

HIGH COURT OF GUJARAT (D.B.)

PIPARA AND CO LLP

Versus

GUJARAT STATE POLICE HOUSING CORPORATION LIMITED

Date of Decision: 17 June 2021

Citation: 2021 LawSuit(Guj) 1850

Hon'ble Judges: [J B Pardiwala](#), [Vaibhavi D Nanavati](#)

Case Type: Special Civil Application

Case No: 7342 of 2021, 7340 of 2021, 7270 of 2021

Subject: Company, Constitution

Acts Referred:

[Constitution Of India Art 226](#)

[Companies Act, 1956 Sec 224](#), [Sec 619](#), [Sec 225](#), [Sec 230](#), [Sec 232](#), [Sec 233](#), [Sec 229](#),
[Sec 228](#), [Sec 231](#), [Sec 227](#), [Sec 226](#)

[Comptroller And Auditor Generals \(Duties, Powers And Conditions Of Service\) Act, 1971 Sec 19A](#), [Sec 19](#)

[Companies Act, 2013 Sec 140\(1\)](#), [Sec 140](#), [Sec 139\(5\)](#), [Sec 143](#), [Sec 143\(5\)](#), [Sec 2\(45\)](#),
[Sec 139](#), [Sec 141](#), [Sec 139\(6\)](#), [Sec 144](#), [Sec 139\(7\)](#), [Sec 140\(5\)](#), [Sec 2\(20\)](#),
[Sec 143\(6\)](#), [Sec 143\(7\)](#).

[Companies \(Audit And Auditors\) Rules, 2014 R 7](#)

Final Decision: Application disposed

Advocates: [Manish Bhatt](#), [M R Bhatt & Co](#), [Munjaal M Bhatt](#), [Chintan Dave](#), [G H Virk](#),
[Varun K Patel](#), [Vishal Dave](#), [Keyur Gandhi](#), [Nanavati Associates](#)

Cases Referred in (+): 11

J.B.Pardiwala, J.

[1] As the issues raised in all the captioned writ applications are the same, those were taken up for hearing analogously and are being disposed of by this common judgement and order.

[2] In administrative law rule of natural justice are foundational and fundamental concepts. Law is now well settled that the principles of natural justice are part of legal and judicial proceedings.

[[Rattan Lal Sharma vs. Managing Committee, Dr. Hari Ram Higher Secondary School](#), 1993 AIR(SC) 2155 para 9]

[3] We are tempted to preface our judgement with the aforementioned observations of the Supreme Court as in the case on hand the writ applicant has been very badly condemned and that too unheard.

[4] The Special Civil Application No.7342 of 2021 is treated as the lead matter.

[5] By this writ application under Article 226 of the Constitution of India, the writ applicants have prayed for the following reliefs:

"(a) This Hon'ble Court may be pleased to issue a writ of mandamus or any other writ, order or direction of petitioner No.1 as statutory Auditor effected for F.Y. 2020-21 and be pleased to grant consequential relief of reinstatement.

(b) This Hon'ble Court may be pleased to issue a writ of mandamus or any other writ, order or direction directing respondents to produce on record the letter dated 05.12.2020, in the event respondent No.1 or respondent No.3 has relied on the said letter before taking the illegal action of terminating the assignment given to petitioner No.1 and subsequently provide an opportunity to the petitioners to respond to the same.

(bb) This Hon'ble Court may be pleased to issue a writ of mandamus or any other writ, order or direction quashing and setting aside the letter dated 05.12.2020 issued by respondent No.2 to various PSUs including the present respondents;

(bbb) Pending admission, final hearing and disposal of the petitioner, this Hon'ble Court may be pleased to stay the effect, implementation and execution of the letter dated 05.12.2020 issued by respondent No.2 to various PSUs including the present respondents.

(c) Pending admission, final hearing and disposal of the petition, this Hon'ble Court may be pleased to stay the effect, implementation and execution of the termination of petitioner No.1 as statutory Auditors for F.Y. 2020-21 and permit the petitioners to complete the work as agreed for F.Y. 2020-21.

(d) In any view of the matter, this Hon'ble Court may be pleased to pass any such order(s) directing respondent No.1 or respondent No.3 not to consider the letter

dated 05.12.2020 (if placed reliance upon) as a ground for blacklisting the petitioners for future agreements;

(e) This Hon'ble Court may be pleased to grant ad-interim ex-parte relief in terms of paragraph 22(c) and (d) hereinabove.

(f) Pass any such order(s) that this Hon'ble Court deems fit in the facts and circumstances of the case."

[6] The facts giving rise to this writ application may be summarized as under:

[7] The writ applicant No.1 is a Chartered Accountant LLP claiming to be working across the verticals of Assurance, Taxation, Accounting, ERP Implementations, Management Consultancy, Cross Boarder Advisory, Investigations, Forensic Audits, Corporate Litigation, Compliance, GRC, M&A's and allied activities.

[8] The writ applicant No.2 is a partner of the Pipara and Company, LLP.

