

Articles

AUDITORS' NEGLIGENCE AND PROFESSIONAL MISCONDUCT IN INDIA: A STRUGGLE FOR A CONSISTENT LEGAL STANDARD[¶]

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Gross negligence is a severe form of negligence. Its severity has been characterized using the presence of a mental element or mens rea accompanying the negligent act. Within the context of professional negligence, gross negligence is important as it constitutes professional misconduct. For auditors, a finding of professional misconduct through disciplinary proceedings can result in suspension or expulsion from the profession. In India, gross negligence is regularly used in disciplinary proceedings against auditors and also by the Securities and Exchange Board to determine whether an auditor has violated any securities regulations. Given the implications of a finding of gross negligence on the practice of an auditor, this paper seeks to discuss this Indian legal standard in detail. Using the statutory framework that governs auditors as a backdrop, this paper examines all reported High Court decisions from the 1950s till 2019 along with decisions of the Securities and Exchange Board with regards to an auditor's duties. We find that the approach used to discern the existence of gross negligence across these decisions has been inconsistent. In the

[¶] This study examines all the reported decisions of the Indian Supreme Court and the High Courts from 1950s till 2019/the establishment of the National Financial Reporting Authority (NFRA). NFRA's first decision came in July 2020.

We are thankful to the Research & Publications Area of Indian Institute of Management Ahmedabad for funding the project and to Prof. T T Arvind for initial comments.

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absence of any precedent from the Supreme Court of India that details what comprises gross negligence in the context of auditors, this inconsistent approach poses a problem. This paper offers a starting point for a discussion to minimize the uncertainty currently associated with auditors' liability for professional misconduct, especially hoping to assist the newly established National Financial Reporting Authority in its decision-making process.

Keywords: Auditor, professional negligence, gross negligence, India, Securities Regulations

INTRODUCTION

An auditor is “a watch dog, but not a bloodhound.” This formulation by Justice Lopes in *Re Kingston Cotton Mills*¹ has attained the status of a classic for describing the nature of an auditor’s duties, and it has been used extensively in academic writing and judicial pronouncements.² While not a legal standard in itself, the proposition is persuasive. Broadly speaking, an auditor’s duty is to audit the annual balance sheet of a company. The duty is not restricted to checking the arithmetic accuracy of the balance sheet nor does it extend to uncovering meticulously set schemes of fraud by the auditor’s clients.³ The statement of Justice Lopes seems to capture this role of the auditor. In India, the Institute of Chartered Accountants of India has (ICAI) issued Standards on Auditing⁴ not only to guide auditors in carrying out their functions but also to help adjudicatory bodies determine when an auditor has acted negligently. A deviation from the auditing standards would indicate a professional lapse on the part of the auditor and some level of negligence.

The detailed auditing standards have allowed courts to easily identify when an auditor has not acted on par with the conduct expected of him or her. When it comes to an auditor’s liability, the more contentious issue is deciding the level of negligence shown by the auditor and whether it amounts to professional misconduct. Courts in India have not had a consistent answer to this question. Recently, in the case of

¹ *Re Kingston Cotton Mills Co.* (1896) 2 Ch. 279 (UK).

² See *Secretary, Council of the Chartered Accountants of India v. B. Shantaram Rao* (1977) SCC OnLine Kar 44; *Registrar of Companies v. P. Arunajatai* (1962) SCC OnLine Mad 118; R. Baxt, *the Modern Company Auditor—A Nineteenth Century Watchdog?* 33 MODERN L. REV. 413, 413 (1970); Frederick K. Rabel, *Auditing Standards and Procedures in Light of Court Decisions*, 43 MICH. L. REV. 1009, 1018 (1944).

³ See JOSEPHINE BISACRE & CLAIRE MCFADZEAN, *COMPANY LAW ESSENTIALS* (Edinburgh University Press 2011); Dalvinder Singh, *Role of External Auditors in Bank Supervision: A Supervisory Gatekeeper?* 47 THE INTERNATIONAL LAWYER 65, 69, 82 (2013), see text accompanying footnote 104 therein; Anita Indira Anand, *Shareholder Isolation and the Regulations of Auditors*, 54 U. OF TORONTO L.J. 1, 27 (2004).

⁴ *Engagement and Quality Control Standards – Complete Text*, INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA, https://www.icai.org/new_post.html?post_id=450&c_id=141 (last visited Apr. 27, 2021).

Mukesh Gang,⁵ the Hyderabad High Court⁶ held that a professional lapse by the auditor without any *mens rea* would amount to gross negligence. This is in stark contrast with the formulation of gross negligence by the Supreme Court of India in a bevy of judgments relating to professional negligence in the context of advocates and medical practitioners.⁷ These judgments establish that there should be some accompanying moral turpitude or moral culpability along with a negligent act to warrant a finding of gross negligence.⁸ Moral turpitude is used to describe a person's state of mind when they have done something that is contrary to honesty and good morals. Moral turpitude has been described by the Supreme Court as meaning vileness and depravity in the case of *Sushil Kumar Singhal v. Regional Manager, Punjab National Bank*.⁹ In *Sushil Kumar* the Court held that a bank employee had acted with moral turpitude when he had embezzled money from the bank.

This paper seeks to probe into the Indian legal standards applied to auditors in order to inform the profession of the benchmark that their conduct is expected to meet. The paper examines laws governing professional misconduct of auditors along with decisions of High Courts and the Securities and Exchange Board of India (SEBI). SEBI decisions are examined on account of SEBI's power to restrain auditors from practicing in connection to the securities market. Through the examination of High Court and SEBI decisions, the paper attempts to gain a better understanding of what is expected of an auditor. This discussion is especially relevant given the prevalence of corporate mismanagement over the past two decades and the role of auditors in that mismanagement.¹⁰ Such events led to the

⁵ ICAI v. Mukesh Gang, (2016) Indlaw HYD 585 (Westlaw).

⁶ The State of Telangana and the State of Andhra Pradesh shared a High Court which had its seat in the city of Hyderabad, India until 2019. At present, the two States have their own separate High Courts.

⁷ T.A. Kathiru v. Jacob Mathai, (2017) 5 SCC 755; Jacob Mathew v. State of Punjab (2005) 6 SCC 1; Dr. Suresh Gupta v. NCT of Delhi & Anr., (2004) 6 SCC 422; *In re P, an Advocate*, AIR 1963 SC 313.

⁸ See T.A. Kathiru *supra* note 7; Jacob Mathew, *supra* note 7, at ¶¶ 13–15; *In Re: P, an Advocate*, *supra* note 7, at ¶ 7.

⁹ *Sushil Kumar Singhal v. Regional Manager, Punjab National Bank* (2010) 8 SCC 573, at ¶ 25.

¹⁰ John C. Coffee Jr., *Understanding Enron: "It's About the Gatekeepers, Stupid,"* 57 THE BUSINESS LAWYER 1403, 1404–05 (2002); Mincgcherling Deng, Nahum Melumad & Toshi Shibano, *Auditors' Liability, Investments,*

establishment of the National Financial Reporting Authority (NFRA) in October 2018.¹¹ The NFRA is charged with maintaining and enforcing accounting and auditing standards in relation to listed companies (in Indian or foreign stock exchanges) and unlisted companies having a share capital or outstanding loans and debentures exceeding INR 5,000,000,000 (approximately USD 68,521,100) or an annual turnover exceeding INR 10,000,000,000 (approximately USD 137,036,610).¹² The NFRA's adjudicatory apparatus is at its nascent stage and decided its first case in July 2020; so far it has only issued three orders.¹³ As the number of authorities capable of influencing the practice of auditors is increasing, an examination of the legal standards applied to the conduct of these professionals has become pertinent. Before discussing relevant High Court and SEBI decisions, we provide an overview of the statutory framework for regulating the conduct of an auditor.

THE STATUTORY FRAMEWORK

The Chartered Accountants Act, 1949¹⁴ governs chartered accountants practicing in India. The Act requires Chartered Accountants to be members of the Institute of Chartered Accountants of India (ICAI).¹⁵ The names of members of the ICAI are contained in a register maintained by it. A member's name will be taken off the Register if they have been found guilty of professional misconduct.¹⁶ The Chartered Accountants Act was amended in 2006 to change the procedure for determining whether an auditor is guilty of misconduct.¹⁷

and Capital Markets: A Potential Unintended Consequence of the Sarbanes-Oxley Act, 50 J. OF ACCT. RESEARCH 1179, 1180 (2012).

¹¹ S.O. 5099(E), Ministry of Corporate Affairs (2018), https://nfra.gov.in/sites/default/files/ConstitutionNotificationNFRA_04102018.pdf (last visited Apr. 27, 2021); Committee of Experts – Findings and Recommendations on Regulating Audit Firms and the Networks (2018), MINISTRY OF CORPORATE AFFAIRS, http://www.mca.gov.in/Ministry/pdf/2018_CommitteeExperts_Report_08112018.pdf (last visited Apr. 27, 2021).

¹² National Financial Reporting Authority Rules 2018, rule 3.

¹³ National Financial Reporting Authority Orders, <https://nfra.gov.in/Orders> (last visited Apr. 27, 2021).

¹⁴ The Chartered Accountants Act, No. 38, Acts of Parliament, 1949.

¹⁵ The ICAI is a statutory body established under the Chartered Accountants Act, 1949 comprising persons whose name is in the Register of Members maintained under the Act. The affairs of the ICAI are managed by a Council of thirty-two members of the ICAI.

