified as secured, unsecured and doubtful. The Committee noted that Note 6 (R) of 'General Instructions for Preparation of Balance Sheet' of Part I of Revised Schedule VI to the Companies Act, 1956 requires the disclosure of "Short Term Loans and Advances" which states as under:-

" R. Short-term loans and advances

(i) Short-term loans and advances shall be classified as:

(a) Loans and advances to related parties (giving details thereof);

(b) Others (specify nature).

(ii) The above shall also be sub-classified as:

(a) Secured, considered good;

(b) Unsecured, considered good;

(c) Doubtful." (emphasis added)"

- 28.1 In view of the above stated requirements, the Committee noted that Loans and Advances is required to be nature of Others separately.
- 28.2 The Committee noted that the Respondent in his submission stated that 98.72% of (Rs. 23.56 Crores) "Others" is only of TDS. Further, remaining 1.28% consists of service tax input, staff housing loans, Telephone deposit, Prepaid expenses, prepaid insurance, and the same is immaterial.
- 28.3 The Committee noted that the Respondent was expected to provide clarification regarding these advances, such as whether there was a deduction of TDS or otherwise, to facilitate proper classification as required under Schedule VI.
- 28.4 Furthermore, these Loans and Advances are required to be classified as Secured, Unsecured, and Doubtful, as specified in the aforementioned requirement. However, the said classification was not done by the Company and the Respondent being Statutory Auditor of the Company failed to report the same.
- 28.5 Thus, the Committee viewed that the Respondent is **GUILTY** of professional misconduct falling within the meaning of Items (5), (6) and (7) of Part I of Second Schedule to the Chartered Accountants Act, 1949.

TWELFTH CHARGE BY DIRECTOR (DISCIPLINE)

29. The Committee noted that **point (a) of twelfth charge** is that fixed assets not segregated between Tangible and Intangible Assets. The Committee noted that the relevant extracts of 'General Instructions for preparation of Balance Sheet' given in Part I of Revised Schedule VI to the Companies Act, 1956 to be read as under:-

"1. Non-current assets

(a) Fixed Assets

- (i) Tangible assets*
- (ii) Intangible Assets*
- (iii) Capital work- in-progress*
- (iv) Intangible assets under development"*

- 29.1 The Committee noted that according to aforementioned requirements, it is stipulated that Fixed Assets should be distinctly categorized into Tangible and Intangible Assets. However, on the perusal of financial statements of the Company for the financial year 2012-13, it is noted that the Fixed Assets were not classified as 'Tangible' and 'Intangible Assets' when both the nature of assets were existing as on the date of balance sheet.
- 29.2 Accordingly, the Committee viewed that the Respondent is **GUILTY** for the instant charge for the failure to draw attention to this deviation in his Audit Report for professional misconduct falling within the meaning of Item (7) of Part I of Second Schedule to the Chartered Accountants Act, 1949.
30. The Committee noted that **point (b) of twelfth charge** is that comparative figures of the previous year relating to fixed assets have not been disclosed. The Committee noted that relevant extracts of Paragraph 5 of General Instructions for preparation of Balance Sheet and statement of profit and Loss of a Company in addition to the notes incorporated above the heading of Balance Sheet, given in Revised Schedule VI to the Companies Act, 1956 to be read as under:-
- “5. Except in the case of the first Financial Statements laid before the Company (after its incorporation) the corresponding amounts (comparatives) for the immediately preceding reporting period for all items shown in the Financial Statements including notes shall also be given.”*
- 30.1 The Committee on perusal of notes to accounts of the financial statements of the Company for the financial year 2012-13, noted that the comparative figures of the aggregate value of gross block of fixed assets, accumulated depreciation, net block of fixed assets for the immediately preceding financial year 2011-12 has been shown in Schedule 9 “Fixed Assets”. However, similar information for each item of fixed asset was not given in the fixed asset schedule forming part of the balance sheet.

30.2 Thus, the Committee viewed that the Respondent is **GUILTY** for the instant charge for the failure to draw attention to this deviation in his Audit Report for professional misconduct falling within the meaning of Item (7) of Part I of Second Schedule to the Chartered Accountants Act, 1949.

31. The Committee noted that **point (c) of twelfth charge** is that the Company has reported the notes as "Schedule" instead of "Note No." and has reported the note heading as "Fixed Assets" instead of "Tangible Assets".

