



**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH - I**

C.P. No. 2996 (MB) 2019

Under Section 140(5) of the
Companies Act, 2013.

In the matter of

**Union of India, Ministry of
Corporate Affairs, Through
Registrar of Companies, Pune.**

...Petitioner

Versus

**Mr. Dattatray Maruti Khune &
Anr.**

...Respondents

Order pronounced on 15/05/2026

Coram:

Prabhat Kumar

Member (Technical)

Sushil Mahadeorao Kochey

Member (Judicial)

Appearances:

For the Petitioner : Mr. Suraj Chaudhary, Mr. Atishay Jain
i/b Mr. Kunal Kanungo, Advocates

For the Respondent No.1 : Mr. G. Aniruth Purusothaman a/w Mr.
Pratik Pandey, Advocates



ORDER

1. This petition is filed under Section 140(5) of the Companies Act, 2013 by the Union of India, Ministry of Corporate Affairs through Registrar of Company, Pune against the Respondent No.1, Mr. Dattatray Maruti Khune seeking following reliefs:

a) Direct that the Respondent No.1 shall immediately cease to function as statutory auditor of Respondent No.2 Company.

b) Direct that the Respondent No.1 and his proprietorship firm shall not be eligible to be appointed as an auditor of any company for a period of 5 years from the date of passing of order, in terms of second proviso to Section 140(5) of the Companies Act, 2013, read with Explanation I thereto.

c) Pass any other order(s) as deemed fit and proper under the circumstances by the Hon'ble Tribunal.

2. Brief Facts:

2.1. That, Mr. Dattatray Maruti Khune i.e. Respondent No.1 is a Chartered Accountant in terms of Section 2(1)(b) of the The Chartered Accountants Act, 1949 and the Proprietor of D.M. Khune & Co., & was appointed as the Statutory Auditor of M/s Networth Agrotech India Limited (Respondent No. 2), a public limited company incorporated on 01.06.2011 under the Companies Act, 1956 and having registered office at Pune. The Respondent No.1 submitted audit report to the financial statements of the Respondent no. 2 for the financial years 2012-2013, 2013-14, 2014-15, 2015-16 and 2016-2017. It is stated that, no requisite form was filed with RoC Pune for appointment of the auditor, neither by the Company nor by the auditor.

2.2. On the basis of a complaint received from Mr. Sachin Rasal and other



investors alleging, inter alia, fraudulent activities of the Company, the Ministry of Corporate Affairs *vide* letter No. 815/2016/CL-II (WR) dated 08.07.2016 ordered an inspection in the affairs of Respondent No. 2 under Section 206(5) read with Section 207 of the Companies Act, 2013. Pursuant thereto, the inspection was duly carried out and the Inspecting Officer submitted his Inspection Report dated 23.03.2017, which was thereafter placed before the Regional Director (Western Region), Mumbai, and duly forwarded to the Ministry.

2.3. The ministry *vide* letter No. 1/29/2017- CL-II (WR) dated 08.05.2017 directed the petitioner to re-examine non-fulfillment of duties by the auditor and to submit a supplementary report. Accordingly, the Supplementary Inspection Report dated 25.01.2019 was submitted by the Inspecting Officer ("IO"). During the course of the supplementary inspection, the IO re-examined the matter in detail and observed from the MCA portal that the Company had filed the financial statements of the Respondent no. 2 for the financial years 2012-2013, 2013-14, 2014-15, 2015-16 and 2016-2017 (bearing the signatures of Respondent Statutory Auditor as well as one director of Respondent Company) (hereinafter 1st Set") on 30.04.2018, i.e. subsequent to the submission of the Inspection Report by the then IO, Dr. Amol Shinde, the then Deputy Registrar of Companies, Pune, however the said financial statements didn't contain the Auditor's Report thereon and the notes to accounts forming part of such financial statements. Upon examination, the first set of financial statements of the Respondent no. 2 for the financial years 2012-2013, 2013-14, 2014-15, 2015-16 and 2016-2017, so filed, were found to be forged and fabricated. The IO accordingly decided to summon the Directors of the Company as well as the Statutory Auditor who had signed the Balance Sheets, for the purpose of verifying the facts.



2.4. Pursuant thereto, the first auditor of the Company, Mr. Sagar Dharmavat, appeared before the IO on 08.10.2018 in response to a summons issued on 03.10.2018 and recorded his statement. The Directors of the Company, namely, Mr. Machindra Baban Mundhe, Mr. Ram Devidas Aute, Mr. Vikas Bhaurao Falake, Mr. Umrao Vasantrao Gilbile, Mr. Ram Babanrao Zodage, and Mr. Buvasaheb Janu Bochare, also appeared before the IO on various dates and recorded their statements on oath. The Directors further furnished certain documents, including a list of investors, details of properties held by the Company, bank details, and property papers, all of which were in the custody of Mr. Machindra Baban Mundhe, Managing Director, and were submitted in duly certified form to the Inspecting Officer.

2.5. Further, pursuant to summons issued to the respondent No. 1, he submitted one set of financial statements for the year ended 31.3.2013 to 31.3.2017 along with auditor's report thereon and notes to accounts forming part thereof, however, these were not filed with RoC, accordingly, IO has referred these financial statements as 2nd Set.

3. Submissions of the Petitioner:

The Petitioner has made the following averments in the petition:

3.1. It is contended by the Petitioner that the first set did not contain previous year figures, auditor's reports, and notes to accounts. The Petitioner further submits that no attempt was made by the Company or by the statutory auditor to remove, rectify, or withdraw this 1st Set, which continues to remain publicly accessible on the MCA portal under Respondent No. 1's DSC, thereby misleading the public.

3.2. It is further contended that the IO found that the Company raised



approximately ₹3.5 crores from around 2,400 customers through schemes involving allotment of plots and payment of interest after five years, if plots were not allotted, and, as of the date of inspection, ₹2,08,65,107/- remained outstanding to approximately 700 customers. It is further submitted that the Directors, including Managing Director Mr. Machindra Baban Mundhe, admitted that no plots were allotted as promised; no bills, vouchers, or statutory records were maintained owing to losses and disputes among directors; and the business had ceased since 2014. The Petitioner contends that the schemes floated by the Company squarely fall within the definition of "deposit schemes" under Section 58A of the Companies Act, 1956, rendering the Company and its officers in default liable to penal action.