¹⁶ The Chartered Accountants Act § 21B.

¹⁷ Chartered Accountants (Amendment) Act, No. 9, Acts of Parliament, 2006.

However, the position before 2006 remains important as many High Court decisions referred to in this paper were made under the pre-2006 legal framework.

Prior to the 2006 amendment, disciplinary proceedings were governed by the Council of the ICAI. The Council had the power to refer proceedings to the Disciplinary Committee under the Act if it was of the opinion that a *prima facie* case of misconduct had been made out against a chartered accountant. Based on the Council's reference, the Disciplinary Committee would conduct an inquiry and submit its report to the Council.¹⁸ If the Council found that the report did not reveal any misconduct, it had the power to dismiss the complaint. In the case that the report revealed that some misconduct had been committed, the Council could reprimand the chartered accountant or remove their name from the Register of Chartered Accountants for a period of time not exceeding five years.¹⁹ In the case that the Council found the report of the Disciplinary Committee revealed misconduct that would fall under the Second Schedule of the Act, the Council had to mandatorily refer the case to the High Court.²⁰

The Second Schedule (before and after the 2006 amendment) includes "gross negligence" as a form of misconduct. However, there are other actions that constitute misconduct under the Schedule, including, disclosure of a client's confidential information without their authorization, certifying the financial statements of firms in which the auditor has a substantial interest, and failure to disclose a material fact that is known to the chartered accountant.²¹ The High Court had the ability to dismiss the case, reprimand the member, remove their name from the Register (permanently or for the time period the High Court determined), or refer the case back to the Council for further inquiry.²²

After the 2006 amendment, the High Court is no longer involved in disciplinary proceedings relating to chartered accountants.²³ A Disciplinary Committee deals with cases of misconduct under the Second Schedule and has the authority to

¹⁸ The Chartered Accountants Act § 21(1).

¹⁹ *Id.* § 21(4).

²⁰ *Id.* § 21(5).

²¹ *Id.* Second Schedule.

²² *Id.* § 21 (6).

²³ *Id.* § 21A–21B.

reprimand the member, impose a fine or remove their name from the Register (permanently or for a time determined by it).²⁴ However, the substantive provisions for what constitutes misconduct remain largely the same. The only change in the context of gross negligence is that prior to 2006, gross negligence alone was mentioned under Clause 7 of the Second Schedule.²⁵ After the amendment, not exercising “due diligence” has been mentioned under Clause 7 in addition to gross negligence; thus, either of these factors under Clause 7 can individually constitute professional misconduct.²⁶ Due diligence means the exercise of a level of prudence that can be reasonably expected of a person in the relevant circumstances.²⁷ This will not significantly alter the discussion on gross negligence as the wording of the new item continues to allow the Disciplinary Committee to find a chartered accountant guilty of misconduct if they have been grossly negligent. The case law regarding what comprises due diligence is at an early stage of its evolution. Subsequent discussions will highlight how the addition of “due diligence” to the Second Schedule can allow adjudicatory bodies to more consistently interpret the concept of gross negligence.

Appeals from the Disciplinary Committee now lie with the Appellate Authority constituted under the Chartered Accountants Act.²⁸ Unfortunately, the decisions of the Appellate Authority are not readily available online. Thus, this paper will discuss the decisions of High Courts to understand the legal standards applicable to auditors. Despite the change in procedure brought about by the 2006 amendment, High Court decisions on the liability of chartered accountants remain relevant. This is because chartered accountants can approach the High Court under Article 226 of the Constitution of India if they are dissatisfied with the disciplinary process (including the appellate authority’s decision).²⁹ In fact, chartered accountants have been approaching High Courts under Article 226 which gives High Courts the power to issue directions against orders of courts and

²⁴ *Id.* at § 21B.

²⁵ Chartered Accountants (Amendment) Act § 29. *See* Chartered Accountants Act prior to 2006 amendment, INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA, at 86, <https://resource.cdn.icai.org/7694announ1209a.pdf> (last visited Apr. 28, 2021).

²⁶ *Id.*

²⁷ Consolidated Engineering Enterprises v. Principal Secretary, (2008) 7 SCC 169, at ¶ 31.

²⁸ Chartered Accountants Act § 22A.

²⁹ INDIA CONST. art. 226.

tribunals within their jurisdiction.³⁰ Thus, High Courts will continue to refer to previous judgments when deciding whether the concept of gross negligence was properly applied by the Disciplinary Committee and Appellate Authority under the Chartered Accountants Act.

In addition to the above, the Securities and Exchange Board of India (SEBI) can also restrain auditors from practicing to some extent. SEBI can bar an auditor from issuing certificates for publicly listed companies for varying periods of time. This is possible because Sections 11 and 11B of the SEBI Act³¹ allow SEBI to take actions to protect investors in the securities market. Section 12A prevents the use of any scheme to defraud investors in connection with the issue of securities on a recognized stock exchange. Thus, if an auditor is found to have been a part of a fraudulent scheme, SEBI would be able to pass an order to restrain such an auditor from engaging with the securities market. SEBI's power to restrain auditors from practicing in connection with the securities market ostensibly impinges on the ICAI's power to discipline auditors. This issue was put to the Bombay High Court in the case of *Price Waterhouse v. SEBI*.³² The facts of this case have been discussed in a subsequent section. At this stage of the discussion, it is sufficient to focus on the principles laid down by the Bombay High Court for demarcating SEBI's jurisdiction over auditors.

The Bombay High Court noted that SEBI exercises its powers to give directions to persons under Section 11B only in the interests of investors and the securities market. Thus, directions to restrain chartered accountants from practicing in connection with the securities market are not given by SEBI to regulate the profession (which comes within the purview of ICAI).³³ Rather, it is done to prevent or remedy any fraudulent schemes against investors. SEBI is allowed to inquire into the conduct of the auditor to determine if it has jurisdiction over the person.³⁴ The High Court held that if any connivance or

³⁰ CA Rajesh v. Disciplinary Committee, (2012) Indlaw GUJ 1763 (Westlaw). In this case, an auditor against whom disciplinary action was taken for inaccurately certifying the accounts of a company approached the High Court through a writ petition.

³¹ Securities and Exchange Board of India Act, No. 15, Acts of Parliament, 1992.

³² *Price Waterhouse v. SEBI*, (2010) SCC OnLine Bom 1197.

³³ *Id.* at ¶ 25.

³⁴ *Id.*

collusion on the part of an auditor was found during a SEBI investigation, then SEBI would be entitled to pass an order against the auditor. However, SEBI cannot pass orders against auditors only based on the omissions in carrying out their duties.³⁵ There would have to be some element of connivance on the part of the auditor with the persons implicated in perpetuating the fraud.³⁶ While the standard for restraining an auditor from practicing under SEBI regulations seems straightforward, this is not the case for the standard of “gross negligence” under the Chartered Accountants Act. The next section examines the concept of gross negligence in the general context of professional misconduct and then analyses its application in High Court decisions relating to auditors’ professional misconduct.

GROSS NEGLIGENCE IN THE CONTEXT OF PROFESSIONAL MISCONDUCT

As already discussed, gross negligence is not the only form of misconduct under the Chartered Accountants Act, it is one amongst fifteen items mentioned under the Second Schedule which are deemed to be professional misconduct. However, gross negligence as a path to establishing misconduct is significant for two reasons. The first is that the concept of gross negligence is not limited to auditors’ liability. It is also used to decide whether professionals in other fields (such as law and medicine) have committed professional misconduct. Importantly, there is some degree of cross-referencing between judgments relating to different professions to determine the meaning of gross negligence and consequently the occurrence of professional misconduct. For instance, in *CBI v. K. Narayana Rao*,³⁷ the Supreme Court was dealing with a case concerning the professional misconduct of an advocate. When deciding on the standard that ought to be applied in this case to determine whether a professional is guilty of negligence, the court referred to *Jacob Mathew v. State of Punjab*.³⁸ *Jacob Mathew* laid down the principles of determining whether a medical professional had committed professional misconduct. Interestingly, *Jacob Mathew* has also been referred to in the context of auditors’ liability by the SEBI Appellate Tribunal (discussed below). The

³⁵ *Id.* at ¶ 39.

³⁶ *Id.*

³⁷ Central Bureau of Investigation, Hyderabad v. K. Narayana Rao, (2012) 9 SCC 512.

³⁸ *Jacob Mathew v. State of Punjab and Anr.*, (2005) 6 SCC 1.

second reason for focusing on gross negligence is that SEBI uses the concept to determine whether auditors have breached any of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 (PFUTP Regulations).³⁹ Given the potential for an interpretation of gross negligence in the context of another profession to affect an auditor's liability, the rest of this section gives a general overview of the concept.

Though widely applied in the field of tort law, gross negligence originated as a concept in contract law.⁴⁰ During the Middle Ages, gross negligence was considered a degree of liability which could be affixed to a bailee in a contract of bailment.⁴¹ Gross negligence was considered to be a lack of care to such a degree that even "inattentive and thoughtless" persons would not make such an omission to take care of property that was their own.⁴² The concept spilled over into tort law in the nineteenth century. However, it was easier to ascertain the occurrence of an act of gross negligence in the context of contract law than in tort law.⁴³ Because the duties owed from one party to the other were more easily determined under contract law due to the existing agreement between parties, the standard for gross negligence was clearer. In the context of tort law, the duty of care was not as clear cut.⁴⁴

In India, the test for negligence is well known and has been reiterated in both literature and case law.⁴⁵ When

³⁹ Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003, S.O. 816 (E). See e.g., *In re Celestial Biolabs Ltd. & Ors.*, 2018 Indlaw SEBI 173 (Westlaw), at ¶¶43, 50; SEBI Order under sections 11(1), 11(4) and 11B of the SEBI Act, 2017, WTM/GM/DRA 8 (India), at ¶ 180.