[9] The respondent No.1 is an undertaking of the Gujarat Government and is established to undertake construction of residential, non-residential and all other types of building required for the Gujarat Police, Jails, Home Guards amongst other activities.

[10] The respondent No.3 herein is the Comptroller and Auditor General of India (hereinafter referred to as "C&AG") who performs such duties and exercises such powers in relation to the accounts of the Union and the State.

[11] The appointments to carry out either the statutory audit or internal audit of a Public Sector Undertaking (PSUs), such as the respondent No.1 is done through the respondent No.3 - C&AG. In accordance with the procedure prescribed, a Chartered Accountant firm like the writ applicant No.1 herein would apply to the C&AG for empanelment. After due verification and checks and balances, the said firm would get empanelled with the C&AG, who, thereafter, would recommend appointment of the said firm to the various PSUs, depending on the scale of work vis-a-vis the size of the firm.

[12] In the case on hand, the writ applicant got empanelled with the C&AG for the financial year 2020-21. The writ applicant firm was also empanelled with the C&AG for the previous years and was already appointed as the statutory authority for the respondent NO.1 for the F.Y. 2019-20.

[13] Post empanelment, under the email dated 24th August 2020, the C&AG informed the respondent No.1 that the writ applicant No.1 has been appointed as the statutory auditor for the respondent No.1 for the F.Y. 2020-21. The same email was forwarded by

the respondent No.1 to the writ applicant No.1, who confirmed the appointment on 24th August 2020 itself.

[14] Immediately thereafter on the very next day i.e. on 25th August 2020, the C&AG portal reflected the name of the writ applicant No.1 as the statutory Auditor for the respondent No.1 for the F.Y. 2020-21. Between September 2020 and December 2020, the respondent no.1 had contacted the writ applicant No.1 for various works pertaining to the statutory audit for the F.Y. 2020-21 as well as queries regarding F.Y. 2019-20, which were duly attended to by the writ applicant No.1.

[15] From January 2021 onwards, the respondent No.1 suddenly stopped responding to the calls of the writ applicant No.1 in respect of the queries raised. At first the writ applicant No.1 suspected that with the on-set of Covid-19 pandemic and surge of cases in India, the response was not forthcoming. Sometime thereafter, the officials of the respondent No.1 interacted with the officials of the writ applicant No.1 over phone, but the former consciously refrained from sending any email or answering any query raised on record.

[16] On 22nd December 2021, the writ applicant No.1 checked the C&AG portal to ascertain the status of its appointment. The writ applicant was shocked to see the portal display "nil" appointment in the name of the writ applicant. The same conveyed that the respondent No.1 had technically terminated the appointment of the writ applicant without prior notice.

[17] Upon inquiry, the writ applicant learnt that some time in January 2021, the respondent no.1 had already appointed one another Chartered Accountant firm to undertake the work of the statutory audit for the F.Y. 2020-21 and had uploaded the relevant ADT - 1 Form on 4th February 2021.

[18] In such circumstances referred to above, the writ applicants came before this Court with the present writ application.

[19] This writ application was take up for hearing by one of us (Vaibhavi D. Nanavati, J) sitting as a Single Judge during the summer vacation on 12th May 2021. The following order came to be passed:

"Draft amendment supplied by the learned advocate for the petitioner is ordered to be taken on record. The same shall be carried out within a period of one week.

Heard learned Senior Counsel Mr.Manish Bhatt for the petitioners and learned AGP Mr.Dhawan Jayswal for the respondent no.2-State.

It is stated by the learned Senior Counsel Mr.Manish Bhatt for the petitioners that petitioner no.1 is a Chartered Accountant LLP empaneled with Indian Banking Association for forensic audit of Major Frauds and is also one of the 10 firms empaneled with SEBI as Forensic Auditors. It is stated that the petitioner no.2 is a partner of Pipara & Co., LLP and operates out of New Delhi. It is stated that the petitioner no.1 got empaneled with C&AG for the Financial Year 2020-21. It is stated that post empanelment, by email dated 24.08.2020, C&AG informed respondent no.1 that the petitioner no.1 is being appointed as Statutory Auditor for respondent no.1 for Financial Year 2020-21. It is stated that the respondent no.1 suddenly stopped imparting work to the petitioner from January-2021. It is stated that the petitioner no.1 checked the C&AG portal on 22.04.2021 to check the status of their appointments and it came to notice that the portal displayed 'Nil' appointments in the name of petitioner, which meant that respondent no.1 had technically terminated petitioner no.1's appointment without informing them. The screen shot is annexed at Annexure-C to this petition. It is stated that newly appointed appointee will be joined as party respondent.

Let Notice be issued making it returnable on 17.05.2021. Learned AGP Mr.Dhawan Jayswal waives service of notice for the respondent no.2-State.

Direct service permitted through Fax message, email and/or any other suitable electronic mode."