3.3. The Petitioner submits that several statutory breaches are attributable to Respondent No. 1. The Petitioner further submits that Respondent No. 1 signed the Balance Sheets for financial years ending 31.03.2013 through 31.03.2017 and filed them on 30.04.2018 using his DSC, along with the DSC of one director, Mr. Buvasaheb Janu Bochare, and that no other director was aware of or signed these documents.

3.4. It is also contended that Respondent No. 1's appointment itself is invalid, as an auditor can only be appointed by shareholders at a duly convened general meeting under the Companies Act, 1956/2013, and since no Board meetings or AGMs were held since 2013, as admitted by both Mr. Buvasaheb Janu Bochare and Managing Director Mr. Machindra Baban Mundhe, any purported appointment by way of a mere letter from one director in 2018 is void in law.

3.5. The Petitioner also contends that Respondent No. 1 is disqualified from practice, having served as a lecturer at a college under the University of Pune since 1999, as, under Clause (11) of Part I of the




First Schedule to the Chartered Accountants Act and Regulation 190A of the CA Regulations, a Chartered Accountant in practice is prohibited from engaging in any other occupation without the Council's specific permission. It is further contended that Appendix 9 of the CA Regulations specifically mandates such permission for taking a full-time lectureship by a chartered accountant holding full-time certificate of practice, which Respondent No. 1 never sought or obtained.

3.6. In this regard, Appendix 9 of the Chartered Accountants Regulations expressly stipulates that a member seeking to engage in full-time lectureship is required to obtain 'specific permission' from the Institute. Admittedly, no such specific permission was ever sought or obtained by Respondent No. 1. Consequently, Respondent No. 1 was disqualified from acting as Statutory Auditor of Respondent No. 2 by virtue of Section 141(3)(g) of the Companies Act, 2013 read with Regulation 190A of the Chartered Accountants Regulations, 1988.

3.7. It is further contended that under Section 137 of the Companies Act, 2013, only accounts adopted by shareholders at an AGM can be filed with the Registrar, and since no AGM has been held since 2013, neither the 1st Set nor the 2nd Set of Balance Sheets could have been lawfully submitted to the ROC or the IO.

3.8. It is further submitted that under Section 146 of the Companies Act, 2013, the auditor is required to attend AGMs, unless granted an exemption, and Respondent No. 1 admittedly never visited the registered office nor attended any purported AGM. The Petitioner also contends that Respondent No. 1 failed to communicate with the previous auditor, Mr. Sagar S. Dharmavat (auditor until 2012), before accepting the assignment, constituting professional misconduct under



Clause (8) of Part I of the First Schedule to the Chartered Accountants Act.

3.9. The Petitioner also submits that in November 2018, subsequent to his examination by the IO, Respondent No. 1 produced a second set of financial statements for the same years (2nd Set), which were only hand-delivered to the IO and were never uploaded on the ROC portal with the requisite fees or forms. It is contended that, given that no AGM has been held since 2013, the 2nd Set, like the 1st Set, could not have been lawfully adopted, and the agenda items and meeting approvals indicated therein are false and back-dated.

3.10. The Petitioner submits that Respondent No. 1 has claimed that, one Mr. Sandeep Rahane, whom he describes as the Company's accountant, forged and filed the 1st Set by misusing his DSC. It is contended by the Petitioner that the Directors and Mr. Rahane himself confirmed in their statements to the IO that Mr. Rahane is an employee of Respondent No. 1's office and not an accountant of the Company. The Petitioner further submits that there is no credible reason why Mr. Khune's own office employee would forge documents using Mr. Khune's own DSC. It is further contended that Mr. Khune issued a complaint to the Police only on 01.12.2018, after his examination by the IO, and has never informed the Certifying Authority under Section 42 of the IT Act, 2000 that his DSC was allegedly misused.

3.11. The Petitioner submits that Respondent No. 1's contention that the Petition is not maintainable on account of his resignation dated 23.08.2019 is without merit, the Petition having been filed on 12.03.2019, prior to the said resignation. It is further submitted that as held by the Hon'ble Supreme Court in **Union of India v. Deloitte Haskins and Sells LLP & Anr., (2023) 8 SCC 56**, a subsequent

resignation does not affect the maintainability of a petition under Section 140 of the Companies Act, 2013.

3.12. It is submitted that the IO has reported and recommended action for fraud under Sections 447 and 448 of the Companies Act, 2013 against the Directors of the Company and Respondent No. 1 as the statutory auditor, both having acted in collusion. The Petitioner further submits that the Central Government has accordingly directed the ROC to initiate prosecution before the Special Court.

4. **Submissions of the Respondent No. 1:**

4.1. The Ld. Counsel for the Respondent No. 1 submits that, on 01.04.2014, an Annual General Meeting of Respondent No. 2 was convened, wherein a Resolution appointing a Statutory Auditor for the period 01.04.2012 to 31.03.2019 was duly passed by the Board of Directors. It is further submitted that Respondent No. 1 was formally apprised of his appointment as Statutory Auditor vide an Appointment Letter dated 01.04.2018, which unambiguously confirmed that his appointment was approved by the Board vide Resolution dated 01.04.2014, covering the period from 01.04.2012 to 31.03.2019.

4.2. It is contended that Respondent No. 2 had also addressed a letter dated 02.04.2018 to its erstwhile Statutory Auditor, Sagar Dharmavat & Associates, informing them of Respondent No. 1's appointment and seeking their No-Objection Certificate ("NOC"). It is submitted that the said erstwhile auditor duly granted the NOC vide letter dated 22.11.2018. The appointment of Respondent No. 1 was therefore lawful and procedurally complete in all respects.