⁴⁰ Daniel O. Howard, *An Analysis of Gross Negligence*, 37 MARQUETTE L. REV. 333, 335–36 (1954).

⁴¹ *Id.*; See also Cecil A. Wright, *Gross Negligence*, 33 UNIV. OF TORONTO L.J. 184 (1983).

⁴² Howard, *supra* note 40, at 338.

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ See e.g., DURGA DAS BASU, *THE LAW OF TORTS* 152–54 (9th ed. 1979); ROBERT WICKINS, *PROFESSIONAL LIABILITY* 11, (Hong Kong Univ. Press 3d ed. 1996), <https://books.google.co.in/books?id=cSnxAQAAQBAJ&printsec=frontcover#v=onepage&q&f=true> (last visited Apr. 27, 2021); Andrew Robertson, *On the Function of the Law of Negligence*, 33 OXFORD J. OF LEGAL STUDIES 31 (2013).

determining whether a person has acted negligently, the court will look to whether there existed a duty of care, whether this duty of care was breached, and whether the breach in the duty of care caused any damage.⁴⁶ While there are differing standards for what the duty of care is, once this standard is established, negligence is essentially a breach of a duty of care.⁴⁷

In the context of auditors, the challenging task used to be the determination of the auditor's duty towards the client and third parties. For instance, in the 1960s, the United States of America was grappling with consolidating the standards and procedures that auditors were expected to follow.⁴⁸ At that time, most of the guidance on the subject came from English and the U.S. case law. However, the standards to which auditors are expected to adhere have since been codified, making identifying the appropriate standard less of an issue. In India, these standards take the form of Auditing Standards.⁴⁹ Thus, when an auditor violates one of the standards described in the Auditing Standards, the person can be said to have acted negligently. If the determination of negligence using the Auditing Standards was the only issue concerning auditors' liability, then the discussion would be quite straightforward. However, auditors cannot be held guilty of professional misconduct solely on the basis of having acted negligently. They need to have acted with gross negligence.⁵⁰ Gross negligence is a more severe form of negligence.⁵¹ This distinction is further detailed in the subsequent sections when analysing specific court cases. Generally, it is difficult to determine when an act of negligence becomes one of gross negligence because the test for gross negligence is less straightforward than the test for negligence.⁵²

When dealing with a case relating to the misconduct of advocates, the Supreme Court of India has held that mere negligence on the part of the advocate is insufficient to show that

⁴⁶ Jayshree Ujwal Ingole v. State of Maharashtra, (2014) 14 SCC 571, at ¶ 7.

⁴⁷ See Donal Nolan, *Varying the Standard of Care in Negligence*, 72 CAMBRIDGE L.J. 651 (2013).

⁴⁸ Rabel, *supra* note 2, at 1009–1010.

⁴⁹ Engagement and Quality Control Standards – Complete Text, INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA, https://www.icai.org/new_post.html?post_id=450&c_id=141 (last visited Apr. 27, 2021).

⁵⁰ Chartered Accountants Act, Second Schedule.

⁵¹ See Jacob Mathew v. State of Punjab and Anr., (2005) 6 SCC 1, at ¶ 48.

⁵² Howard, *supra* note 40, at 334–35.

the person has committed gross negligence and professional misconduct.⁵³ In *T.A. Kathiru v. Jacob Mathai*,⁵⁴ the Supreme Court stated that advocates, though professionals, are allowed to make errors in judgment.⁵⁵ For a finding of professional misconduct, an advocate must be found guilty of gross negligence.⁵⁶ Gross negligence includes an element of moral turpitude or delinquency. The Supreme Court went on to hold that moral turpitude should not be construed narrowly and that it would include any wilful or callous disregard for their client's interests.

Thus, in the context of advocates, negligence coupled with a mental element of moral turpitude or a disregard for their client's interests would be necessary to establish gross negligence. When it comes to the medical profession, a finding of gross negligence operates severely. Gross negligence can make doctors criminally liable under the Indian Penal Code, 1860⁵⁷ if it results in the death of the patient. Accordingly, the courts have adopted qualifications for gross negligence that differentiate it from negligence in the context of medicine. The Supreme Court has held that gross negligence in the medical profession refers to a higher degree of negligence than one that would affix liability in a civil case under tort law. In order to show this higher degree of negligence, there must be evidence of recklessness and deliberate wrongdoing. The medical practitioner must be shown to have a state of mind that is completely apathetic towards the patient.⁵⁸

In the context of advocates and doctors, a finding of gross negligence goes beyond the negligent act and it's effectively an indictment of the professional's fitness to practice. Judgments on professional misconduct and gross negligence relating to advocates and medical practitioners often refer to the need for honest practitioners in the profession, given the level of trust placed by their clients and patients. This consideration is not instructive in suggesting what might amount to gross negligence, but it helps to explain the motive behind requiring a mental element to be established before finding that a person is guilty of professional misconduct. This mental element could be

⁵³ *T.A. Kathiru v. Jacob Mathai*, (2017) 5 SCC 755, at ¶ 11.

⁵⁴ *Id.*

⁵⁵ *Id.*

⁵⁶ *Id.*

⁵⁷ Indian Penal Code, Act No. 45 of 1860, INDIA CODE § 304-A.

⁵⁸ *Dr. Suresh Gupta v. Govt. of NCT & Anr.*, (2004) 6 SCC 422, at ¶¶ 24–26.

demonstrated in the form of recklessness, apathy, or moral turpitude which makes one unfit to practice the profession.

PROFESSIONAL MISCONDUCT OF AUDITORS

The Supreme Court has recognized that auditors can be held guilty of professional misconduct when they act in gross negligence. However, it did not delve into the elements which comprise gross negligence in the context of auditors. In *Institute of Chartered Accountants of India v. P.K Mukherjee*,⁵⁹ the auditor had not disclosed that loans were improperly made out of the provident fund account of a company and that they were not paid back. The Supreme Court held that the auditor was guilty of gross negligence. However, it did not explain the differences between negligence and gross negligence. This was because the main question before the court was whether the auditor owed a duty of care to the contributors of the provident fund or only to the company which hired him for the purpose of carrying out an audit of the accounts. Further, the Supreme Court noted that since the auditor had been found to have concealed material information, there was no need to examine whether he had been grossly negligent. The concealment of material information was sufficient to warrant a finding of professional misconduct.

The Court ultimately found that the auditor owed a duty of care to the contributors of the provident fund and that he was grossly negligent in carrying out this duty when he did not disclose the improper loans that were made out of the fund. Despite noting their disapproval of the auditor's actions and stating that the appropriate punishment should have been to remove the auditor's name from the Register for a limited period of time, the Court only issued a reprimand to the auditor. This was done considering the period of time which had elapsed between the actions of the auditor and the final decision of the Court. Thus, while the Supreme Court broadly dealt with the issue of professional misconduct in *P.K Mukherjee*, the decision offers little guidance for distinguishing between negligence and gross negligence in the context of auditors. The majority of the precedents for the professional liability of auditors comprises

⁵⁹ *Institute of Chartered Accountants of India v. P.K. Mukherjee*, (1968) 3 SCR 330, at ¶ 5.

High Court decisions, which will be examined in the next section.

GROSS NEGLIGENCE AS APPLIED TO AUDITORS

The decisions of High Courts can be divided into three categories based on their findings and outcomes.

- Category I: comprises decisions that have held that gross negligence requires an element of mala fides or moral turpitude on the part of the auditor.
- Category II: comprises decisions that have found that the auditors have acted in gross negligence, but without specifying the mental element in their transgression. In these cases, the High Courts have recognized the lack of mala fides and issued a reprimand against the auditors (without removing their names from the Register).
- Category III: cases represent a more recent trend where the existence of moral turpitude or any intention was not required for the court to find the auditors guilty of gross negligence and to punish them by suspending them from practicing.