[20] The aforesaid facts may be summarized in the form of dates and events as under:

Date	Particulars
07.02.2020	Letter addressed by Anti-Corruption Bureau to State of Gujarat
21.08.2020	Letter addressed by the General Administration Department to the Finance Department relying on letter dated 07.02.2020
24.08.2020	C&AG informed the respondent No.1 that the writ applicant No.1 has been appointed as the statutory Auditor of the company for F.Y. 2020-21.
25.08.2020	C&AG portal reflected the name of the writ applicant No.1 as the statutory Auditor of the company for F.Y. 2020-21.
September to December 2020	Work carried out by the writ applicant No.1 in terms of its appointment.

05.12.2020	Letter addressed by the Finance Department to 8 PSUs including the respondent No.1 relying on letters dated 07.02.2020 and 21.08.2020 making certain "suggestions".
18.12.2020	Letter addressed by the respondent No.1 to the C&AG informing them about letter dated 05.12.2020 and requesting for appointment of another suitable CA firm, thereby misconstruing letter dated 05.12.2020.
05.01.2021	Letter addressed by the C&AG to the respondent No.1 appointing the respondent No.4 as the new Auditor.
16.01.2021	Letter addressed by the respondent No.4 to the C&AG accepting their appointment.
04.02.2021	Form ADT-1 required to be uploaded by the respondent No.1 certifying appointment of a new Auditor uploaded online.
22.04.2021	C&AG portal showed 'NIL' appointments qua the writ applicant No.1 meaning thereby the work allotted by the C&AG terminated.
27.04.2021	Petition filed.

• **SUBMISSIONS ON BEHALF OF THE WRIT APPLICANTS:**

[21] Mr. Manish Bhatt, the learned Senior Counsel assisted by Mr. Munjal M. Bhatt, the learned advocate appearing for the writ applicants vehemently submitted that the action on the part of the respondents would be termed as absolutely arbitrary and in gross violation of the principles of natural justice. Mr. Bhatt would submit that it was not expected by an authority like the Comptroller and Auditor General of India to act in such a highhanded manner.

[22] Mr. Bhatt would submit that in response to the notice issued by this Court, the respondent No.1 has filed an affidavit in which there is a reference of a letter dated 5th December 2020 addressed by the respondent No.2 (State of Gujarat, Finance Department) to few PSUs including the respondent No.1 herein informing that the writ applicants - firm shall not be engaged to act as the Auditor in public. Mr. Bhatt would submit that the respondent No.1 blindfoldedly followed the letter addressed by the respondent No.2 and proceeded to appoint a new statutory Auditor i.e. the newly impleaded respondent No.4 - B. P. Bang and Company.

[23] Mr. Bhatt, thereafter, invited the attention of this Court to the letter dated 5th January 2021 addressed by the office of the C&AG to the respondent No.1 herein informing that a new Chartered Accountant firm has been appointed as the new Auditor in the wake of the appointment of the writ applicant being terminated. This,

according to Mr. Bhatt, was in gross violation of the principles of natural justice, as, at no point of time, the respondent No.3 - C&AG gave any opportunity of hearing to the writ applicant.

[24] Mr. Bhatt, thereafter, invited the attention of this Court to a letter dated 21st August 2020 addressed by the General Administrative Department, State of Gujarat to the Additional Chief Secretary, Department of Finance to take up the proceedings in accordance with the observations made by the Anti-Corruption Bureau of Ahmedabad. In this regard also, according to Mr. Bhatt, the writ applicant was not put to any notice.

[25] Mr. Bhatt invited the attention of this Court to Section 139 of the Companies Act, 2013. Section 139 falls in Chapter X titled as the "Audit and Auditors". Section 139 talks about the appointment of Auditors. Thereafter, Mr. Bhatt invited the attention of this Court to Section 140 of the Act, 2013. This is with respect to the removal, resignation of auditor and giving of special notice. It is argued by Mr. Bhatt that any Auditor appointed under Section 139 can be removed from his office before the expiry of its term only by a special resolution of the company after obtaining the prior approval of the Central Government in that behalf in the prescribed manner. However, the emphasis is laid by Mr. Bhatt on the proviso to sub-section (1) to Section 140 which provides that before taking any action under sub-section (1), the Auditor concerned shall be given a reasonable opportunity of being heard. It is submitted that the removal of the writ applicant as the Auditor could be said to be in gross violation of the provisions of Section 140 of the Act. Mr. Bhatt also invited the attention of this Court to the rules called as "the Companies (Audit and Auditors) Rules, 2014", more particularly, Rule 7 which prescribes the procedure for removal of the Auditor before expiry of his term.

[26] In such circumstances referred to above, Mr. Bhatt would submit that the removal of his client as an Auditor could be termed as a very highhanded and arbitrary action and in gross violation of the principles of natural justice. He would submit that the reliefs prayed for in the writ application be granted in the interest of justice keeping in mind the concept of the "Rule of Law".