4.3. It is submitted that, pursuant to his appointment, Respondent No. 1 undertook the audit of the books of accounts and financial statements of Respondent No. 2 for the financial years 2012-13 to 2016-17, and duly



called for the relevant records and documents from the personnel of Respondent No. 2. It is further submitted that the Audit Reports for FY 2012-13, 2013-14, 2014-15, 2015-16, and 2016-17 were prepared in April 2018, clearly subsequent to his appointment, with appropriate qualifications, and were submitted to the Registrar of Companies, Pune on 30.04.2018. It is contended that the Balance Sheets so submitted were duly signed by all the Directors of Respondent No. 2, namely, Mr. Machindra Baban Mundhe, Mr. Buvasaheb Janu Bochare, Mr. Ram Babanrao Zodage, Mr. Vasantrao Umrao Gilbile, Mr. Vikas Bhaurao Falke, and Mr. Ram Devidas Aute.

- 4.4. It is contended that, pursuant to his appointment on 01.04.2018, Respondent No. 1 assessed and audited the Balance Sheets of Respondent No. 2 and, in a bona fide manner, qualified the amounts accepted by Respondent No. 2 as "Advance." In support thereof, the Ld. Counsel for the Respondent places reliance upon the following judgments to submit that the amounts availed by Respondent No. 2 are in the nature of advance received from its customers and do not constitute a debt and relied upon certain decisions rendered by Hon'ble High Court in Tax Appeals.
- 4.5. It is submitted by Respondent No. 1 that there exists only one set of Balance Sheets, duly prepared and audited by Respondent No. 1 and signed by him along with all the Directors of Respondent No. 2, which was submitted to the Registrar of Companies, Pune. It is contended that, even on a perusal of the records relied upon by the Petitioner, the particulars of transactions, quantum of transactions, assets, liabilities, expenses, income, sources of income, shareholdings, loans, advances, and deposits reflect the exact same accounting treatment and values. The Petitioner's allegation of there being two sets of Balance Sheets is therefore misconceived and incorrect.
- 4.6. It is submitted that the Balance Sheets bearing only one Director's signature with incorrect dates, were uploaded on the MCA portal by Mr.



Sandeep Rahane, the accounting personnel of Respondent No. 2, entirely on his own volition, without any direction or authorisation from Respondent No. 1. It is further submitted that Respondent No. 1 has duly lodged a Police Complaint with Nigdi Police Station against Mr. Rahane for uploading Balance Sheets on the MCA portal using his Digital Signature Certificate without authorisation. It is contended that Mr. Rahane has himself placed on oath a statement conceding that he used the Digital Signature of Respondent No. 1 without any authorisation whatsoever. The allegation of the Petitioner that the 1st Set was prepared and filed by Respondent No. 1 is therefore wholly untenable.

4.7. It is submitted that the inspection into the operations of Respondent No. 2 was initiated vide letter dated 08.07.2016 bearing No. 815/2016/CL-II (WR), at a time when Respondent No. 1 had no association whatsoever with Respondent No. 2. It is contended that Respondent No. 1 was apprised of his appointment only on 01.04.2018, and accordingly, he had no relevance, involvement, or role in the business operations or transactions of Respondent No. 2 during the period under inspection. It is further submitted that since Respondent No. 1 was apprised of his appointment only on 01.04.2018, he could not have attended any Annual General Meetings convened prior to that date, and his absence therefrom cannot be construed as a statutory breach.

4.8. It is submitted that Section 140(5) of the Companies Act, 2013 sets a threshold requiring that the auditor must have acted in a fraudulent manner or abetted or colluded in any fraud by or in relation to the Company or its Directors. It is contended that the Petition does not, at any instance, attribute any motive to Respondent No. 1 for connivance, nor does it establish any nexus sufficient to sustain its allegations. The captioned Petition is therefore baseless qua Respondent No. 1.

4.9. It is submitted that, as per Regulation 190A of the Chartered Accountants Regulations, 1988, as clarified by the ICAI, a member engaged as a



lecturer in a university, affiliated college, educational institution, coaching organisation, or in private tutorship, is entitled to continue in practice, provided that the direct teaching hours do not exceed 25 hours per week. It is contended that Respondent No. 1's teaching engagement is limited to a mere 16 hours per week, well within the permissible limit, therefore, he was not disqualified from practice, and the allegation of the Petitioner in this regard is misconceived.

4.10. It is therefore submitted that Respondent No. 1's role as Statutory Auditor commenced only on 01.04.2018 upon communication to him in relation to appointment, that he had no role in the business operations or transactions under question, and that he has duly discharged his obligations as a Statutory Auditor by making appropriate qualifications in his Audit Reports for FY 2012-13 to 2016-17. In light of the aforesaid, it is submitted by Respondent No. 1 that the captioned Petition deserves to be dismissed in *limine* qua Respondent No. 1.

5. **Findings & Analysis:**

5.1. The Petitioner has placed on record the Investigation Report dated 11.01.2017 and the Supplementary Investigation Report dated 25.01.2019 pertaining to Net Wealth Agrotech India Ltd., submitted by the Inspecting Officer ("IO") under Section 206(5) of the Companies Act, 2013.

5.2. The issues raised by the Petitioner in the present petition relate to:

(i) the legality of appointment of Respondent No. 1 as Statutory Auditor of Respondent No. 2;

(ii) submission of a false notice containing agenda items of a General Meeting with the 1st set of financial statements to ROC;

(iii) filing of accounts without adoption by shareholders;

(iv) submission of the 1st set of audited Balance Sheets to the ROC without

adoption at the Annual General Meeting (AGM), and without auditors' reports, notes to accounts, and previous year figures;

(v) Respondent No. 1 acting as auditor in violation of Section 141(3)(g) of the Companies Act, 2013 read with Regulation 190A of the CA Regulations, 1988; and

(vi) failure to remove the 1st set and upload the 2nd set of Balance Sheets on the MCA Portal.