CATEGORY I CASES

The key difference between negligence and gross negligence as seen in Category I cases is the existence of some moral turpitude in actions constituting gross negligence. In *ICAI v. Somnath Basu*,⁶⁰ the Calcutta High Court applied this distinction. In this case, a bank's investments were incorrectly credited to a broker's account instead of the bank's account. The auditor failed to report this and other irregularities in the investments of the bank. The Disciplinary Committee found that the auditor was guilty of gross negligence and recommended that the auditor's name be removed from the Register for one year. The High Court noted that there were no allegations of deliberate negligence on the part of the auditor. For the court, the lack of moral turpitude prevented it from holding the auditor guilty of gross negligence. The court went on to state that even in cases where auditors acted inefficiently or negligently, they cannot be held guilty of professional misconduct. For a finding of gross negligence, there needed to be an element of dishonesty or "ill-motive." Based on this reasoning, the High Court held that the

⁶⁰ *ICAI v. Somnath Basu*, (2006) SCC Online Cal 590.

auditor was not guilty of gross negligence and that the appropriate punishment was a warning. One example of ill-motive is taking up an assignment for illegal financial gratification. In *ICAI v. Dayal Singh*,⁶¹ the auditor did not complete the audit and admitted to taking up the assignment only to be paid an audit fee.⁶² The Delhi High Court held that this amounted to gross negligence and suspended the auditor for one year.⁶³

As discussed earlier, there are other factors in addition to gross negligence which can amount to professional misconduct. In *Somnath Basu*, the Calcutta High Court referred to another one of its decisions on the subject of auditor's liability (*S. Ganesan v. A.K Joscelyne*⁶⁴). In *S. Ganesan*, it was held that even though the auditor was not charged with gross negligence amounting to misconduct, professional misconduct (in general) cannot be established only because the auditor failed to perform one of their duties. The court went on to hold that to establish a charge of misconduct, there needed to be an element of dishonesty in addition to inefficiency.⁶⁵

In *ICAI v. Rajaram*⁶⁶, the Madras High Court was dealing with a case in which the auditor certified the accounts of a company without verifying the actual cash in hand held by the company. The auditor relied on the statements of the company's employees for this. The auditor argued that this was the accepted practice for the type of company being audited. The Disciplinary Committee found that the auditor was guilty of gross negligence and held that it was the duty of the auditor to verify the statements of the company. The High Court agreed that the auditor had a duty to verify the company's statements but did not comment on whether the auditor was guilty of gross negligence. The court found that there were no mala fides and that there did exist a practice, albeit a condemnable one, of relying on the company's internal records for verification. Accordingly, the court ordered that the only punishment warranted was an expression of its disapproval. In this case, the prevalence of an incorrect practice amongst other auditors mitigated the severity

⁶¹ *ICAI v. Dayal Singh*, (2007) SCC Online Del 1060.

⁶² *Id.* at ¶ 11.

⁶³ *Id.* at ¶ 12.

⁶⁴ *S. Ganesan v. A.K Joscelyne*, (1956) SCC Online Cal 43.

⁶⁵ *Id.* at ¶ 33.

⁶⁶ *ICAI v. Rajaram*, (1959) SCC Online Mad 107.

of the accused auditor's lapse. It also demonstrated the lack of moral turpitude on the part of the auditor.

CATEGORY II CASES

The next set of cases that will be analysed are ones in which High Courts have categorically stated that the auditor was guilty of gross negligence, but the punishment administered was only a reprimand. These cases are important as they decouple gross negligence from a severe punishment. In *Registrar of Companies v. P. Arunajatai*,⁶⁷ the auditor (respondent) was engaged to audit the balance sheets of a textile company. Broadly speaking, the allegation against the auditor was that he had acted in gross negligence by certifying the balance statements of the company without verifying the transactions in them. The company being audited had written off debts as losses, and this was suspicious as many of these debts were made out to other companies with the same promoter. The Madras High Court and the Disciplinary Committee found that there was enough in the profit and loss statement of the company to arouse suspicion but the auditor did not carry out any external verification of these transactions. The court agreed with the Disciplinary Committee and the Council that the auditor's actions constituted gross negligence. However, the High Court disagreed with the punishment recommended by the Council (removal of the auditor's name from the Register for two years).⁶⁸ The High Court noted the report of the Disciplinary Committee disclosed no evidence of mala fides.⁶⁹ Additionally, the High Court stated that the respondent was probably over-awed by the reputation of the company he was auditing. Satisfied that there was no moral turpitude involved, the High Court punished the auditor for his gross negligence with a strong reprimand.⁷⁰ The lack of mala fides served as a mitigating factor when deciding the auditor's punishment in this case.

The approach of the Madras High Court in *Arunajatai* was followed by the Himachal Pradesh High Court when deciding the case of *Punjab State Government v. K.N Chandla*.⁷¹ In *K.N Chandla*, the auditor had certified that the funds from a government grant were used for the purpose for which the grant

⁶⁷ *Registrar of Companies v. P. Arunajatai*, (1962) SCC OnLine Mad 118.

⁶⁸ *Id.* at ¶ 15.

⁶⁹ *Id.*

⁷⁰ *Id.*

⁷¹ *Punjab State Government v. K.N Chandla*, (1972) SCC OnLine HP 66, at

¶ 6.

was sanctioned. However, the majority of the grant was unused, and the auditor made this certification without verifying how the money from the grant was actually used.⁷² The Disciplinary Committee found that the auditor was guilty of gross negligence.⁷³ The auditor did not attempt to dispute the fact that he was guilty of professional misconduct. Rather, he argued for a reduced punishment (the Disciplinary Committee recommended that his name be removed from the Register for three months).⁷⁴ The High Court noted that there was no ulterior motive to the auditor's negligence and that there was no loss occasioned to the Government of Punjab (which sanctioned the grant).⁷⁵ The unspent money was simply returned.⁷⁶ Thus, the High Court did not disturb the finding of the Disciplinary Committee that the auditor was guilty of gross negligence but held that a reprimand would suffice as punishment.⁷⁷ Less severe punishments can also be imposed based on extenuating circumstances specifically attributable to the auditor. In *Secretary of ICAI v. B. Shantaram Rao*⁷⁸, the Karnataka High Court found that the auditor (respondent) had acted with gross negligence.⁷⁹ The reported value of the company's stock was inflated, and this affected shareholders' perceptions of the profits the company was making.⁸⁰ The auditor also did not disclose the full extent of depreciation of the company's assets.⁸¹ In principle, the court was in agreement with the punishment recommended by the Disciplinary Committee—suspension for three months.⁸² However, there existed extenuating circumstances in this case which prevented the court from imposing the recommended punishment.⁸³ The auditor concerned was on the verge of retirement and had no blemishes on his record prior to this case.⁸⁴ Like the cases discussed earlier, the Karnataka High Court noted that there was no moral turpitude involved in the conduct of the auditor and that he

⁷² *Id.* at ¶ 2.

⁷³ *Id.* at ¶ 3.

⁷⁴ *Id.* at ¶¶ 5–7.

⁷⁵ *Id.* at ¶¶ 5–6.

⁷⁶ *Id.* at ¶ 5.

⁷⁷ *Id.* at ¶ 7.

⁷⁸ 1977 SCC Online Kar 44.

⁷⁹ *Id.* at ¶ 13.

⁸⁰ *Id.* at ¶ 11.

⁸¹ *Id.* at ¶ 12.

⁸² *Id.*

⁸³ *Id.*

⁸⁴ *Id.*

obtained no additional financial gain due to his negligence.⁸⁵ Accordingly, the court reprimanded him, despite finding that he was guilty of gross negligence.⁸⁶

CATEGORY III CASES

Thus far, we have discussed two types of cases decided by the High Courts—cases where an auditor was found guilty of negligence but not gross negligence and cases where auditors have not been restrained from practicing despite a finding of gross negligence. The next set of cases that will be discussed are the ones in which auditors have been found guilty of gross negligence and have been restrained from practicing.

In Category III cases, the requirement for moral turpitude to arrive at a finding of gross negligence is done away with. In *Superintendent of Police v. R. Rajamany*⁸⁷, the Madras High Court dealt with the case of an auditor who had negligently conducted the audit of a bank. The negligent audit facilitated the fraudulent practices of the bank's directors.⁸⁸ The auditor glossed over irregularities in the bank's balance sheets which included alterations to the books of account and fictitious entries.⁸⁹ The auditor denied knowing the existence of these acts of fraud and stated that he had certified the books of the bank based on the information given to him by his employees.⁹⁰ The Disciplinary Committee did not probe into the question of whether the auditor wilfully perpetuated the fraudulent schemes of the bank's directors.⁹¹ Nevertheless, the auditor was held to be guilty of gross negligence and was suspended from practicing for three years.⁹² The High Court found that the auditor had delegated some of his duties to his subordinates, and with little evidence present regarding their qualifications and capacity, this delegation amounted to abdication.⁹³ The High Court noted that there were suspicious circumstances which pointed towards the wilful misconduct. However, it stopped short of finding that the

⁸⁵ *Id.*

⁸⁶ *Id.* at ¶ 13.

⁸⁷ *Superintendent of Police, Crime Branch (C.I.D.), Madras v. R. Rajamany*, (1961) SCC OnLine Mad 86, (1961) 31 Comp Cas 567, (1961) 2 Mad LJ (551).

⁸⁸ *Id.* at ¶ 3.

⁸⁹ *Id.* at ¶¶ 4–5.

⁹⁰ *Id.* at ¶ 5.

⁹¹ *Id.*

⁹² *Id.* at ¶¶ 5, 9.

⁹³ *Id.* at ¶ 9.

auditor was guilty of wilful misconduct.⁹⁴ *R. Rajamany* is different from the previous decisions discussed, as it explicitly stated that there was no need for a finding of moral turpitude in order to hold that an auditor was guilty of gross negligence and professional misconduct.⁹⁵ This is completely different from the reasoning of the Calcutta High Court in *Somnath Basu* which has held that “ill-motive” in addition to negligence is required to prove gross negligence and professional misconduct.⁹⁶

The decision by the Madras High Court in *R. Rajamany* is similar to the one in *Arunajatai* to the extent that in both cases, the auditors were found guilty of gross negligence without any moral turpitude. However, in *R. Rajamany*, the Madras High Court decided to remove the name of the auditor from the register for a period of three years as a punishment for his gross negligence.⁹⁷ The only difference between the two cases is that *R. Rajamany* dealt with the audit of a bank while *Arunajatai* dealt with the audit of a textile corporation. The fact that public money was endangered by the callousness of the auditor in *R. Rajamany* contributed to how severely the High Court viewed the auditor’s lapses.⁹⁸ In *Deputy Secretary, Government of India v. S.N. Das Gupta*,⁹⁹ an auditor who negligently carried out the balance sheet audit of a bank was restrained from practicing for a period of three years. The Disciplinary Committee Report found that the auditor was guilty of gross negligence.¹⁰⁰ The main charge against the auditor was that he did not verify the cash in hand held by the bank.¹⁰¹ In this decision, the Calcutta High Court noted that the charge against the auditor was not of a criminal nature.¹⁰² Thus, the lack of active concealment of the bank’s position from its shareholders was not material in deciding whether the auditor was guilty of professional misconduct.¹⁰³ Interestingly, though this case was related to a bank, the Calcutta High Court’s decision did not rely on the effects of the auditor’s actions on the public’s money held by the bank to render its substantial punishment. The court proceeded

⁹⁴ *Id.*

⁹⁵ *Id.* at ¶ 7.