31.1 The Committee upon examining the notes to the accounts of the financial statements for the financial year 2012-13, noted that the Company reported "Schedule" instead of "Note No" and used the note heading "Fixed Assets" instead of "Tangible Assets." The Committee noted that while the use of the term 'Schedule' instead of 'note' might be considered an inadvertent error. However, the classification of assets as 'Tangible Assets' and 'Intangible' was a mandatory requirement. However, the Respondent has failed to point out the said deviation in his Report which indicates is careless approach while conducting audit of the Company.

31.2 Thus, the Committee viewed that the Respondent is **GUILTY** of professional misconduct falling within the meaning of Item (7) of Part I of Second Schedule to the Chartered Accountants Act, 1949.

THIRTEENTH CHARGE BY DIRECTOR (DISCIPLINE)

32. The Committee noted that the **thirteenth charge** is related to non-compliance with requirement of Clause 5(vi) (c) of 'General Instructions for Preparation of Statement of Profit and Loss' of Part II of the Revised Schedule VI to the Companies Act, 1956. The Committee noted that relevant extracts of Clause 5 (vi) (c) of 'General instructions for preparation of Profit and Loss' of Part II of Revised Schedule VI to the Companies Act, 1956 states as under:-

5 (vi). *Expenditure incurred on each of the following items, **separately for each item**:-*

(a) *Consumption of stores and spare parts.*

(b) Power and fuel.

(c) Rent.

(d) Repairs to buildings.

(e) Repairs to machinery.

(g) Insurance.

(h) Rates and taxes, excluding, taxes on income.

(i) Miscellaneous expenses” (emphasis added)

32.1 The Committee noted that considering the above stated requirements, it is evident that the Company had a mandatory obligation to disclose Rent Paid, amounting to INR 26,23,065, separately. However, upon reviewing the financial statements of the Company for the financial year 2012-13, it is observed that the Rent Paid amounting to INR 26,23,065/- has been clubbed under the heading ‘Miscellaneous expenses’ in Note 19.

32.2 The Committee viewed that the Respondent's assertion that the Rent Paid amount is immaterial as it is only 1% of Total Revenue is not tenable in this case, as Clause (5) (vi) (c) of Part II of Revised Schedule VI explicitly requires the separate disclosure of Rent expenses and the same cannot be clubbed under other head.

32.3 Despite this, the Company failed to adhere to the stipulation and the Respondent, as the auditor, also failed to report this deviation.

32.4 Thus, the Committee viewed that the Respondent **GUILTY** of professional misconduct falling within the meaning of Items (5), (6) and (7) of Part I of Second Schedule to the Chartered Accountants Act, 1949 for the instant charge for the omission to draw attention to this non-compliance in his Audit Report.

FOURTEENTH CHARGE BY DIRECTOR (DISCIPLINE)

33. The Committee noted that the **fourteenth charge** relates to non-compliance with the requirement of Paragraph 21 of SA-700. The Committee noted that Paragraph 21 of SA-700 “Forming an Opinion and Reporting on Financial Statements” states as under:-

“21. The auditor’s report shall have a title that clearly indicates that it is the report of an independent auditor.

33.1 The Committee noted that as per the above-stated requirements, the Respondent was required to give Title of Audit Report “Independent audit report”. However, the Respondent neglected to comply with this requirement. The Committee noted that standard prescribes mandatory requirements and the Respondent had failed to do so. The Respondent admitted that this was unintentional and inadvertent error. However, such type of mistakes should not be happening while preparing the audit report.

33.2 Thus, the Committee viewed that the Respondent is **GUILTY** on this charge for professional misconduct falling within the meaning of Item (7) of Part I of the Second Schedule to the Chartered Accountants Act, 1949.

FIFTEENTH CHARGE BY DIRECTOR (DISCIPLINE)

34. The Committee noted that the **fifteenth charge** is related to non-compliance with the requirement of Paragraph 23 of SA 700 that Respondent expressed opinion on the Cash Flow Statement but omitted to refer in Opening or Introductory paragraph of the Auditor’s Report. The Committee noted that relevant extracts of Paragraph 23 and Footnote 8 of SA-700 “Forming an Opinion and Reporting on Financial Statements” states as under:-

“Introductory Paragraph

23. The introductory paragraph in the auditor’s report shall: (Ref: Para. A17- A19)

(a) Identify the entity whose financial statements have been audited;