5.3. Pursuant to inspection, the IO submitted the Supplementary Investigation Report dated 25.01.2019. The conclusion drawn by the IO in respect of role of Respondent No. 1 reads as follows:-

“a) As the auditor himself has furnished false information in his balance sheets and has failed to exercise reasonable care and compliance with various auditing and assurance standards issued by the Institute of Chartered Accountants of India which is having material effect upon the financial statements, thereby it attracts Section 143 of the Companies Act, 2013. Also create serious doubt upon the reasonableness/ diligence of audit along with role of the auditor in discharging his professional responsibility as himself has prepared two (2) sets of Balances Sheets to cover his fraud for which he is liable for action under Section 447/448 of the Companies Act, 2013.

b) Further, the matter may also be referred to NCLT for taking action under section 140(5) of the Companies Act, 2013 who has acted in a fraudulent manner and colluded in the fraud committed by the directors of the company and the auditor Dr. Dattatray Maruti Khune has lost his independence due to the above reasons.

c) The conduct of the auditor was most unethical and



unprofessional, as he has involved in fraud in preparation of 2 sets of Balance Sheets and has negligently failed in his responsibilities as statutory auditor. That too he is a practicing chartered accountant in whole time practice as well as holding Government Job as professor in Government College, Nigdi, Pune since 1999, which is against to the professional ethics, being a professional in practice he cannot render other services as a professor in Government College. Hence, the Auditors has prepared falsified accounts of the company and are responsible for the said fraud and various other acts as alleged above, the auditors had adopted a course of conduct unbecoming of a professional. He did not comment on the fraud committed by the company in his audit report even though they are material in nature, thereby his privy and active role in the conspiracy is established. Hence, the conduct of the auditors was most unethical and unprofessional; therefore, the Inspecting Officer strongly recommend the severest punishment to the auditors. Since the above stated facts has been proved that the statutory auditor is guilty of "other professional misconduct" and are liable to punishment under the guidelines of ICAI. Hence, the matter may be referred to ICAI for professional misconduct by the auditor for disciplinary action against him."

5.4. The key findings of the IO as recorded in both the Investigation Reports in relation to the Respondent Company's act of commission of fraud and Respondent No. 1 statutory auditor's acts reads as follows:

(i) The fraudulent Balance Sheets (1st Set) for the financial years ending 31.03.2015, 31.03.2016, and 31.03.2017 were filed on the MCA portal on 30.04.2018. They were audited and signed by Mr. Dattatray Maruti Khune, Chartered Accountant, without any proper audit, the said Balance Sheets lacked previous year figures, schedules, audit reports, notes to accounts, and any supporting documentary evidence. No Annual General




Meetings were held by the Company, and the Balance Sheets were signed by only one director, Mr. Buvasaheb Janu Bochare, without the knowledge of the other directors.

(ii) The revised Balance Sheets (2nd Set) for financial years ending 31.03.2013 to 31.03.2017 were filed to cover up the discrepancies in the 1st Set. These revised Balance Sheets were procured through Mr. Sandip Yadav Rahane, an accountant, who called the directors to his office on the pretext of signing the Balance Sheet for FY 2018 and obtained their signatures on all the past Balance Sheets. Notably, three of the signing directors had been appointed only on 31.01.2018 and had no knowledge of the earlier periods.

(iii) Respondent No. 1, in order to cover his misdeeds, sought to place blame on Mr. Sandip Yadav Rahane and filed a police complaint that was never registered. It is also noted that his Digital Signature Certificate (DSC) was used in other companies for certification of various forms. It is therefore evident that Respondent No. 1 furnished false and misleading information before the IO.

(iv) The audit was conducted entirely in Respondent No. 1's office; neither he nor any of his employees visited the registered office of the Company, and he met none of the directors prior to signing. Despite the directors' own admission that no business was conducted and no bills/vouchers were maintained since 2014, the Balance Sheets reflected expenses and turnover without any documentary basis. These figures are therefore false and misleading, and Respondent No. 1 has failed to exercise reasonable care and comply with auditing and assurance standards issued by the ICAI, attracting the provisions of Section 143 of the Companies Act, 2013, as well as Section 447/448 thereof.

(v) All the directors are involved in fraud and have cheated the depositors of approximately Rs. 4 Crores collected in 2012, which has not been



repaid, rendering them liable under Section 447/448 of the Companies Act, 2013.

5.5. The Balance sheets & Profit Loss Accounts as contained in the both sets of financial statements for the year ended 31.03.2016 are reproduced hereunder for better appreciation of the facts:

1st Set :



NETWEALTH AGROTECH INDIA LIMITED			
Add: OFFICE NO. 1 TO 5, 2ND FLOOR, A WING SAGAR COMPLEX, KASARWADI PUNE 411			
Balance Sheet as at 31 March 2016			
Sr.No.	Particulars	Notes	As at 31 March 2016
I. EQUITY AND LIABILITIES			
1	Shareholders' funds		
	(a) Share capital	3	500,000
	(b) Reserves and surplus	4	(9,831,870)
2	Non-current liabilities		(9,331,870)
	(a) Long-term borrowings		
	(b) Deferred tax liabilities (net)	5	
	(c) Other long-term liabilities		
	(d) Long-term provisions		
3	Current liabilities		
	(a) Short-term borrowings		
	(b) Trade payables	6	18,397,071
	(c) Other current liabilities	7	582,155
	(d) Short-term provisions	8	450,400
		9	84,073
	TOTAL		19,513,699
II. ASSETS			
NON-CURRENT ASSETS			
	(a) Fixed assets		
	(i) Tangible assets	10	8,493,766
	(ii) Intangible assets		
	(iii) Capital work-in-progress		
	(iv) Intangible assets under development		
	(b) Non-current investments		
	(c) Deferred Tax Assets	11	
	(d) Long-term loans and advances	12	
	(e) Other non-current assets		
	TOTAL		8,493,766
CURRENT ASSETS			
	(a) Investment		
	(b) Inventories	18	120,300
	(c) Trade receivables	13	145,500
	(d) Cash and cash equivalents	14	54,395
	(e) Short-term loans and advances	15	1,059,781
	(f) Other current assets		308,087
	TOTAL		1,688,063
	TOTAL		10,181,829
	Contingent Liabilities and Commitments		
	Significant accounting policies	1 & 2	
	The accompanying notes form an integral part of the financial statements		

This is the Balance sheet referred to in our report of even Date.