⁹⁶ *Somnath Basu*, *supra* note 60, at ¶ 61.

⁹⁷ *R. Rajamany*, *supra* note 87, at ¶ 9.

⁹⁸ *Id.* at ¶¶ 8–9.

⁹⁹ *Deputy Secretary to the Government of India, Ministry of Finance v. S.N. Das Gupta*, (1955) SCC OnLine Cal 209, 1956 AIR (Cal.) 414.

¹⁰⁰ *Id.* at ¶ 11.

¹⁰¹ *Id.* at ¶¶ 7, 19–20.

¹⁰² *Id.* at ¶ 23.

¹⁰³ *Id.*

on the premise that auditors were a necessary apparatus in a system of commerce centred around the joint stock company.¹⁰⁴ The auditor had a duty to keep the shareholders informed so that they can hold the directors of a company accountable for their actions. A failure in performing this duty warranted a suspension from practice for two years.¹⁰⁵

The cases discussed above reveal that there are some inconsistencies between the decisions of High Courts when it comes to the standards used to determine whether an auditor is guilty of professional misconduct and the punishment that is warranted for it. In *Somnath Basu*, the Calcutta High Court held that an element of ill-motive in addition to negligence is necessary to establish professional misconduct.¹⁰⁶ This aligns with the ingredients of professional misconduct as described by the Supreme Court in cases related to advocates and medical practitioners.¹⁰⁷ However, most cases decided by High Courts have held that an auditor is guilty of gross negligence and professional misconduct even though there was no moral turpitude involved. These cases of gross negligence have been given a more lenient punishment (reprimand) except when the negligence (though without moral turpitude) was related to the audit of banks dealing in public money. Thus, it seems to be easier for an auditor to be found guilty of gross negligence than it is for other professionals such as medical practitioners and advocates. This strict approach towards auditor's liability did not have any significant effect in cases where the lack of moral turpitude was considered a mitigating factor. In these cases, the punishment imposed was less severe.¹⁰⁸ However, in *S.N Das Gupta* (discussed above), and more recently, in *Mukesh Gang*¹⁰⁹, auditors have been found guilty of gross negligence for violating auditing standards without any accompanying moral turpitude. Importantly, they have been punished by having their names

¹⁰⁴ *Id.* at ¶ 34.

¹⁰⁵ *Id.* at ¶¶ 34–35.

¹⁰⁶ *Somnath Basu*, *supra* note 60, at ¶ 61.

¹⁰⁷ See e.g. *T.A. Kathiru v. Jacob Mathai*, (2017) 5 SCC 755, at ¶¶ 11, 17; *Jacob Mathew v. State of Punjab & Anr.*, (2006) 6 SCC 1, at ¶ 48(2); *Dr. Suresh Gupta v. NCT of Delhi & Anr.*, (2004) 6 SCC 422, at ¶ 24; *In Re: P, an Advocate AIR 1963 SC 1313*, at ¶ 7.

¹⁰⁸ See *Registrar of Companies v. P. Arunajatai*, (1962) SCC OnLine Mad 118, at ¶ 15; *Punjab State Government v. K.N Chandla*, (1972) SCC OnLine HP 66, at ¶¶ 6–7.

¹⁰⁹ *Mukesh Gang*, *supra* note 5.

removed from the Register of auditors for limited periods of time, thus preventing them from practicing.

Mukesh Gang is a recent decision which has been rendered by the Andhra Pradesh High Court and refers to some of the cases that have been discussed above. In *Mukesh Gang*, an auditor had certified that the promoters of a company had contributed INR 22,500,000 (approximately USD 300,000) through the purchase of shares.¹¹⁰ However, the actual contribution was only INR 3,500,000 (approximately USD 46,665). The cheques issued by the promoters for the remaining amounts had bounced but shares worth INR 22,500,000 were still allotted to them.¹¹¹ The receipt of the cheques was recorded in the books of account of the company and the auditor said that he did not expect them to bounce.¹¹² The auditor admitted that he should have qualified his certification by stating that the promoters' contribution was subject to the promoter' cheques being cleared.¹¹³ While the auditor admitted to a professional lapse on his part, he argued that he was not guilty of gross negligence and misconduct as his actions were neither intentional nor planned.¹¹⁴ The auditor relied on *Somnath Basu*¹¹⁵ to substantiate his stance that negligence without any wilful transgression cannot amount to gross negligence. The High Court, however, was more persuaded by the decision in *S.N Das Gupta*.¹¹⁶

The court held that while acting with an intention to defraud would amount to gross negligence, it was not an essential ingredient to establish gross negligence. For the court, negligently carrying out a statutory duty (issuing a certificate for the public issue of shares) would automatically amount to gross negligence.¹¹⁷ The court then went on to assert that the auditor was grossly negligent in carrying out his duties, because he did not verify if the cheques of the promoters had actually cleared. The High Court ultimately recommended that the auditor should be suspended from practicing for a period of three years.¹¹⁸

¹¹⁰ *Id.* at ¶ 54.

¹¹¹ *Id.*

¹¹² *Id.*

¹¹³ *Id.* at ¶ 46.

¹¹⁴ *Id.* at ¶¶ 46, 69.

¹¹⁵ *Id.* at ¶ 103.

¹¹⁶ *Id.* at ¶ 111.

¹¹⁷ Companies Act, No. 1, Acts of Parliament, 1956 (India), § 227.

¹¹⁸ *Mukesh Gang*, *supra* note 5, at ¶¶ 54, 80.

MAINTAINING FLEXIBILITY IN THE APPROACH TO AUDITORS'
LIABILITY

The decision in *Mukesh Gang* is worrying because it seems to leave no room for error for the auditor. The court was not able to articulate why the verification carried out by ensuring that cheques were issued was inadequate. It is now unclear how far an auditor would need to go in order to ensure that no fraud on the investors or shareholders is being carried out by the directors or promoters of the company. The rationale behind Category I decisions that an omission or act done inadvertently cannot amount to misconduct is a more persuasive legal standard.¹¹⁹ During the course of the audit, the auditor may be faced with issues that require them to use their judgment or to interpret the law. Under Category I cases, mistakes arising because of the incorrect judgment call or interpretation of law will not be penalized. In *Union of India v. Rajam Iyer*,¹²⁰ the auditor did not alert shareholders that the managing agents of the company were being paid despite the fact that the managing agency had been dissolved. The auditor argued that he had proceeded based on the Articles of Association of the Company which allowed managing agents to continue their engagement with the company until they were removed because of misconduct or upon becoming insolvent.¹²¹ The Madras High Court noted that while the auditor had committed an error of judgment, he could not be held liable for gross negligence.¹²²

The Category I approach offers the same leeway to auditors in case auditors have committed an error in interpreting the law. In *Union of India v. M.N Basu*,¹²³ the auditor did not report that a public company had extended a loan without passing a resolution under Section 370 of the Companies Act, 1956. The auditor believed that Section 370 would not apply to loans granted before the Companies Act, 1956 came into force, and the auditor did not report the apparent irregularity based on this.¹²⁴ The Calcutta High Court acknowledged that the issue

¹¹⁹ See also *The Secretary, Council of the Institute of Chartered Accountants of India v. Shri K. Venkatacharyulu*, (2014) SCC OnLine Hyd 773.

¹²⁰ *The Union of India by the Department of Company Law Administration, v. R.N. Rajam Iyer*, (1964) SCC OnLine Mad 5, AIR 1964 Mad 398.

¹²¹ *Id.* at 210–11.

¹²² *Id.*

¹²³ *Union of India v. M.N Basu*, (1962) SCC OnLine Cal 175, (1963) 6 FLR 153 (Cal).

¹²⁴ *Id.* at ¶ 4.

with which the auditor was contending was a controversial one.¹²⁵ Accordingly, it held that auditors cannot be found guilty of gross negligence because of an erroneous interpretation of the law.¹²⁶ It remains unclear whether the Category III approach would make allowance for errors in judgment.