• **SUBMISSIONS ON BEHALF OF THE RESPONDENT NO.1:**

[27] Mr. Varun Patel, the learned counsel appearing for the respondent No.1 would submit that his client was left with no other option, but to comply with the directions issued by the respondent No.2 - State of Gujarat (Finance Department). Mr. Patel would submit that his client is in no way concerned with the cause or reason for the termination of the writ applicants as the statutory Auditor. The respondent No.1 is only concerned with the work of audit. He would submit that the C&AG, by letter dated 5th

January 2021, has appointed the respondent No.4 as the statutory Auditor of the respondent No.1 - Corporation for F.Y. 2020-21. Mr. Patel would submit that although the writ applicant was appointed as the Auditor to undertake the audit work of the respondent No.1 - Corporation, yet nothing substantial was done by the writ applicant or in other words, the writ applicant had yet to commence with the work of statutory audit and by that time, the respondent No.4 came to be appointed as the Auditor. Mr. Patel would submit that the respondent No.4 has commenced the work of audit.

[28] Mr. Patel would submit that Section 140 of the companies Act, which is sought to be relied upon, has no application in the present case as Section 140 talks about removal of Auditor from his office by the company and that too, after obtaining the prior approval of the Central Government. Section 140 does not talk about removal of an Auditor appointed under Section 139 by the C&AG. According to Mr. Patel, if sub-section (1) of Section 140 is not applicable, then the proviso to the same, which provides for a reasonable opportunity of being heard, would also not apply.

[29] In such circumstances referred to above, Mr. Patel prays that the present writ application may not be entertained the same be rejected.

• **SUBMISSIONS ON BEHALF OF THE RESPONDENT NO.3 - C&AG:**

[30] Mr. Gursharan Virk, the learned counsel appearing for the respondent No.3 - C&AG, with his usual fairness, submitted that an opportunity of hearing ought to have been definitely granted to the writ applicant and before removing the writ applicant as the statutory Auditor. Mr. Virk would submit that although it is the stance of all other learned counsel appearing for the respondents that Section 140 of the Act, 2013 would not apply, yet, according to him, Section 140 would apply and before taking any decision to remove the writ applicant as the Auditor, an opportunity of hearing should have been granted. Mr. Virk submitted that the entire confusion came to be created by the State Government. The State Government smacked of some foul play at the end of few employees of one of the statutory Corporations (other than the respondent No.1) in which the writ applicant was appointed as the Auditor of the said Corporation. According to Mr. Virk, some of the office bearers of the said Corporation were found to be in possession of the assets disproportionate to the known sources of their income and in this regard, the Anti-Corruption Bureau, State of Gujarat took up this issue. According to Mr. Virk, it is the case of the State Government that as the writ applicant was appointed as the statutory Auditor of the said Corporation, during the work of audit, it would have definitely come to its notice of the disproportionate assets of the office bearers, and in such circumstances, the writ applicant owed a duty to inform about the same to the State Government. It is the failure on the part of the writ applicant to inform the State Government as regards the disproportionate assets, that

annoyed the authorities concerned, which led to the letters, which have been referred to above. However, Mr. Virk submits that the writ applicant ought not to have been condemned so badly without giving any opportunity of hearing. He would submit that his client i.e. the respondent No.3 would abide by whatever order this Court may deem fit to pass in the larger interest of justice.

• **SUBMISSIONS ON BEHALF OF THE RESPONDENT NO.2 - STATE OF GUJARAT:**

[31] Mr. Chintan Dave, the learned A.G.P. appearing for the State would submit that this Court may not entertain this writ application and reject the same. He would submit that the decision to remove the writ applicant as the Auditor has been taken in the larger public interest.

• **SUBMISSIONS ON BEHALF OF THE RESPONDENT NO.4:**

[32] Mr. Vishal Dave, the learned counsel appearing for the respondent No.4 - newly appointed Auditor submitted that his client has already undertaken the work of statutory audit and would be filing his report in the near future. Even otherwise, the last date is 31st August 2021 and therefore, before 31st August 2021, the respondent No.4 will have to file the audit report. The learned counsel would submit that having undertaken the substantial work, the respondent No.4 may be permitted to complete the audit and file its report.

[33] In such circumstances referred to above, Mr. Dave submitted that there being no merit in this writ application, the same be rejected.

[34] We also heard Mr. Keyur Gandhi, the learned counsel appearing for the respondent No.1 in the Special Civil Application No.7270 of 2021.

• **ANALYSIS:**

[35] Having heard the learned counsel appearing for the parties and having gone through the materials on record, the following three questions fall for our consideration:

[1] Whether Section 140(1) of the Companies Act, 2013 applies to the C&AG?

[2] If the C&AG has appointed a Chartered Accountant firm as the statutory Auditor of a Public Sector Undertaking owned by the State Government and if the C&AG wants to remove such Auditor midway on the ground of fraud, etc., then what is the procedure as prescribed in law?

[3] Whether the writ applicant could have been removed as a statutory Auditor appointed under Section 139 of the Act, 2013 without giving any opportunity of hearing or without any show cause notice?

[36] Procedure under the old Act - Companies Act, 1956.

• **Sections 224-233 of the Companies Act, 1956.**

(a) Deals with the Auditor's appointment, removal and remuneration generally.