(b) State that the financial statements have been audited;

(c) Identify the title of each statement that comprises the financial statements;

(d) Refer to the summary of significant accounting policies and other explanatory information; and

(e) *Specify the date or period covered by each financial statement comprising the financial statements.” (emphasis added)*

“Footnote

8. Paragraph 3.4 of the Revised Preface to the Statements of Accounting Standards issued by the Institute of Chartered Accountants of India in 2004 states as follows:

“The term “General Purpose Financial Statements” includes balance sheet, statement of profit and loss, a cash flow statement (wherever applicable) and statements and explanatory notes which form part thereof, issued for the use of various stakeholders, Governments and their agencies and the public…….”.

- 34.1 The Committee noted that from the perusal of relevant extracts of SA 700, it is clearly evident that the said standard prescribes the consideration of Cash Flow Statement in the Opening or Introductory paragraph of the Auditor’s Report on financial statements being part of General Purpose Financial Statements. However, the Respondent has failed to mention the said facts in his Audit Report.
- 34.2 Thus, in view of the above, the Committee noted that the Respondent is **GUILTY** of Professional Misconduct falling within the meaning of item (7) of Part I of Second Schedule to the Chartered Accountants Act, 1949.

SIXTEENTH CHARGE BY DIRECTOR (DISCIPLINE)

35. The Committee noted that the **sixteenth charge** is related to non-compliance with the requirement of Paragraph 4(i) (c) of Companies (Auditor’s Report) Order, 2003. The Committee noted that Paragraph 4(i) (c) of the Companies (Auditor’s Report) order (CARO) 2003 states as under:-

“4(i)(c) If a substantial part of fixed assets have been disposed off during the year, whether it has affected the going concern.”

- 35.1 The Committee noted Paragraph 4 (i) (c) of Annexure to the Auditor's Report, which states that:

“(c) There is no disposal of fixed assets during the year and hence according to information and explanation given to us, we are of opinion that there is no effect on the going concern status of the company.”

The Committee noted that the Respondent has reported in the above stated clause that there was no disposal of fixed assets during the year, however, it is observed from the fixed assets schedule that there was disposal of fixed assets.

- 35.2 The Committee noted that the auditor is required to report whether substantial part of fixed assets have been disclosed off during the year which would affect the going concern, however, in the extant case, the Respondent has clearly reported that no disposal of fixed assets was there, which gives wrong picture to readers of the financial statements as disposal is there though not substantial. Hence, the contention of Respondent that being non substantial in nature, he had not reported is not acceptable.

- 35.3 Thus, keeping in view of the same, the Committee viewed that the Respondent is **GUILTY** of professional misconduct falling within the meaning of Item (7) of Part I of Second Schedule to the Chartered Accountants Act, 1949 in instant case for the violation of CARO, 2003.

SEVENTEENTH CHARGE BY DIRECTOR (DISCIPLINE)

36. The Committee noted that the **seventeenth charge** is related to non-compliance with the requirement of Paragraph 4(iii) (e) to (g) of Companies (Auditor's Report) Order, 2003. The Committee noted that the relevant extracts of Paragraph 4(iv) of CARO, 2003 states as under:-

“4(iii) (a) Has the company granted any loans, secured or unsecured to companies, firms or other parties covered in the register maintained under section 301 of

the Act. If so, give the number of parties and amount involved in the transactions; and

- (b) Whether the rate of interest and other terms and conditions of loans given by the company, secured or unsecured, are prima facie prejudicial to the interest of the company; and*
- (c) Whether receipt of the principal amount and interest are also regular; and*
- (d) If overdue amount is more than rupees one lakh, whether reasonable steps have been taken by the company for recovery of the principal and interest*
- (e) Has the company taken any loans, secured or unsecured from companies, firms or other parties covered in the register maintained under section 301 of the Act. If so, give the number of parties and the amount involved in the transactions; and***
- (f) Whether the rate of interest and other terms and conditions of loans taken by the company, secured or unsecured, are prima facie prejudicial to the interest of the company; and***
- (g) Whether payment of the principal amount and interest are also regular."***
(Emphasis added)

36.1 The Committee noted that the Respondent was required to mention in his Audit Report the loan (secured or unsecured) taken by the Company from Companies, firms or Other parties covered in the register maintained under Section 301 of the Act which was covered under clauses 4 (iii) (e) to (g) of CARO, 2003.