Importantly, the decision in *Mukesh Gang* incorrectly stated that *S.N. Das Gupta* was a decision of the Supreme Court. As already discussed, this was a High Court decision.¹²⁷ While this may have been a clerical error, it is worth noting that *S.N. Das Gupta* has been misinterpreted in *Mukesh Gang*. According to the Hyderabad High Court, *S.N. Das Gupta* had held the lack of any actual monetary loss to be a mitigating factor when deciding the existence of professional misconduct.¹²⁸ However, this was not the case. *S.N. Das Gupta* cited an English case which dismissed charges against auditors on the grounds that they had conducted the required enquiries and that there was no monetary loss suffered due to the error in their statement.¹²⁹ Even when discussing the English case, the court in *S.N. Das Gupta* emphasized that the auditors had conducted adequate enquiries. It was the auditors' due diligence and not the lack of actual damage caused by their error in their certification which led to a finding that they were not guilty of gross negligence.¹³⁰ In conclusion, *S.N. Das Gupta* held that the auditor in its own case was guilty of gross negligence for not verifying the assertions in the financial statement he had audited.¹³¹ This case would have supported the approach of *Mukesh Gang*. Peculiarly, the court in *Mukesh Gang* stated that *S.N. Das Gupta* would not be applicable. This was based on the incorrect interpretation of the latter by the former as discussed above. Be that as it may, there seems to be no middle ground between proper conduct and gross negligence for an auditor. The Hyderabad High Court noted that chartered accountants were specialists in the field of accountancy and were expected to maintain high ethical standards. Inducing chartered accountants to act with high levels of integrity and ethical consideration was considered to be in the

¹²⁵ *Id.* at ¶ 7.

¹²⁶ *Id.*

¹²⁷ *Mukesh Gang*, *supra* note 5, at ¶¶ 110–11.

¹²⁸ *Id.*

¹²⁹ *S.N. Das Gupta*, *supra* note 99, at ¶ 23. See *In re City Equitable Fire Insurance Company, Limited* (1925) 1 Ch. 407 (UK).

¹³⁰ *S.N. Das Gupta*, *supra* note 99, at ¶ 23.

¹³¹ *Id.*

public interest.¹³² While the importance of maintaining the standards of the profession cannot be disputed, the approach in *Mukesh Gang* has made gross negligence indistinguishable from simple negligence in the context of an auditor's conduct.

AUDITORS LIABILITY WHEN ENGAGING WITH THE SECURITIES
MARKET – THE *PRICE WATERHOUSE* CASE

Having mapped the standards applied by the ICAI and the High Court in determining auditors' liability for professional misconduct, we now turn to decisions of the Securities and Exchange Board. To briefly reiterate, the Bombay High Court broke the tension between the role of SEBI and the ICAI in regulating the conduct of auditors through its decision in *Price Waterhouse v. SEBI*.¹³³ SEBI would be able to proceed against an auditor and restrain them from practicing in connection with the securities market only if it was found that they had colluded to defraud investors. Accordingly, some level of intention was required on the part of the auditor in order to establish SEBI's jurisdiction over them. The decision of the Bombay High Court has been applied by the Securities Appellate Tribunal (SAT) in one of its recent orders. This order has been studied in detail as it is the only SAT order dealing with the liability of auditors in the securities market.

In *Price Waterhouse (SAT)*¹³⁴, the tribunal dealt with the liability of the auditors of Satyam Computers (which included Price Waterhouse firms) in defrauding the company's investors and shareholders. The charge against the auditors and Price Waterhouse firms (PW firms) was that they had certified financial statements which grossly overstated the current account balance and fixed deposits of Satyam, they also failed to

¹³² *Id.* at ¶ 76.

¹³³ *Price Waterhouse v. SEBI* (Bombay High Court), *supra* note 32.

¹³⁴ *Price Waterhouse & Co. v. SEBI*, Appeal No. 6, (2018) SEBI/SAT (India) [Henceforth SAT Decision]. This decision has been appealed before the Supreme Court of India. The Supreme Court is yet to render its final decision. In the meantime, it has stayed the portion of the SAT decision which held that SEBI did not have the power to bar auditors from practice. *See Supreme Court Interim Stay On Appellate Tribunal's Observation on SEBI's Power To Bar Auditors*, BLOOMBERG QUINT, Feb. 10, 2020, <https://www.bloomberquint.com/law-and-policy/sc-extends-interim-stay-on-sat-s-observation-on-sebi-s-power-to-bar-auditors> (last visited Apr. 27, 2021).

detect forged customer receipts and overstated debtor positions of the company.

The case was first heard by a Whole Time Member of SEBI (WTM), who found that the auditors had acted negligently while auditing Satyam by making repeated errors.¹³⁵ These errors were in the nature of ignoring verification procedures and not cross-checking the bank statements of Satyam and their sales invoices with all the bank branches and clients respectively. For instance, no confirmations were sought from Bank of Baroda (BoB) and New York Bank (NY Bank), which held a majority of the current account balances of Satyam. The same applies for verifications of customer invoices. The WTM ordered PW Bangalore and two individual auditors of the company to disgorge the fees obtained from auditing Satyam (INR 130,000,000, approximately USD 1,733,210).¹³⁶ Additionally, all PW firms and the two individual auditors were prohibited from auditing public companies for two years and three years, respectively.¹³⁷

The WTM relied on the Supreme Court's decision in *Shri Kanaiyalal Baldevbhai Patel & Ors.*¹³⁸, which had held that *mens rea* was not required to establish an offence under Regulations 3 and 4 of the PFUTP Regulations.¹³⁹ This was crucial to the WTM's decision, because it was not able to conclude that there existed any intention to defraud investors or connivance with Satyam on the part of the auditors. The WTM then used the decision in *Mukesh Gang* to find that the auditors were grossly negligent in the present case by virtue of their carelessness. The WTM held that the aggregated acts of gross negligence "scale up" to an act of commission of fraud.¹⁴⁰ The

¹³⁵ SEBI Order under sections 11(1), 11(4) and 11B of the SEBI Act, 2017, WTM/GM/DRA 8 (India) [Henceforth WTM Decision].

¹³⁶ *Id.* at ¶ 205.

¹³⁷ *Id.*

¹³⁸ SEBI v. Shri Kanaiyalal Baldevbhai Patel & Ors., (2017) 15 SCC 1 (India). In this case, the Supreme Court dealt with whether the practice of front running by non-intermediaries was an acceptable practice under the PFUTP Regulations. Front running refers to the use of non-public information to buy or sell securities ahead of a substantial order in order to gain an advantage. The case concerned the actions of a trader who was engaging in front running.

¹³⁹ SEBI v. Shri Kanaiyalal Baldevbhai Patel & Ors., (2017) 15 SCC 1 (India); SEBI v. Cabot International Capital Corporation, (2004) 51 SCL 307 (India); ICAI v. Mukesh Gang, (2016) SCC OnLine Hyd 327 (India).

¹⁴⁰ WTM Decision, *supra* note 135, at ¶ 180.

WTM order implies that the auditors deliberately ignored the irregularities present in the financial statements of Satyam and thus acted with *mala fides*.¹⁴¹ The WTM emphasised the scale of the underlying fraud and the losses which accrued to investors.¹⁴² For this reason, the cumulative effect of the various instances of gross negligence amounted to fraud.¹⁴³ To support its finding, the WTM cited the case of *Mukesh Gang* which held that reckless certification by an auditor and “wilful blindness” amount to gross negligence.

The order of the WTM was appealed before the SAT.¹⁴⁴ Like the WTM, the SAT found that professional lapses had occurred in the audit and that the auditors had acted negligently.¹⁴⁵ The actions which led to this finding are similar to the conduct of auditors that brought them under the scrutiny of the Disciplinary Committee. The auditors of Satyam failed to use external confirmations to verify the assertion's in the company's financial statement and relied on the documents provided by Satyam.¹⁴⁶ However, the SAT's finding regarding whether gross negligence and fraud occurred was different from the one in the WTM order.

SAT'S TEST FOR GROSS NEGLIGENCE

The SAT found that while some professional negligence had occurred, it did not amount to gross negligence. The SAT disagreed with the WTM's use of the Supreme Court decision in *Kaniyalal*. The SAT noted that the case of *Kaniyalal* dealt with persons directly involved in trading securities.¹⁴⁷ Even in *Kaniyalal*, the Supreme Court affirmed that an element of “inducement” was necessary to establish fraud.¹⁴⁸ The SAT found that there was no inducement in the present case (presumably because there was no finding of an intention to defraud investors).¹⁴⁹ The SAT held, that the certification of financial statements and books of account could “by no stretch of imagination” be considered as an act of directly or indirectly

¹⁴¹ *Id.* at ¶ 172.

¹⁴² *Id.* at ¶ 180.

¹⁴³ *Id.*

¹⁴⁴ SAT Decision, *supra* note 134.

¹⁴⁵ *Id.* at ¶ 139; WTM Decision, *supra* note 135, at ¶ 205.

¹⁴⁶ WTM Decision, *supra* note 135, at ¶¶ 5–47; SAT Decision, *supra* note 134, at ¶¶ 65139.

¹⁴⁷ SAT Decision, *supra* note 134, at ¶¶ 52–53.

¹⁴⁸ *Id.* at ¶ 44.

¹⁴⁹ *Id.*

dealing in securities. The SAT closely relied on the High Court of Bombay judgment in *Price Waterhouse v. SEBI* which ruled that SEBI had to find that there was some *mens rea* or connivance on the part of auditors before it could issue directions to them.¹⁵⁰ In the absence of *mens rea* attributable to the auditors, the SAT struck down the portion of the WTM order which prohibited the firms and the accountants from auditing listed companies for varying periods of time.¹⁵¹

An important difference between the opinions of the WTM and the SAT was the expectations they ascribed to the audit process. Paragraph 18 of Auditing Assurance Standard 4¹⁵² requires that auditors act with professional scepticism. In the present case, auditors had ignored red flags in Satyam's internal audit process.¹⁵³ The WTM held that the different format used by the fake invoices and the fact that they were generated for offshore customers should have alerted the auditors of the underlying fraud.¹⁵⁴ The SAT had a different opinion in this regard and found that the auditors had not completely disregarded the Auditing Assurance Standards (AAS) when seeking external confirmations of the assertions in Satyam's financial statements.¹⁵⁵ The SAT pointed out that alternative means of verification (other than external verification) were available to auditors to confirm assertions in a company's

¹⁵⁰ *Id.* at ¶¶ 52–53.