(b) Heading of the Sections:

- [224. Appointment and remuneration of auditors]
- 224-A. Auditor not to be appointed except with the approval of the company by special resolution in certain cases]
- [225. Provisions as to resolutions for appointing or removing Auditors]
- [226. Qualifications and disqualifications of auditors]
- [227. Powers and duties of auditors]
- [228. Audit of accounts of branch office of company]
- [229. Signature of audit report, etc]
- [230. Reading and inspection of auditor's report]
- [232. Penalty for non-compliance with Sections 225 to 231]
- [233. Penalty for non-compliance by auditor with Sections 227 and 229]
- [233-A. Power of Central Government to direct special audit in certain cases]
- [233-B. Audit of cost accounts in certain cases]

• **Section 619. Application of Sections 224 to 233 to Government companies .-**

(1) *In the case of a Government company, the following provisions shall apply, notwithstanding anything contained in Sections 224 to 233.*

(2) *The auditor of a Government company shall be appointed or re-appointed by the Comptroller and Auditor-General of India: Provided that the limits specified in*

sub-sections (1-B) and (1-C) of section 224 shall apply in relation to the appointment or re-appointment of an auditor under this sub-section.

(3) The Comptroller and Auditor-General of India shall have power-

(a) to direct the manner in which the company's accounts shall be audited by the auditor appointed in pursuance of sub-section (2) and to give such auditor instructions in regard to any matter relating to the performance of his functions as such;

(b) to conduct a supplementary or test audit of the company's accounts by such person or persons as he may authorise in this behalf; and for the purposes of such audit, to require information or additional information to be furnished to any person or persons, so authorised, on such matters, by such person or persons, and in such form, as the Comptroller and Auditor-General may, by general or special order, direct.

(4) The auditor aforesaid shall submit a copy of his audit report to the Comptroller and Auditor-General of India who shall have the right to comment upon, or supplement, the audit report in such manner as he may think fit.

(5) Any such comments upon, or supplement to, the audit report shall be placed before the annual general meeting of the company at the same time and in the same manner as the audit report.

[37] The Supreme Court in **Gurugobinda Basu vs. Sankari Prasad Ghosal and others, reported in 1964 SC 254** had held in the context of a Government company that the statutory Auditor is removable by the Central Government and the Comptroller and Auditor-General of India would exercise full control over him. We quote the relevant observations:

"8. It is clear from the aforesaid provisions that notwithstanding s. 224 of the Act which empowers every company to appoint an auditor or auditors at each annual general meetings, the appointment of an auditor of a Government company rests solely with the Central Government and in making such appointment the Central Government takes the advice of the Comptroller and Auditor-General of India. Under section 224(7) of the Act an auditor appointed under s. 224 may be removed from office before the expiry of his term only by the company in general meeting, after obtaining the previous approval of the Central Government in that behalf. The remuneration of the auditors of a company is to be fixed in accordance with the provisions of sub-s. (8) of s. 224. It is clear however that sub-s (7) of s. 224 does not apply to a Government company because the auditor of a Government

company is not appointed under s. 224 of the Act, but is appointed under sub-s. (2) of section 619 of the Act. It is clear therefore that the appointment of an auditor in a Government company rests solely with the Central Government and so also his removal from office. Under sub-s. (3) of s. 619 the Comptroller and Auditor-General of India exercises control over the auditor of a Government company in respect of various matters including the manner in which the company's accounts shall be audited. The Auditor-General has also the right to give such auditor instructions in regard to any matter relating to the performance of his functions as such. The Auditor-General may conduct a supplementary or test audit of the company's accounts by such person or persons as he may authorise in this behalf. In other words, the Comptroller and Auditor-General of India exercises full control over the auditors of Government company. The powers and duties of auditors in respect of companies other than Government companies are laid down in s. 227 of the Act but by virtue of sub-s. (1) of section 619 of the Act, the provisions in s. 227 of the Act do not apply to a Government company because a Government company is subject to the provisions of s. 619 of the Act. Under s. 619-A of the Act, where the Central Government is a member of a Government company, an annual report of the working and affairs of the company has to be prepared and laid before both Houses of Parliament with a copy of the audit reports and the comments made by the Comptroller and Auditor-general. Under s. 620 of the Act the Central Government may by notification direct that any of the provisions of the Act, other than Sections 618, 619 and 639, shall not apply to any Government company.

9. The net result of the aforesaid provisions is that so far as the Durgapur Projects Ltd. and the Hindustan Steel Ltd. are concerned, the appellant was appointed an auditor by the Central Government; he is removable by the Central Government and the Comptroller and Auditor-General of India exercise full control over him. His remuneration is fixed by the Central Government under sub s. (8) of s. 224 of the Act though it is paid by the company."

[38] Comptroller and Auditor-General's (Duties, Powers and Conditions of Service) Act, 1971.

• **Section 19. Audit of Government companies and corporations.**

(1) The duties and powers of the Comptroller and Auditor General in relation to the audit of the accounts of Government companies shall be performed and exercised by him in accordance with the provisions of the Companies Act, 1956 (1 of 1956).

