Ch. 19 – "P.E. and liabilities of Auditors"

First Schedule to CA Act, 1949 :

Part - I (Practicing CA – Pro. Misconduct)

- **Clause - 1** : Restriction on use of name
- **Clause - 2** : Sharing of Profits with others (Reg. 53A)
- **Clause - 3** : Sharing of other's Profits (Reg. 53A)
- **Clause - 4** : Restrictions on Partnership with others (Reg. 53A and 53B)
- **Clause - 5** : Securing Professional work through services of others or means which are not open to a CA.
- **Clause - 6** : Solicitation of client and Professional work. (Circular, Advt., Communication, Interview, other)
- **Clause - 7** : Restriction over advt. of professional attainments
- **Clause - 8** : Prior Communication with Predecessor Auditor [Applicable in case of Replacement position]
- **Clause - 9** : Ensuring Compliance of Secs. 139 and 140 (Read with 141) of Companies Act, 2013
- **Clause - 10** : Charging fees on %age Basis or results of Engagements. [Reg. 192]
- **Clause - 11** : Engaging into occupations other than that of Practice of CA [Reg. 190A and 191]
- **Clause - 12** : Allowing others to sign the Reports and financial statements.

Part - II (Members in Service – P.M.)

- **Cl. 1** : Sharing emoluments of Employment with others
- **Cl. 2** : Commission / Gratification from CA / Lawyer / Agent / Customer of Employer

Part - III (Members Generally – P.M.)

- **Cl. 1** – Acting as F.C.A.
- **Cl. 2** – Non supply of info. or non complying with require-ments asked for by ICAI.
- **Cl. 3** – Providing false info. while advt. for professional work or responding to tenders

Part - IV [Members Generally) Other Misconduct

- **Cl. 1** : Guilty - offence ≤ 6 M.I.
- **Cl. 2** : Bringing disrepute to the Profession.

(8) Part I of Second Schedule to CA Act, 1949 : [Professional Misconduct for a Member in Practice]

A member in practice is deemed to be guilty of professional misconduct, if he :

Clause - 1 : discloses the information acquired in the course of professional work to any other person, other than his client
- without consent of the client ; or
- otherwise than as required by law.

Examples :

(a) Informing violation of corporate and economic laws by clients to Regulatory Authorities without any statutory obligation.

(b) Sharing client's information during any seminar to elaborate a related subject matter.

Clause - 2 : Certify or submits in his name or firm's name, a report of an examination of financial statements, unless

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such statements and related records are being examined by him, his partner, employee or another Practicing CA.

(e.g. Branch Auditor)

Clause - 3 : permits his name or firm's name, to be used in connection with an estimate of earnings, which is contingent upon future transactions, in a manner, which leads to belief that he vouches for the accuracy of the forecast.

(e.g. Projection or forecast)

Note: In this reference, a practicing CA must ensure compliance of requirements of SAE 3400 "Examination of Prospective Financial Information".

As per SAE 3400, preparation of PFI is the responsibility of management and while preparing PFI, following need to be disclosed:

(a) Sources of Information;

(b) Basis of forecast; and

(c) Assumptions used.

While issuing report on examination of PFI, practicing CA needs to ensure the required disclosures and state that no vouching done for the accuracy of the forecast.

(Details of SAE-3400 are covered in Chapter 11)

Clause-4: expresses an opinion on financial statements of an entity, in which, he, his partner or firm is having substantial interest.

Council recommendations: - From Book -

Note: A member should not accept audit assignment of a company for a period of 2 years from date of completion of his tenure as a director or resignation as director of that company.

For Example:

Mr. A (Practicing CA), also a director of MN Ltd. resigned from directorship on 15.10.2022.

MN Ltd. offering Mr. A, auditorship of the company on 15.09.2024 for a period of 5 years. Whether Mr. A can accept the audit.

Ans.: No, Mr. A cannot accept audit of MN Ltd. for a period of 2 years from 15.10.2022.

Clause 5: fails to disclose a material fact, known to him, which is not disclosed in f.s. but disclosure of which is necessary to make the f.s. not misleading

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when the member is associated with the f.s. in Professional Capacity.

(Auditor / Accountant)

Clause-6: fails to report a material misstatement, known to him, to appear in f.s.

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with which he is associated in a professional capacity.

Examples: (i) Loans availed not recorded in Books of Account / f.s. → clause 5 / 6

(ii) Wrong classification of Investments in the Balance Sheet. → clause 6

(iii) Loans against Gratuity / PF fund taken by Company, not informed to Members of Gratuity / PF fund. → clause 5

Clause-7: fails to exercise due diligence or is grossly negligent in the conduct of his professional duties.

Examples: - from book -

Clause-8: (a) fails to obtain sufficient information which is necessary for the expression of opinion

Or

✓ (b) its exceptions are sufficiently material so as to negate the expression of opinion.

(deny)

✓ Clause - 2 — Certification without examination

✓ " - 7 — failure to exercise due diligence

✓ " - 8 — " to obtain sufficient info. necessary to express an opinion.

Clause - 9: fails to invite attention to material departure from generally accepted auditing practices | procedures.

Recommendations on clause 9 : - from Book -

Clause - 10 : (a) fails to keep the client's money in separate Account

or

(b) uses the client's money for purposes other than those specified by client.

Council suggestions : from Book