For and on behalf of the



O. M. KHURSE & CO.
Chartered Accountants
Pune
Date: 30.09.2016



Place : Pune
Date : 30.09.2016

Place Pune
Date: 30.09.2016



NETWEALTH AGROTECH INDIA LIMITED
Add: OFFICE NO. 1 TO 5, 2ND FLOOR, A WING SAGAR COMPLEX, KASARWADI PUNE 411034

Statement of Profit and Loss for the Year 01 April 2015 To 31 March 2016

Particulars	Notes	Year ended 31 March 2016
INCOME	16	-445,000
Revenue from operations (gross)		120,300
Add: Closing Stock		565,300
Revenue from operations (net)		10,500
Other income		575,800
Total revenue (1+2)		680,900
Expenses	17	680,900
(a) Cost of Material Consumed	19	-
(b) Employee benefits expense	20	-
(c) Finance cost	10	176,033
(d) Depreciation and amortisation expense	21	340,000
(f) Other expenses		1,196,933
Total expenses		(621,133)
PROFIT BEFORE EXCEPTIONAL AND EXTRAORDINARY ITEMS AND TAX (3-4)		(621,133)
Exceptional items		(621,133)
PROFIT BEFORE EXTRAORDINARY ITEMS AND TAX (5±6)		-
Extraordinary items		(621,133)
PROFIT/(LOSS) BEFORE TAX (7 ± 8)		(621,133)
Tax Expenses		-
- Current tax		-
- Deferred Tax		(621,133)
PROFIT/(LOSS) FOR THE PERIOD (9 ±10)		(621,133)
Profit / (Loss) from discontinuing operations		-
Tax expense of discontinuing operations		-
PROFIT/(LOSS) FROM DISCONTINUING OPERATIONS (12±13)		-
PROFIT/(LOSS) FOR THE PERIOD (11±12)		(621,133)
Earnings per share		(6.21)
Basic		
Diluted		
Significant accounting policies	1 & 2	
The accompanying notes form an integral part of the financial statements		

This is the Statement of Profit and Loss referred to in our report of even date.

For and on behalf of the
For Netwealth Agrotech India Ltd
Director

Place : Pune
Date : 30.09.2016

Place Pune
Date: 30.09.2016

2nd Set

NETWEALTH AGROTECH INDIA LIMITED
Add: OFFICE NO. 1 TO 5, 2ND FLOOR, A WING SAGAR COMPLEX, KASARWADI PUNE 411034
Balance Sheet as at 31 March 2016

Sr.No.	Particulars	Notes	As at 31 March 2016
I. EQUITY AND LIABILITIES			
1	Shareholders' funds		
	(a) Share capital	3	5,00,000
	(b) Reserves and surplus	4	(98,31,871)
			(93,31,871)
2	Non-current liabilities		
	(a) Long-term borrowings	5	-
	(b) Deferred tax liabilities (net)		-
	(c) Other long-term liabilities		-
	(d) Long-term provisions		-
3	Current liabilities		
	(a) Short-term borrowings	6	-
	(b) Trade payables	7	4,50,400
	(c) Other current liabilities	8	5,82,155
	(d) Short-term provisions	9	1,83,97,071
			84,973
	TOTAL		1,95,13,699
II. ASSETS			
NON-CURRENT ASSETS			
	(a) Fixed assets	10	
	(i) Tangible assets		84,93,766
	(ii) Intangible assets		-
	(iii) Capital work-in-progress		-
	(iv) Intangible assets under development		-
	(b) Non-current investments	11	84,93,766
	(c) Deferred Tax Assets		-
	(d) Long-term loans and advances	12	-
	(e) Other non-current assets		-
	TOTAL		84,93,766
CURRENT ASSETS			
	(a) Investment		-
	(b) Inventories	18	1,20,300
	(c) Trade receivables	13	1,45,500
	(d) Cash and cash equivalents	14	54,395
	(e) Short-term loans and advances	15	10,59,781
	(f) Other current assets	16	3,08,087
			16,88,063
	TOTAL		1,91,81,729
	Contingent Liabilities and Commitments		
	Significant accounting policies		
	The accompanying notes form an integral part of the financial statements	1 & 2	

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DATTATRAY M. KHUNE & CO.
PUNE
FRN
127455 W
INDIA

This is the Balance sheet referred to in our report of even Date.
DATTATRAY M. KHUNE & CO.
CHARTERED ACCOUNTANTS
No. T22918
Place Pune
Date: 03.09.2016

For and on behalf of the Board of
Mr. B. J. Bochara
Director
DIN: 06419162
Place Pune
Date: 03.09.2016

Mr. DAM NARAYAN KAKADE
Director
DIN: 0804861

NETWEALTH AGROTECH INDIA LIMITED
Add: OFFICE NO. 1 TO 5, 2ND FLOOR, A WING SAGAR COMPLEX, KASARWADI PUNE 411034

Statement of Profit and Loss for the Year 01 April 2015 To 31 March 2016

Particulars	Notes	Year ended 31 March 2016
INCOME		
1 Revenue from operations (gross)	16	4,45,000
Add: Closing Stock	17A	1,20,300
Revenue from operations (net)		5,65,300
2 Other income	16-A	10,500
3 Total revenue (1+2)		5,75,800
Expenses		
(a) Cost of Material Consumed	17	6,80,900
(b) Employee benefits expense	19	-
(c) Finance cost	20	-
(d) Depreciation and amortisation expense	10	1,76,033
(f) Other expenses	21	3,40,000
Total expenses		11,96,933
5 PROFIT BEFORE EXCEPTIONAL AND EXTRAORDINARY ITEMS AND TAX(3-4)		(6,21,133)
6 Exceptional items		-
7 PROFIT BEFORE EXTRAORDINARY ITEMS AND TAX (5±6)		(6,21,133)
8 Extraordinary items		-
9 PROFIT/(LOSS) BEFORE TAX (7 ± 8)		(6,21,133)
10 Tax Expenses		(6,21,133)
- Current tax		-
- Deferred Tax		-
11 PROFIT/(LOSS) FOR THE PERIOD (9 ± 10)		(6,21,133)
12 Profit / (Loss) from discontinuing operations		-
13 Tax expense of discontinuing operations		-
14 PROFIT/(LOSS) FROM DISCONTINUING OPERATIONS (12±13)		-
15 PROFIT/(LOSS) FOR THE PERIOD (11±12)		(6,21,133)
16 Earnings per share		(42.99)
Basic		(42.99)
Diluted		-
Significant accounting policies	1 & 2	
The accompanying notes form an integral part of the financial statements		

D. M. KHUNE & CO.
PUNE
FRN
127455 W
Chartered Accountants

This is the Statement of Profit and Loss referred to in our report of even date.