(2) The duties and powers of the Comptroller and Auditor-General in relation to the audit of the accounts of corporations (not being companies) established by or under law made by Parliament shall be performed and exercised by him in accordance with the provisions of the respective legislations.

[39] Interpretation of Section 19 of the Comptroller and AuditorGeneral's (Duties, Powers and Conditions of Service) Act, 1971.

- i. For Companies, CAG has to follow the procedure under Companies Act, 2013.
- ii. For Corporations established by law (Parliament or State Legislature), CAG's duties and powers shall be performed and exercised by him in accordance with the provisions of the respective legislations.

[40] Procedure under the New Companies Act, 2013:

• **Section 2(20) of the Companies Act, 2013**

(20) "company" means a company incorporated under this Act or under any previous company law;

• **Section 2(45) of the Companies Act, 2013**

(45) "Government company" means any company in which not less than fifty one per cent. of the paid-up share capital is held by the Central Government, or by any State Government or Governments, or partly by the Central Government and partly by one or more State Governments, and includes a company which is a subsidiary company of such a Government company;

[41] Section 139 of the Companies Act, 2013:

"... .."

(5) Notwithstanding anything contained in sub-section (1), in the case of a Government company or any other company owned or controlled, directly or indirectly, by the Central Government, or by any State Government or Governments, or partly by the Central Government and partly by one or more State Governments, the Comptroller and Auditor-General of India shall, in respect of a financial year, appoint an auditor duly qualified to be appointed as an auditor of companies under this Act, within a period of one hundred and eighty days from the commencement of the financial year, who shall hold office till the conclusion of the annual general meeting.

(6) Notwithstanding anything contained in sub-section (1), the first auditor of a company, other than a Government company, shall be appointed by the Board of Directors within thirty days from the date of registration of the company and in the case of failure of the Board to appoint such auditor, it shall inform the members of the company, who shall within ninety days at an extraordinary general meeting appoint such auditor and such auditor shall hold office till the conclusion of the first annual general meeting.

(7) Notwithstanding anything contained in sub-section (1) or subsection (5), in the case of a Government company or any other company owned or controlled, directly or indirectly, by the Central Government, or by any State Government, or Governments, or partly by the Central Government and partly by one or more State Governments, the first auditor shall be appointed by the Comptroller and Auditor-General of India within sixty days from the date of registration of the company and in case the Comptroller and Auditor-General of India does not appoint such auditor within the said period, the Board of Directors of the company shall appoint such auditor within the next thirty days; and in the case of failure of the Board to appoint such auditor within the next thirty days, it shall inform the members of the company who shall appoint such auditor within the sixty days at an extraordinary general meeting, who shall hold office till the conclusion of the first annual general meeting."

[42] Section 140 of the Companies Act, 2013:

"140. Removal, resignation of auditor and giving of special notice.

(1) The auditor appointed under section 139 may be removed from his office before the expiry of his term only by a special resolution of the company, after obtaining the previous approval of the Central Government in that behalf in the prescribed manner: Provided that before taking any action under this sub-section, the auditor concerned shall be given a reasonable opportunity of being heard.

.... ..

(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."

[43] Section 143 of the Companies Act, 2013

"... .."

(5) In the case of a Government company, the Comptroller and Auditor-General of India shall appoint the auditor under sub-section (5) or subsection (7) of section 139 and direct such auditor the manner in which the accounts of the Government company are required to be audited and thereupon the auditor so appointed shall submit a copy of the audit report to the Comptroller and Auditor-General of India which, among other things, include the directions, if any, issued by the Comptroller and Auditor-General of India, the action taken thereon and its impact on the accounts and financial statement of the company.

(6) The Comptroller and Auditor-General of India shall within sixty days from the date of receipt of the audit report under sub-section (5) have a right to,-

(a) conduct a supplementary audit of the financial statement of the company by such person or persons as he may authorise in this behalf; and for the purposes of such audit, require information or additional information to be furnished to any person or persons, so authorised, on such matters, by such person or persons, and in such form, as the Comptroller and Auditor-General of India may direct; and

(b) comment upon or supplement such audit report: Provided that any comments given by the Comptroller and Auditor-General of India upon, or supplement to, the

audit report shall be sent by the company to every person entitled to copies of audited financial statements under sub section (1) of section 136 and also be placed before the annual general meeting of the company at the same time and in the same manner as the audit report.

(7) Without prejudice to the provisions of this Chapter, the Comptroller and Auditor-General of India may, in case of any company covered under sub-section (5) or sub-section (7) of section 139, if he considers necessary, by an order, cause test audit to be conducted of the accounts of such company and the provisions of Section 19A of the Comptroller and Auditor-General's (Duties, Powers and Conditions of Service) Act, 1971 (56 of 1971), shall apply to the report of such test audit."

[44] Interpretation of the provisions:

- As the Companies Act, 2013 makes a departure from the erstwhile Companies Act, 1956, the Constitution Bench judgement in Gurugobinda Basu (supra) would now not be applicable.