¹⁵¹ *Id.* at ¶¶ 136–39.

¹⁵² Auditing Assurance Standards (AAS) have been reclassified and renumbered as Standards as Auditing (SA). The SAT and WTM Decisions in *Price Waterhouse* were decided with reference to AAS as they were in force at the time of the alleged fraud. For more information on the reclassification of AAS into SA, see “Bombay Chartered Accountants Society,” https://www.bcasonline.org/Referencer2015-16/Accounting%20&%20Auditing/standards_on_auditing.html (last visited Apr. 27, 2021). SA 240 is the equivalent of AAS 4. Specifically paragraphs 8 and 12-14 of SA 240 refer to the professional scepticism expected of an auditor. SA 240 came into effect from Apr. 1, 2009. See *Auditors Responsibilities Relating to Fraud in an Audit of Financial Statements*, INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA, https://resource.cdn.icai.org/15374Link9_240SA_REVISIED.pdf, (last visited Apr. 27, 2021).

¹⁵³ WTM Decision, *supra* note 135, at ¶ 64, 91.

¹⁵⁴ *Id.*

¹⁵⁵ SAT Decision *supra* note 134, at ¶ 65.

financial statement. Paragraph 39 of AAS 30¹⁵⁶ allowed auditors to use alternative procedures to verify the assertions made in the financial statements.¹⁵⁷ The bank statements provided by the management were on the letterhead of the bank. However, there were irregularities such as discrepancies between monthly and daily bank statements and the absence of account numbers on fixed deposit receipts which went unnoticed.¹⁵⁸ The SAT held that ignoring these irregularities amounted to professional negligence but not to the same degree as characterised by the WTM.

The SAT was reluctant to equate deviations from the AAS to gross negligence given that the auditors neither acted intentionally nor recklessly in the present case.¹⁵⁹ Echoing Justice Lopes' formulation, the SAT held that the auditor was not expected to detect a fraudulent scheme especially when the Chairman of Satyam had gone on record to state that statutory auditors were kept in the dark and that they had had no role to play in fudging the books of account.¹⁶⁰ The SAT found that the audits were performed in accordance with the standards generally accepted in India which rarely contemplate the identification of forged documents. The SAT cautioned against using the benefit of hindsight (after a fraudulent scheme is unearthed) to decide how auditors ought to have acted.¹⁶¹ The correct approach would be to use the information which was available to the auditors when the audit was conducted and determine their role in any scheme of fraud using this information.¹⁶²

The SAT order refers to the decisions in *Jacob Mathew v. State of Punjab*¹⁶³ and *Bolam v. Friern Hospital Management Committee*¹⁶⁴ which were decided in the context of medical negligence. These decisions prescribe the use of the Bolam rule to determine the duty of care and level of competence owed by

¹⁵⁶ *Id.*, The SA equivalent of AAS 30 is SA 505. SA 505 came into effect from Apr. 1, 2010. See, "External Confirmations," https://resource.cdn.icai.org/18135sa505_rev.pdf (last visited Apr. 27, 2021).

¹⁵⁷ SAT Decision *supra* note 134, at ¶ 65.

¹⁵⁸ See WTM Decision, *supra* note 135, at ¶ 64.

¹⁵⁹ SAT Decision *supra* note 134, at ¶ 65.

¹⁶⁰ *Id.* at ¶ 45.

¹⁶¹ *Id.* at ¶ 72.

¹⁶² *Id.*

¹⁶³ *Jacob Mathew v. State of Punjab & Anr.*, (2005) 6 SCC 1 (India).

¹⁶⁴ *Bolam v. Friern Hospital Management Committee*, [1957] 1 WLR 582.

a doctor. Under the Bolam rule, professionals are expected to possess an ordinary level of skill in their profession and not the highest level of skill. Thus, the SAT order held that there was some negligence on the part of the auditors and that they had a duty to be sceptical. However, the auditors could neither be tasked with uncovering fraud nor can they be expected to approach every step of the audit with suspicion.¹⁶⁵

*UNDERSTANDING THE DIVERGENCE IN THE WTM AND SAT
DECISIONS*

From the above discussions, it is clear that the WTM and the SAT found that there was some professional negligence, and this finding was based on deviation from AAS. The WTM's order went further than this to find that the auditor's acceptance of the information provided by Satyam in lieu of direct confirmations and deviation from AAS amounted to "gross negligence."¹⁶⁶ The SAT did not agree with the WTM that violations of the AAS will amount to gross negligence or recklessness in and of themselves.¹⁶⁷ Neither the WTM nor the SAT enunciates what the test for gross negligence in the context of statutory auditors would be. The WTM's order simply asserts that the deviations from AAS in the present case amount to gross negligence.¹⁶⁸ The SAT uses the lack of reasons in the WTM's order to conclude that there is not enough to hold the auditors liable for gross negligence.

The SAT decision discussed above is a recent one (September 2019).¹⁶⁹ Despite a clear directive from the SAT regarding the need for some intention on the part of the auditor to establish culpability under the PFUTP Regulations, SEBI has continued to take the opposite approach. In *Re Coral Hub*¹⁷⁰ (December 2019), the auditor did not verify the status of a company's sales with its clients. The auditor relied on the revenue reports of the directors and did not use external verification to satisfy themselves of the company's financial position. The WTM in *Re Coral Hub Ltd.* applied the test laid down in *Shri Kanaiyalal Baldevbhai Patel & Ors* (something

¹⁶⁵ SAT Decision, *supra* note 134, at ¶¶ 66, 68, 71–72.

¹⁶⁶ WTM Decision, *supra* note 135, at ¶ 151; *see* SAT Decision, *supra* note 134, at ¶ 34.

¹⁶⁷ SAT Decision, *supra* note 134, at ¶ 65.

¹⁶⁸ WTM Decision, *supra* note 135, at ¶ 151.

¹⁶⁹ SAT Decision, *supra* note 134, at 1. The decision date is September 9, 2019.

¹⁷⁰ *In re Coral Hub* (2019) Indlaw SEBI 225 (Westlaw).

that the SAT had cautioned against in *Price Waterhouse (SAT)* and held that there was no need to establish *mens rea* in order to hold that an act of collusion had occurred between the auditors and the directors.¹⁷¹ The WTM held that the carelessness shown by the auditor in his work (by not relying on the revenue reports of the directors without external verification) demonstrated collusion. The auditor was barred from issuing any certificate to listed companies for a period of one year. It is possible that the decision in *Coral Hub* is an anomaly, and future decisions will take into consideration the holding in *Price Waterhouse (SAT)*. However, the practice of conflating omission with collusion has been prevalent in SEBI prior to the *Price Waterhouse (SAT)* decision as well.¹⁷² In all these cases, the auditor had not externally verified the representations made on the company's balance sheet and had been found guilty of collusion based on this omission.

TOWARDS A CONSISTENT STANDARD

Previous discussions have highlighted how decisions on the professional misconduct and gross negligence of advocates and doctors have been used to supplement corresponding jurisprudence in the context of auditors. Similarly, decisions on auditors' liability are used to determine the standard of professional misconduct in the context of other cases. This trend has been seen in the context of service laws; the High Court of Calcutta has referred to cases on auditor's liability to determine whether government employees are guilty of misconduct.¹⁷³ Thus, while the minutiae of the application of gross negligence will differ from profession to profession, the concept's wide application makes a case for ensuring that it is consistently interpreted. How gross negligence is treated in relation to auditor's liability will influence its legal evolution in other contexts as well.

Based on the three approaches of the High Courts categorised above, we have noted that the Category I approach

¹⁷¹ *Id.* at ¶¶ 21–23.

¹⁷² See *In re Celestial Bio Labs*, (2019) Indlaw SEBI 173 (Westlaw); *In re Parikh Aluminex & Ors*, (2017) Indlaw SEBI 218 (Westlaw).

¹⁷³ *Institute of Chartered Accountants of India v. Indrajit Roy*, (1999) SCC OnLine Cal 88 is referred to in *Syndicate Bank v. Vidya G. Nayek* (2000) SCC OnLine Cal 325; *Vinod Mahajan v. Hindustan Copper Ltd.*, (2002) SCC OnLine Cal 898; *Somnath Basu*, *supra* note 60, referred to in *Damodar Valley Corporation v. Ballari Sarkar*, (2009) SCC OnLine Cal 2776.

offers the most flexibility. It does not prevent the High Court from punishing auditors but allows courts the flexibility to decide on the punishment based on the pivotal question of whether an auditor was grossly negligent or just negligent. This type of flexibility is not found in the Category III approach which characterises any breach of duty as gross negligence. This could have the dangerous effect of punishing auditors for genuine misinterpretations of the law. The Category II approach allows for a similar degree of flexibility, because it considers the lack of mala fides as a mitigating factor when deciding on the punishment for gross negligence. However, this approach is not preferable to the Category I approach; there is a high probability that the Category II approach will dilute the severity normally associated with gross negligence by not requiring a finding of moral turpitude in addition to a breach of duty.