D. M. KHUNE & CO.
CHARTERED ACCOUNTANTS

Dattatray M. Khune
422918

For and on behalf of the Board
Mr. B. J. Buehary
Director
DIN: 06419462

Place Pune
Date: 03.09.2016

Place: Pune
Date: 03.09.2016

All Information Provided by us Board of Managements

5.6. It is noted from the above financial statements that there is perceptible difference in the type of signature of the Respondent No. 1, the signatures on 1st Set are different from the signatures on the 2nd set.



5.7. The following undisputed facts emerge:

- a. The Respondent No. 2 Company had collected money from the investors majorly from 01.01.2012 to 31.03.2014;
- b. The Inspection in the fraudulent conduct of business by Respondent Company was completed in 2017, and it is only after filing of (1st Set of) audited financial statements with ROC, belatedly in April, 2018 that a supplementary inspection was carried resulting into a supplementary report dated 25.01.2019;
- c. The 1st set of financial statements was filed on 30.04.2018, and that set didn't contain the auditor's report, notes to accounts forming part of the financial statements and previous figures as required under the prescribed format for financial statements;
- d. The Respondent No. 1 was appointed as statutory auditor on 01.04.2018 in a purported board meeting held on that day, and the Respondent Company issued a communication with respect thereto to him on 01.04.2018 and the outgoing auditor issued his NOC on 22.11.2018;
- e. The 1st set of Financial Statement, having a printed ante-date thereon, was signed by only one director and had signature of the Respondent No. 1 as auditor, and 2nd set of Financial Statements was signed by all the directors, three of the signing directors had been appointed only on 31.01.2018, and contained the Auditor's Report dated 20.04.2018 as well as Notes to Accounts forming part of such financial statements but was not filed with the ROC; and
- f. Both sets of Financial Statements have identical financial numbers and there is no change in such numbers.

5.8. Section 140(5) of the Companies Act, 2013 prescribes a specific threshold



for action against an auditor, requiring that the auditor shall have acted in a fraudulent manner or abetted or colluded in any fraud by, or in relation to, the company or its directors, whether directly or indirectly. Section 140(5) reads as under:

*“(5) Without prejudice to any action under the provisions of this Act or any other law for the time being in force, the Tribunal either suo motu or on an application made to it by the Central Government or by any person concerned, if it is satisfied that the auditor of a company has, **whether directly or indirectly, acted in a fraudulent manner or abetted or colluded in any fraud by, or in relation to, the company or its directors or officers**, it may, by order, direct the company to change its auditors:*

Provided that if the application is made by the Central Government and the Tribunal is satisfied that any change of the auditor is required, it shall within fifteen days of receipt of such application, make an order that he shall not function as an auditor and the Central Government may appoint another auditor in his place:

Provided further that an auditor, whether individual or firm, against whom final order has been passed by the Tribunal under this section shall not be eligible to be appointed as an auditor of any company for a period of five years from the date of passing of the order and the auditor shall also be liable for action under section 447.

Explanation I.-- It is hereby clarified that the case of a firm, the liability shall be of the firm and that of every partner or partners who acted in a fraudulent manner or abetted or colluded in any fraud by, or in relation to, the company or its director or officers.

Explanation II.-- For the purposes of this Chapter the word "auditor" includes a firm of auditors.

5.9. With regards to the alleged disqualification of Respondent No. 1 on



account of his employment as a professor, it is submitted by the petitioner that Respondent No. 1 has been serving as an Associate Professor at Camp Education Society's Dr. Arvind Telang Senior College, affiliated to Savitribai Phule Pune University, since 25th January 1999. The direct teaching hours prescribed by UGC are 20 hours per week; however, Respondent No. 1 avers that his actual teaching hours are limited to 16 hours per week. It is submitted that under Regulation 190A of the Chartered Accountants Regulations, 1988, the relevant ceiling on outside employment is defined accordingly- *“Any member engaged in any other business or profession, in the area of engagement as lecturer in an university, affiliated college, educational institution, coaching organization, private tutorship provided the direct teaching hours do not exceed 25 hours a week, shall be entitled to perform attached function.”* and Respondent No. 1's engagement falls within the permissible limits.


- 5.10. It is further submitted by the Petitioner that Respondent No. 1 stands disqualified from acting as an auditor by virtue of Section 141(3)(g) of the Companies Act, 2013, which provides that a person who is in full-time employment elsewhere is not eligible for appointment as an auditor of a company. It is noted that Respondent No. 1, admits to being employed as an Assistant Professor at the aforementioned institution. It is observed that the exact nature and extent of his employment cannot be conclusively determined on the basis of the material presently available on record. Accordingly, this issue is not capable of adjudication at this stage. It is, however, noted that any breach of the Regulations of the Institute of Chartered Accountants of India renders a member liable for professional misconduct and consequent disciplinary action by the ICAI.
- 5.11. On the question of the maintainability of proceedings under Section 140(5) of the Companies Act, 2013, reference is made to the decision of the Hon'ble Supreme Court in *Union of India v. Deloitte*



Haskins and Sells LLP and another (2023 SCC Online SC 557), wherein the Apex Court unequivocally held that the “application/proceedings under section 140(5) of the Act, 2013 is held to be maintainable even after the resignation of the concerned auditors and now the NCLT therefore to pass a final order on such application after holding enquiry in accordance with law and thereafter on the basis of such final order, further consequences as provided under the second proviso to section 140(5) shall follow. However, it is made clear that we have not expressed anything on merits on the allegations against the concerned auditors for the NCLT/Tribunal to pass a final order on the application under section 140(5) of the Act, 2013.”