[A] Ramaiya's Guide to Company Act (18th Edition Volume 2) page 2764:

"Appointment of auditors [Proviso to Sub-section (2):

The appointment and removal of the auditor or auditors rested with the Central Government and the Auditor-General of India exercised full control over the auditor. [Guru Gobinda Basu v. Sankari Prasad Ghosal](#), 1963 33 CompCas 1132, 1136 (SC)

(This case law is not now relevant because under the 2013 Act, the auditor's appointment and removal does not rest with the Central Government.)"

[B] Under the Old Companies Act, 1956 the provision of the Section 619 was separate and was notwithstanding the general scheme of auditors under Sections 224-233. In such circumstances, the Supreme Court held that the CG and CAG retained the power to appoint and remove the auditor for the Government Companies.

[C] It appears that under Section 140(5) of Companies Act, 2013, the power is now with the NCLT.

[45] The scope and ambit of Section 139 (5)- 139(7) under the Companies Act, 2013 is wider than the Companies Act, 1956.

[A] Earlier phrase under Section 619 was "Government Companies".

[B] While in the 2013 Act, Section 139(5)-(7) uses the phrase "in the case of a Government company or any other company owned or controlled, directly or indirectly, by the Central Government, or by any State Government or Governments, or partly by the Central Government and partly by one or more State Governments".

- Section 140(1) is clear in it's language

[46] Interpretation of "auditor appointed under Section 139":

[A] CAG appoints auditors under Section 139(5)

[B] Section 140(1) refers to the auditor appointed under the Section 139.

[C] Section 139 includes Section 139(5)

[47] Interpretation of "Government Company" and Authorised established by law by the Supreme Court:

[A] "Government Company" would be subsumed by the "Company". The Supreme Court in the Hindustan Construction Company Limited vs. Union of India, 2019 SCCOnLineSC 1520 held as under:

"...63. As correctly argued by the learned Solicitor General, Shri Tushar Mehta, the first part of 'corporate person', as defined in Section 3(7) of the Insolvency Code, means a company as defined in Clause 20 of Section 2 of the Companies Act 2013. Sections 2(20) and 2(45) of the Companies Act, 2013, which define 'company' and 'Government company' respectively, are set out hereinbelow:

"2(20). "company" means a company incorporated under this Act or under any previous company law;"

"2(45). "Government company" means any company in which not less than fifty-one per cent of the paid-up share capital is held by the Central Government, or by any State Government or Governments, or partly by the Central Government and partly by one or more State Governments, and includes a company which is a subsidiary company of such a Government company."

64. From a reading of the aforesaid definition, Shri Tushar Mehta is clearly right in stating that the three entities who owe monies under arbitral awards to the Petitioner No. 1, being Government companies, would be subsumed within the first part of the definition. However, so far as NHAI is concerned, Dr. Singhvi's argument of either deleting certain words in Section 3(7) of the Insolvency Code, or adding

certain words in Section 3(23)(g) of the Insolvency Code into Section 3(7) cannot be accepted."

[B] The "PSU" established by any Act of Parliament or State Legislature also would be "Government Company" if incorporated under the Companies Act and if the CAG has appointed an auditor under Section 139.

[48] Thus, it appears that from the scheme of the Act, 2013 that if a company wants to remove the Auditor appointed under Section 139 of the Act from its office before the expiry of his term, then the company is empowered to do so only by way of passing a special resolution and that too after obtaining the previous approval of the Central Government in that behalf in the prescribed manner. At this stage, we may clarify that the company may want to remove an Auditor for many reasons. To illustrate take a case wherein the company is not satisfied with the working of the Auditor or the Auditor is working in a negligent manner or there is dereliction of duty on the part of the Auditor, then, in such circumstances, the company can remove the Auditor appointed under Section 139 after passing a special resolution in that regard with the prior approval of the State Government.

[49] In the aforesaid context, we shall now look into sub-section (5) of Section 140 referred to above. Sub-section (5) starts with a non obstante clause "without prejudice to any action under the provisions of this Act or any other law for the time being in force". Sub-section (5) of Section 140 would come into play if the Auditor appointed under Section 139 of the Act is found to have directly or indirectly, acted in a fraudulent manner or has abetted or colluded in any fraud by, or in relation to, the company or its Directors or officers. In such circumstances, the Tribunal either "suo motu" or on an application made to it by the "Central Government" or by "any person" concerned can direct the company to change its Auditor. Here, again, there is a grey area which needs to be looked into. A close reading of Sub-section (5) would indicate that the fraudulent act or any collusion of the Auditor concerned should be with respect to the company whose audit work the Auditor has undertaken. Therefore, Sub-section (5) takes care of altogether a different contingency i.e. other than sub-section (1) of Section 140. For the purpose of sub-section (1), the power of removal is with the company, after following the procedure prescribed therein and for the purpose of sub-section (5), the power is with the Tribunal.

[50] Section 140(5) of Companies Act, 2013 was considered by the Bombay High Court in N Sampath Ganesh vs Union of India, 2020 SCCOnLineBom 782).

Key Findings of the Bombay High Court

Para 204. In the light of the above, we find it appropriate to mention the relevant findings which crystalize out of our deliberations in the matter:

.....