36.2 However, on perusal of the report issued by the Respondent under CARO, 2003, it is evident that the Respondent has failed to give his report on the loan taken by the Company as required in Paragraph 4(iii) (e) to (g) of CARO, 2003 and has reported only in respect of loan given by the Company as required in Paragraph 4(iii) (a) to (d). The Respondent himself admitted that there is no loan taken except from SICOM i.e., Holding Company. Hence, he had not reported the same in the CARO, 2003.

36.3 Accordingly, the Respondent is held **GUILTY** of professional misconduct falling within the meaning of Item (7) of Part I of Second Schedule to the Chartered

Accountants Act, 1949 in instant case for violation of Paragraph 4(iii)(e) to (g) of CARO, 2003.

EIGHTEENTH CHARGE BY DIRECTOR (DISCIPLINE)

37. The Committee noted that the **eighteenth charge** relates to non-compliance with the requirement of Paragraph 4 (iv) of Companies (Auditor's Report) Order, 2003. The Committee noted that Paragraph 4 (iv) of the Companies (Auditor's Report) order (CARO) 2003 states as under:-

*4(iv) Is there an adequate **internal control system** commensurate with the size of the company and the nature of its business, for the purchase of inventory and fixed assets and for the **sale of goods and services**. Whether there is a continuing failure to correct major weaknesses in internal control system;"*

- 37.1 The Committee noted that from the above mentioned requirements, it is clear that Respondent was required to report on the adequacy of internal control system with regard to purchase of inventory and fixed assets and for sale of goods and services.
- 37.2 Upon reviewing the Respondent's report under CARO, 2003 for the financial year 2012-13, the Committee noted the use of the term "other items" instead of "sale of goods and services". This deviation from the specified aspects outlined in CARO, 2003, raised concerns about the Respondent's compliance with reporting requirements. The Committee is of view that CARO, 2003 defines the specific aspects on which an auditor is required to report and usage of such general phrases instead of specific aspects as being required under law indicates the casual approach with which the Respondent is reporting w.r.t. CARO requirements. Accordingly, the Respondent is held prima facie **GUILTY** of Professional Misconduct for this part of instant allegation.
- 37.3 The Committee further noted that using the word 'internal control procedure' instead of 'internal control system' in the audit report for the financial year 2012-13 is crucial, since it signifies the depth of verification and degree of compliance with

respect to specific reporting requirement as such. Hence, the Respondent is held prima facie **GUILTY** of professional misconduct falling within the meaning of items (7) and (9) of Part I of Second Schedule to the Chartered Accountants Act, 1949.

Summary of Charges

S. No.	Charge	Finding (Para ref.)	Decision of the Committee
1(a)	Non-adjustment of Depreciation as non-cash item in cash flow statement which is non-compliance with the requirement of paragraph 20 of AS-3.	14 to 14.4	Not-Guilty - Items (5), (6) and (7) of Part I of Second Schedule
1(b)	Non-reconciliation of Cash and Cash equivalents shown in Note 13 and Cash Flow Statement which is non-compliance with the requirement of paragraph 42 of AS-3.	15 to 15.4	Not-Guilty - Items (5), (6) and (7) of Part I of Second Schedule
2(a)	Non-disclosure of accounting policy and employee benefits in relation to gratuity and leave encashment.	16 to 16.4	Guilty -Items (5), (6) and (7) of Part I of Second Schedule
2(b)	Liability arising out of encashment of un-availed leave has been provided on payment basis.	17 to 17.3	Guilty -Items (5), (6) and (7) of Part I of Second Schedule
2 (c)	Separate disclosure of salaries and wages, contribution to provident and other funds was neither disclosed by way of separate line item neither in statement of profit and loss nor in notes to account	18 to 18.2	Guilty -Items (5), (6) and (7) of Part I of Second Schedule
3.	Non-compliance with the requirement of paragraph 23 (a) of AS-16 'Borrowing Costs'.	19 to 19.5	Guilty -Item (7) of Part I of Second Schedule