- 5.12. As noted above, the alleged fraud in the affairs of the Respondent Company took place during January 2012 to March 2014 when the Respondent No. 1 was not statutory auditor of the Respondent Company, and he is stated to have signed the financial statements for the year ended 31.03.2013 onwards in April 2018, when admittedly he was conveyed about his appointment as statutory auditor by the Respondent Company thereby evidencing that he was not associated with the Respondent Company till the last collection from the defrauded creditors took place. The allegations of the Petitioner primarily stem from the attestation of the financial statements of the Respondent Company, carrying printed ante-date corresponding to each year, by the Respondent No. 1 belatedly in 2018, pursuant to his appointment as statutory auditor, done in irregular manner, to attest those financial statements, belatedly in a manner that attestation thereof appears to have been carried out in the each of relevant year and without following due audit procedures, and Respondent No. 1 being not eligible to attest such financial statements on account of his employment with a school.

- 5.13. It is noted that the Directors of Respondent No. 2, in their



statements recorded before the IO, admitted that no business was carried out by the Company since 2014 and that no Annual General Meetings or meetings of any nature were convened during this period. It therefore follows that all agenda notices, resolutions, and meeting approvals reflected in both sets of Balance Sheets are false, back-dated, and manufactured documents. It follows therefrom that Respondent No. 1 was appointed merely by way of a letter dated 01.04.2018, without the requisite shareholder approval at a duly convened general meeting as mandated under the Companies Act, 1956 or the Companies Act, 2013 which is in contravention of Section 139 of the Companies Act, 2013.

5.14. It is further noted that there exists a material distinction between auditing and signing Balance Sheets of previous financial years with current dates, and signing Balance Sheets of previous financial years with dates of relevant year itself. In the present case, Respondent No. 1 signed the Balance Sheets of previous financial years back-dated, at a time when he had not been duly appointed by the Board for those periods. It is further observed that all shareholder meeting agenda notices, approvals and Director Reports reflected in both sets of Balance Sheets are ante-dated, inasmuch as no Board Meeting or Annual General Meeting was held since 2014.

5.15. It is observed that Respondent No. 1 has placed blame on Mr. Sandip Yadav Rahane and filed a police complaint that was never registered. It is also noted that his Digital Signature Certificate (DSC) was used in other companies for certification of various forms.


5.16. The IO, in his Supplementary Report, has recorded that the funds of Respondent No. 2 were misused by its directors, and in particular by Mr. Machindra Mundhe, who exercised control over all the assets and properties of Respondent No. 2 and derived undue advantage and benefit therefrom. The relevant extract from the IO's observations is reproduced

hereinbelow:

- j) Sh. Buvasaheb Janu Bochare has alleged that Sh. Machindra Baban Mundhe, Managing Director without their knowledge nor consent of the board, is misusing the funds of the customers without allotment of plots nor any refund was made to the customers and has requested for in-depth investigation. Hence, it is clear that the funds of the company has been misused by the directors especially Sh. Machindra Baban Mundhe, Managing Director who has control of all the assets/properties and has taken undue advantage or benefit as he himself has admitted that he has sold three properties worth amounting to Rs.1.48 Crores for repayment of advances to customers for which no documentary evidence was shown nor any books of accounts/vouchers/bills/bank statements were provided to the undersigned inspite of reminders.


5.17. It is further observed that Respondent No. 1 made statutory declarations in the forms submitted to the ROC. In the relevant forms, Respondent No. 1 expressly declared that there were no qualifications or adverse remarks in his Audit Reports, however, it is noted from the perusal of the audit reports that such reports do not contain qualifications also. Accordingly, the said declaration made while filing the financial statements cannot be faulted as the same is based on the Audit Report issued in relation to the financial statements, which corroborates with the declaration.

5.18. It is alleged that the Company had not maintained any books of accounts, vouchers, or bills since 2014, which is corroborated by the statement of Director as well as Statutory Auditor, whereby, they have admitted drawing financial statements on basis of Bank Statements and other records. Accordingly, it follows that Respondent No. 1 proceeded to issue audit reports on the financial statements without examining any records, signed the same without conducting a genuine audit, and issued an audit report to the Company representing that the accounts presented a



true and fair view of the Company's financial position without carrying out audit procedures and maintaining standards as mandated under Standards of Auditing issued by the Auditing and Assurance Standards Board of Institute of Chartered Accountants of India, for dissemination to the ROC, and the inspecting authority. Accordingly, it can be said that Respondent No. 1 has grossly acted in contravention of the provisions of the Companies Act, 2013 as well as the applicable Standards of Auditing, which bounds him to follow them while discharging his functions as statutory auditor for attestation of annual financial statements.

5.19. However, that be so, it is noted that section 140(5) requires that the auditor of a company to act in a fraudulent manner or abet or collude in any fraud by, or in relation to, the company or its directors or officers. The conduct of the auditor has to be fraudulent in any fraud by the company or in relation thereto. In this context, it is noted that the IO has not found any discrepancy in the amounts reported in the financial statements attested by the auditors, even though the Directors furnished certain documents, including a list of investors, details of properties held by the Company, bank details, and property papers, all of which were in the custody of Mr. Machindra Baban Mundhe, Managing Director, to the Inspecting Officer. Further, it is also noted that there is no difference in the financial numbers reported in both sets of financial statements, and both the financial statements reports identical number under each head of financial statements. It is also noted that the Respondent No. 1 has also admitted to have compiled those financial statements basis such list of investors, details of properties held by the Company, bank details, and property papers. It is further noted that the 1st set of financial statement filed with ROC did not contain any audit report, and the audit report submitted with 2nd set to IO contains an audit report, which is dated 20.04.2018, indicating that the audit report to such financial statements was issued prior to filing of financial statements with ROC on 30.04.2018,



though the same were not appended thereto. Further, these financial statements were only drawn in April, 2018, as is evident from the signature of three directors, who were appointed in January, 2018.