The Category I approach is also supported by the wording of the Chartered Accountants Act, both before and after the 2006 amendment. Section 22 has an inclusive definition for professional misconduct which allows the Council or the Director of Discipline (corresponding authorities before and after the 2006 amendment respectively) to inquire into cases against auditors even if they do not strictly fall within any of the clauses in the First and Second Schedules.¹⁷⁴ Thus, where no mala fides exist, charges implying misconduct can still be framed against the auditor without including the clause relating to gross negligence.

The 2006 amendment offers another solution in this regard. As already discussed, the amendment adds the failure to exercise “due diligence” to Clause 7 of the Second Schedule.¹⁷⁵ This standard can be used to replace “gross negligence” while framing charges for an auditor’s careless behaviour when there are no mala fides involved. The Gujarat High Court took this approach while deciding an appeal filed by an auditor against the decision of the Disciplinary Committee and the Appellate Authority (under the Chartered Accountants Act). In *CA. Rajesh v. Disciplinary Committee*¹⁷⁶ the Disciplinary Committee found that the auditor was guilty of gross negligence and not having acted with due diligence. These charges were based on numerous clerical errors made by him while preparing the tax audit report

¹⁷⁴ The Chartered Accountants Act § 22.

¹⁷⁵ The Chartered Accountants (Amendment) Act § 29.

¹⁷⁶ *CA. Rajesh v. Disciplinary Committee*, (2012) SCC OnLine 6300 (India).

of a company.¹⁷⁷ The Disciplinary Committee punished the auditor by suspending him for one year, these findings were confirmed by the Appellate Authority.¹⁷⁸ The auditor defended himself by stating that the mistakes made would not amount to gross negligence.¹⁷⁹ In response to this contention, the High Court referred to the term “due diligence” in the amended version of the Act, and stated that under Clause 7 of the Second Schedule, it is not only gross negligence but also a failure to exercise due diligence which would amount to professional misconduct.¹⁸⁰ The High Court’s findings thus differed from that of the Disciplinary Committee’s in that the former focused on the lack of due diligence. However, the sentence imposed by the Disciplinary Committee was retained. This was done on the basis of the importance of an auditor’s certificate to the functioning of the corporate machinery and the general level of trust that society places in them.¹⁸¹ Based on these factors, the court held that an auditor’s clerical error cannot be treated in the same manner as an error of an ordinary clerk.¹⁸² While this is true, it is applicable to auditors in all cases. This line of reasoning would justify the imposition of the same punishment for not acting with due diligence and committing an act of gross negligence. Courts and the disciplinary machinery under the Chartered Accountants Act should now move away from the trend of conflating gross negligence with less severe omissions. Adjudicatory bodies should maintain a distinction between due diligence and gross negligence in order to fully take advantage of the two standards.

The context of SEBI proceedings against auditors is different from disciplinary proceedings under the Chartered Accountants Act. In SEBI proceedings, the auditor is usually charged violating regulations 3 and 4 of the PFUTP Regulations.¹⁸³ These regulations deal with the prevention of manipulative and fraudulent practices in connection with the

¹⁷⁷ *Id.* at 30.

¹⁷⁸ *Id.* at 6, 8.

¹⁷⁹ *Id.* at 11.

¹⁸⁰ *Id.* at 69–71.

¹⁸¹ *Id.* at 79–80.

¹⁸² *Id.*

¹⁸³ See charges framed in *In re Celestial Biolabs Ltd.*, (2018) Indlaw SEBI 173 (Westlaw), at ¶¶ 43–44, 49; *In re Deccan Chronicle Holdings Ltd.*, (2019) Indlaw SEBI 234 (Westlaw), at ¶ 4(4); *In re Coral Hub*, (2019) Indlaw SEBI 225 (Westlaw), at ¶ 2(i).

securities market.¹⁸⁴ A finding of gross negligence on the part of the auditor can be used to show that an auditor's omission amounts to fraud. It is at this juncture that decisions under the Chartered Accountants Act become relevant for decisions by SEBI. The differences in the opinions of the WTM and SAT in the *Price Waterhouse* decisions can partly be attributed to the existence of different standards for gross negligence. The WTM relied on the definition put forth by *Mukesh Gang* which did not require anything in addition to a violation of Auditing Standards to merit a finding of gross negligence against the auditor.¹⁸⁵ The SAT took a more tempered approach to the concept and referred to *Jacob Mathew* which required an element of "moral delinquency" in addition to negligence to constitute gross negligence and professional misconduct.¹⁸⁶ There is a difference between gross negligence in the contexts of doctors and auditors. Gross negligence is used to determine whether a doctor can be held criminally liable for negligently causing death under Section 304-A of the Indian Penal Code.¹⁸⁷ A finding of gross negligence on the part of the auditor would still not amount to a finding of criminal liability. It is possible that this was the reason the WTM did not rely on the standards associated with doctors to decide what would constitute gross negligence by an auditor. Be that as it may, the SAT's direction is more consistent with the constituents of gross negligence and its approach ensures that gross negligence is not conflated with any professional lapse.

The WTM's and the SAT's role in determining an auditor's liability under the securities regime is an unenviable one. It is difficult to point to the mental element in addition to an omission which turns an act of negligence into one of collusion or connivance. In cases where it is less obvious whether an auditor has colluded in a scheme of fraud, SEBI may consider adopting a policy of reprimanding the auditor if it is their first instance of negligence instead of banning them. More severe directions can be reserved for recidivists. If this approach seems too lenient, it must be changed through another SAT decision or addressed through a change in statute. SEBI's PFUTP

¹⁸⁴ SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market), 2003, S.O. 816 (E), Regulations 3 & 4.

¹⁸⁵ WTM Decision, *supra* note 135, at ¶ 174.

¹⁸⁶ SAT Decision *supra* note 134, at ¶ 75.

¹⁸⁷ Indian Penal Code, Act No. 45 of 1860, INDIA CODE § 304-A. *See Jacob Mathew v. State of Punjab & Anr.*, (2005) 6 SCC 1, at ¶¶ 12–13, 17, 48(6).

Regulations were amended in 2018¹⁸⁸ and 2020.¹⁸⁹ Together, these amendments have changed the scope of the PFUTP Regulations' prohibition from "fraudulent" trade practices to "manipulative fraudulent" trade practices.¹⁹⁰ Additionally, acts like siphoning off and misutilisation of assets or participating in a scheme to manipulate the accounts of a company have been expressly stated to come within the ambit of PFUTP Regulations.¹⁹¹

The change in the PFUTP Regulations' approach should not be allowed to facilitate findings of gross negligence for all professional lapses. Rather, securities regulators must acknowledge that they have higher standards for auditors given that their certificates affect what the public does with its money. Accordingly, their lapses, even if not amounting to gross negligence, can be treated more severely when it comes to deciding on a punishment.

CONCLUSION

The discussions above reveal that the auditors are subject to inconsistent and unpredictable standards when their professional conduct is being appraised. High Courts are in disagreement about whether moral turpitude or dishonesty is a necessary ingredient to hold an auditor guilty of gross negligence. This has resulted in different decisions being rendered across different High Courts for similar sets of facts. Importantly, the recent trend as seen in *Mukesh Gang* leaves very little room for error before an auditor is found guilty of gross negligence and suspended from practicing. Compared to advocates and medical professionals, auditors face a strict application of their professional standards. SEBI's adjudicatory apparatus mostly seems to follow the strict approach of *Mukesh Gang* and *Shri Kanaiyalal Baldevbhai Patel & Ors* despite the SAT taking an alternative approach in *Price Waterhouse*

¹⁸⁸ Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) (Amendment) Regulations, 2018, No. SEBI/LAD-NRO/GN/2018/56 [Henceforth PFUTP 2018 Amendment]. This amendment came into effect from February 2019 onwards.

¹⁸⁹ Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) (Second Amendment) Regulations, 2020, No. SEBI/LAD-NRO/GN/2020/36 [Henceforth PFUTP 2020 Amendment]. This amendment came into effect from October 2020 onwards.

¹⁹⁰ PFUTP 2018 Amendment, *supra* note 188, at reg. 3(2).

¹⁹¹ PFUTP 2020 Amendment, *supra* note 189, at reg. 3.

(SAT).¹⁹² SEBI conflates an auditor's lapse in following Auditing Standards issued by the ICAI with collusion or connivance in an underlying scheme to defraud investors. The strictness of these standards also leaves no room for error. This is not to say that auditors have an absolute right to err but that not all mistakes should warrant the punishment of a suspension. If SEBI continues to consider any act of negligence as collusion, then it will have trouble differentiating between levels of negligence committed by the auditor. More importantly, it will be unable to accurately assess whether it has jurisdiction over a particular case or whether the omission by the auditor falls within the ICAI's jurisdiction. This paper has shown that there needs to be a standardisation in the approach to evaluating an auditor's misconduct. Such standardisation is difficult because there is no Supreme Court decision which details the elements of gross negligence in the context of an auditor. Under these circumstances, the first step in the right direction would be for the adjudicatory apparatus of SEBI, the ICAI, and the High Courts to become aware of these inconsistencies and consciously eliminate them in future decisions.

¹⁹² See e.g. In re Celestial Bio Labs Ltd. & Ors., 2018 Indlaw SEBI 173 (Westlaw); In re Coral Hub, (2019) Indlaw SEBI 225 (Westlaw).