4	The remuneration has been paid to Managing Director during the year under the head 'Remuneration to Managing Director' however, no such transaction relating to key managerial personnel was reported under Related Party Disclosure as required by AS-18.	20 to 20.4	Not-Guilty -Items (5), (6) and (7) of Part I of Second Schedule
5.	Non-compliance with the requirement of AS-18 'Related Party Disclosure' as outstanding balance pertaining to related party transactions was not disclosed.	21 to 21.3	Guilty -Items (5), (6) and (7) of Part I of Second Schedule
6.	Non-compliance of requirement of Note 6(F) of 'General Instructions for Preparation of Balance Sheet' of Part I of Revised Schedule VI to the Companies Act, 1956.	22 to 22.4	Guilty -Items(6) and (7) of Part I of Second Schedule
7.	Non-compliance with the requirements of Note 6 (G) of 'General Instructions for Preparation of Balance Sheet' of Part I of Revised Schedule VI to the Companies Act, 1956.	23 to 23.3	Guilty -Items(6) and (7) of Part I of Second Schedule
8(a)	Non-compliance with the requirement of Note 6 (K) (i) of Part I of Revised Schedule VI to the Companies Act, 1956.	24 to 24.4	Guilty -Items(6) and (7) of Part I of Second Schedule
8(b)	It is alleged that 'share application money paid' was disclosed under the head 'Non-Current Investments' as against the requirement to disclose under the head "Non-Current Assets" as required by Part I of Revised Schedule VI to the Companies Act, 1956.	25 to 25.4	Guilty -Items (5), (6) and (7) of Part I of Second Schedule
9.	Non-compliance of requirement of Note 6(L) of 'General Instructions for Preparation of Balance Sheet' of Part I of Revised Schedule VI to the Companies Act, 1956.	26 to 26.5	Guilty -Items (5), (6) and (7) of Part I of Second Schedule

10.	Non-compliance of Note 6(P) of 'General Instructions for Preparation of Balance Sheet' of Part I of Revised Schedule VI to the Companies Act, 1956.	27 to 27.4	Guilty- Items (6) and (7) of Part I of Second Schedule
11.	Non-compliance of Note 6(R) of 'General Instructions for Preparation of Balance Sheet' of Part I of the Revised Schedule VI to the Companies Act, 1956.	28 to 28.5	Guilty- Items (5), (6) and (7) of Part I of Second Schedule
12(a)	Fixed Assets not segregated between Tangible and Intangible Assets	29 to 29.2	Guilty- Item (7) of Part I of Second Schedule
12(b)	Comparative figures of the previous year relating to fixed Assets have not been disclosed.	30 to 30.2	Guilty- Item (7) of Part I of Second Schedule
12(c)	The Company has reported the note as "Schedule" instead of "Note No." and has reported the note heading as "Fixed Assets" instead of "Tangible Assets.	31 to 31.2	Guilty- Item (7) of Part I of Second Schedule
13.	Non-compliance with requirement of Clause 5(vi) (c) of 'General Instructions for Preparation of Statement of Profit and Loss' of Part II of the Revised Schedule VI to the Companies Act, 1956.	32 to 32.4	Guilty- Items (5), (6) and (7) of Part I of Second Schedule
14.	Non-compliance with the requirements of Paragraph 21 of SA-700.	33 to 33.2	Guilty- Item (7) of Part I of Second Schedule
15.	Non-compliance with the requirement of paragraph 23 and Footnote 8 of SA-700.	34 to 34.2	Guilty- Item (7) of Part I of Second Schedule
16.	Non-compliance with the requirement of Paragraph 4(i) (c) of Companies (Auditor's Report) Order, 2003.	35 to 35.3	Guilty- Item (7) of Part I of Second Schedule

17.	Non-compliance with the requirement of Paragraph 4 (iii) (e) to (g) of Companies (Auditor's Report) Order, 2003.	36 to 36.3	Guilty -Item (7) of Part I of Second Schedule
18.	Non-compliance with the requirement of Paragraph 4(iv) of Companies (Auditor's Report) Order, 2003.	37 to 37.3	Guilty -Item (7) and (9) of Part I of Second Schedule

CONCLUSION

38. In view of the findings stated in the above paragraphs vis-a-vis material on record, the Committee, in its considered opinion, holds the Respondent **GUILTY** of Professional Misconduct falling within the meaning of Items (5), (6), (7) and (9) of Part-I of the Second Schedule to the Chartered Accountants Act, 1949.

Sd/-

(CA. RANJEET KUMAR AGARWAL)
PRESIDING OFFICER

Sd/-

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

Sd/-

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

Sd/-

(CA. SANJAY KUMAR AGARWAL)
MEMBER

DATE:07/02/2024

PLACE: NEW DELHI