

## Lecture No. 4 of Professional Ethics

### (3) Part I of First Schedule to CA Act, 1949:

Clause 1: Restriction on allowing use of name or firm's name to others

(Exception - Member + CoP + Partner/Employee)

Clause-2: Sharing of Profits of professional work with others

(Exception - Member / Partner / R. Partner / Legal rep of d. partner / S3A-Q / S3A-M)

Clause-3: Sharing of Profits of professional work of others

(Exception - Member / Reg. S3A - M + Q)

Clause-4: Partnership with others

(Exception - Member in practice / Member - S3B / Qualifications - S3A)

Clause-5: Securing professional work through services of others or unethical means

(Exception: Partner/Employee)

Clause-6: Solicitation of client of professional work

(Exception - another member in practice / responding to tenders / Website)

Clause-7: Advt. of professional attainments / Services or using designation other than "Ch. Acc"

(Exception - J.P.; Reg. values)

### Clause-8: Prior communication with predecessor auditor:

A CA in practice shall be deemed to be guilty of professional misconduct, if he accepts a position as auditor, previously held by another CA or Certified auditor, without first communicating with him in writing.

Note: Communication is required in case of Every audit (Replacement position)

Internal auditor (X) → Internal auditor (Y)

St. Auditor (A) → St. Auditor (B)

Communication is not required in case of parallel audit. e.g. New Internal auditor is not required to communicate with Statutory auditor.

Guidelines / Council decisions over clause 8: - from Book -

## Clause 9

### Compliance of Sec. 139 and 140 of Companies Act, 2013:

A CA in practice shall be deemed to be guilty of professional misconduct, if he accepts an appointment as auditor of a company, without first ascertaining the compliance of Sec. 139 and 140 of Companies Act, 2013 (read with Sec. 141).

✓ Sec. 139: Appointment of auditor

✓ Sec. 140: Removal, resignation and requirement of special notice.

✓ Sec. 141: Eligibility, qualification and disqualification of auditor.

### Clause - 10: Restriction on charging fees on %age basis:

A CA in practice shall be guilty of professional misconduct, if he charges or offers to charge or accepts or offers to accept, in respect of professional work, fees which is based on:

✓ (a) %age of profits;

✓ (b) contingent upon findings; or

✓ (c) results of such engagement.

except as permitted under Regulation 192.

Reg. 192: Exceptions:

(a) Receiver or liquidator: %age of realisation or disbursement of assets.

(b) Co-operative Society :

(c) Values for direct taxes :

(d) Mngt. consultancy services:

✓ (e) fund raising services :

✓ (f) Debt recovery services :

✓ (g) cost optimisation services :

✓ (h) Other prescribed services :

(JP or Non-assurance service to

Non audit clients)

Fees, which is fixed on %age basis or contingent upon findings - based on any criteria prescribed by Govt. or Regulator - permitted.

## Clause - 11: Restriction on engaging into other occupations:

A CA in practice shall be deemed to be guilty of professional misconduct, if he engages into any business or occupation other than that of profession of Chartered Accountancy, unless permitted.

Note: A practicing CA may become director of a Company; provided he or any of his partner is not the auditor of that Company. However, to become M.D./WTD, prior permission from Council is required.

Note: Reg. **190A** of CA Regulations provides a list of occupations in which a practicing CA may be engaged generally or with prior approval of Council.

Q. [Whether Mr. X (practicing CA) can be a director of H Ltd. if his partner Mr. Y (practicing CA) is auditor of S Ltd. (Sub. of H Ltd.)]

Ans: Though there is no legal restriction under the provisions of Companies Act, 2013 or CA Act, 1949, but such a position might affect independence of Mr. Y, hence such association is to be avoided.

Regulation 190A: - from book -

## Clause - 12: Signing of reports and financial statements:

A CA in practice shall be deemed to be guilty of professional misconduct if he allow a person, not being a member in practice or a member not being his partner, to sign on his behalf or behalf of his firm any report or financial statements.

Note: Sec. 26 of CA Act, 1949: Unqualified persons are not authorised to sign on behalf of Chartered Accountants.

Sec. 145 of Companies Act, 2013: Only the partner who is a CA - authorised to sign.

Conclusion: Practising CA can allow only a member holding CoP and his partner to sign on his behalf or firm behalf.

Power to sign routine documents on which a professional opinion or authentication is not required, may be delegated.

Example: - from book -