5.20. It is further noted that 1st set of financial statements were filed with ROC after conclusion of inspection conducted by IO, while the IO himself was provided the financial records. It is further noted that the Respondent No. 1 in the “Annexure A” attached to the Audit Report for FY 2015-16 has stated that *“The Company has not accepted any deposits from the public and hence the directives issued by the Reserve Bank of India and the provisions of Sections 73 to 76 or any other relevant provisions of the Act and the Companies (Acceptance of Deposit) Rules, 2015 with regard to the deposits accepted from the public are not applicable, however Company accepted the advances from customer for plot of land and agriculture products”*. It is further noted that the main object of the company in Financial Statement in year ending 2013 is stated as *“the business of purchase and sale of plot and developments and investments in various businesses.”* And the auditor has also stated in audit report to said financial statement that *“company has not taken term loans from banks, but the company has accepted advances from the customers as against plot of land, agricultural land and agricultural products of Rs. 1,10,03,120/-.”* It is further noted that no evidence has been placed on record to suggest any communication or information with Respondent No. 1 in relation to commission of alleged fraud in the affairs of Respondent Company or any inspection in relation thereto.

5.21. It is further noted that the present petition is based on opinion of the inspector that a fraud has been perpetrated in the affairs of the respondent Company. The relevant conclusion drawn by the inspector at Para 10 (vii)(k) states that *“.....Prima facie it indicates that the directors has involved in the fraud and mismanagement of the funds of the company.*



Since, the company had suspended its business since 2014 and that too there had been a deadlock in the board and finally that substratum of the company was gone. Hence in order to safeguard the interest of 700 or more customers as well as properties of the company immediate steps are required to be taken to safeguard the properties valuing around Rs. 7 to 10 Crores (present market rate as admitted by all the directors) and should be informed to the concerned....” Though, the petitioner has filed a criminal complaint before Special Court in relation to said fraud and Respondent No. 1 has also been impleaded as one of the parties, however, there is no final finding returned by said Court in relation to the occurrence of the fraud. It is further noted that this Tribunal has ordered winding up the Respondent Company on the basis of Application filed by the Petitioner herein in terms of Section 271(c) of the Companies Act, 2013 in view of, no objection received from the Directors of Respondent company to such winding-up based on prima facie finding of IO protecting their rights and contentions regarding the allegations made against them. Accordingly, it can also not be said that this Tribunal has formed a final opinion that the affairs of the Respondent Company were carried out in fraudulent manner.

- 5.22. Further, Explanation to section 447 of the Companies Act, 2013 defines “fraud” in relation to affairs of a company or anybody corporate, to *“include any act, omission, concealment of any fact or abuse of position committed by any person or any other person with the connivance in any manner, with intent to deceive, to gain undue advantage from, or to injure the interests of, the company or its shareholders or its creditors or any other person, whether or not there is any wrongful gain or wrongful loss.”* It is clear from the plain reading of said definition that there has to be an intent to deceive or to gain undue advance or to injure the interests. Attestation of financial statements after about 4 years from commission of fraud by the Respondent Company and its directors cannot result into



imputing an intent on the part of statutory auditor, thereby holding him liable for consequences arising from commission of fraud by the auditee company. It is not the case that such financial statements led the investors to believe the affairs of the company in the position in contrast to reality, more so when those financial statement were not in existence when the investor deposited their money with the Respondent Company. Further, the Respondent company is owned by group of persons, who are closely knit and there is no borrowing from any third person. Accordingly, it cannot be said that the attestation of the financial statements in April, 2018 was done to cause deception to any stakeholders and to make them believe what was not true.

5.23. It is admitted by the IO himself in final conclusion that the properties owned by the company are stated to be more than the liabilities reflecting in the financial statements, though it may exceed when the unreasonable promised high rate of return are factored into. To establish an intent, the knowledge of perpetration of fraud and the possibility of deception of stake holders is *sine qua non*, however, no material, except the facts of his appointment in contravention of provisions of Companies Act and Code of Conduct issued by the Regulator (ICAI), has been placed on record by IO to evidence such knowledge or deception. Hence, we are of considered view that the necessary ingredients of Section 140(5) of the Companies Act, 2013 are not met at this stage. However, the petitioners shall be at liberty to approach this Tribunal, if the Special Court renders a conclusive finding of Commission of Fraud in the affairs of Respondent Company and knowledge of the Respondent No. 1 in relation to such fraud at the time of attestation of these financial statements.

5.24. Nonetheless, the manner in which he has discharged his function as statutory auditor after his appointment cannot be held to be bona-fide and in accordance with the professional conduct, an auditor is required to



discharge his duties. In our considered view, the allegations against the Respondent No. 1 are primarily in relation to contravention of provisions of Companies Act and reflects disregard to the accepted audit procedures and practices, for which, a disciplinary proceeding by the regulator i.e. Institute of Chartered Accountants of India be initiated and the RoC may take appropriate proceeding in relation to the contravention of various provision as well as IO report.

5.25. From the above discussions, we are of the considered opinion that Respondent No. 1 had acted without exercising due care and diligence while attesting the financial statements, and he may be liable for contravention of provisions of Companies Act, 2013 as well as action by the Regulator in relation to professional misconduct on his part, however, an order in terms of section 140(5) cannot be made in the absence of a demonstrated intent on his part in commission of fraud, which was committed 4 years before he attested the financial statements. However, it is clarified that our observation in this order are in context of section 140(5) of the Companies Act, 2013, particularly on the premise that no discrepancy in the amounts stated in attested financial statements has been pointed out by the IO and there is no clear finding in relation to knowledge of respondent No. 1 about commission of alleged fraud, accordingly, such observation shall not have any bearing on the proceedings, if any, initiated by the Central Government against the Respondent no. 1 under Section 447/448 of the Companies Act, 2013 before Special Court.



5.26. The Registry is directed to send a copy of this order to Disciplinary Committee of Institute of Chartered Accountants of India for their information.

5.27. In terms of the above, CP No. 2996/2019 is disposed of.

Sd/-

Prabhat Kumar
Member (Technical)

Sd/-

Sushil Mahadeorao Kochey
Member (Judicial)

/A/