VII.S.140(5) is part of the provision (S.140) which deals with the removal of CA or his resignation. Need of special resolution to remove CA or grant of opportunity to him in that connection are part of this scheme. The concerned CA though removed by special resolution or due to his resignation, is not visited thereby with any action for professional misconduct or prosecution for crime or any disability because of that removal or resignation.

....

IX. When NCLT comes across cases in which the company does not exercise its power under S. 140(1) or the CA does not resign and there is unholy collusion between them, it can order the company to change him.

....

XI. After NCLT issues the direction to company to change its CA, procedure under S. 140(1) need not be followed. Exercise of passing of special resolution which is contingent upon the desire of the majority is ruled out. CA against whom the company proposes to pass a special resolution is not prohibited from resigning after following the prescribed procedure. That option is not denied to & also available to CA when NCLT initiates the exercise towards directing the company to change him.

....

XVII. Debarment or disqualification under 2nd proviso to S. 140(5) follows automatically due to statutory mandate and NCLT has no option or discretion in that respect.

....

XXII. If despite such CA ceasing to be the CA of concerned Company, need for passing of a final order to change him is read into scheme of S. 140(5), it would overlook the absence of need to pass final order and violate its language. NCLT has been given the discretion whether to pass that final order or not, even after reaching the "satisfaction" and legislative wisdom behind it will be lost. It will introduce a discordant note in the scheme of S. 140 itself.

XXIII. Second proviso speaks of a "final order" and question is whether it needs to be construed in contradistinction with first proviso which contemplates passing of an urgent order within 15 days on application of Central Government prohibiting the "suspect auditor" to continue with audit work thereby enabling the Central Government to substitute him. This order under first proviso, according to the respondent Union of India is an interim order. According to UOI, the words "final order" in second proviso are to be understood with reference to this "interim" order.

XXIV. We find that S.140(5) in its substantive part, does not envisage any such interim order. It only speaks of an order and direction to company to change its CA. Thus final order to be issued under substantive part is to a Company only. The CA to be changed who opposes that change, may also be required to be heard under this substantive part as he may point out the want of material to sustain the subjective satisfaction. reached by NCLT.....

XXVII. But as object of S. 140(5) is to change the suspect auditor, the final order will always displace an existing auditor. Therefore order asking the Company to change the auditor, alone needs to be treated as final order which will attract the above disqualification or debarment. Element of subjective satisfaction rules out the need of a full fledged inquiry or an exercise to prove it in each & every case.

.....

XXXI. Threat of disqualification is only to expedite the change of CA as the "satisfaction" which triggers said jurisdiction is of a superior authority like NCLT. Intention is not to punish, but to prohibit a CA with prima facie dubious record to continue and to see that concerned Company appoints another CA of its choice as per law....

XXXV. Under first proviso to S. 140(5), in specified contingencies, due to urgency, NCLT has to pass order to change a CA within 15 days. There again the same procedure will be followed, but the Central Government can change or substitute the CA itself. There is no provision in 2013 Act & S. 139 also does not authorize the Central Government to appoint the CA for any company. Therefore this power given to Central Government does not take away the power of the concerned Company to appoint CA of its choice. Hence, even after the central government appoints the CA, said Company can exercise its right, Not only this, but said Company or its CA can oppose the move, thereby necessitating the passing of final order. Power given to the Central Government is therefore by way of exception & hence, in emergent situations to avoid further perpetration of apprehended fraud.

The NCLT after reaching the subjective satisfaction as warranted by substantive part of S.140(5), may pass an order restraining the suspect CA from further functioning in appropriate cases. Thereafter, the Central Government can be clothed with & gets the power to appoint CA in his place.....

XLIII.S.140(5) is enacted to infuse confidence in the public in corporate sector & to prevent abuse of the position by company to the detriment of its share holders. Direction issued by NCLT thereunder does not result in any injury to Company. Still, it gives opportunity to company or CA to meet the subjective satisfaction but it comes at the risk of disqualification for CA as stipulated in second proviso.

[51] We are of the view that the phrase "any person concerned" for the purpose of sub-section (5) of Section 140 would include the C&AG. We are persuaded to take the view that the C&AG can approach the NCLT for the removal of the Auditor if the C&AG is of the view that the Auditor has acted fraudulently. However, as discussed above, the only grey area is whether such fraudulent act should be with respect to that particular company only or any other company whose audit work the Auditor might have undertaken in the past.

[52] The Supreme Court in the case of [Bar Council of Maharashtra vs. M. V. Dabholkar](#), 1975 2 SCC 702 had the occasion to interpret the phrase "person aggrieved". We quote the relevant observations:

"28. The meaning of the words "a person aggrieved" may vary according to the context of the statute. One of the meanings is that a person will be held to be aggrieved by a decision if that decision is materially adverse to him. Normally, one is required to establish that one has been denied or deprived of something to which one is legally entitled in order to make one "a person aggrieved". Again a person is aggrieved if a legal burden is imposed on him. The meaning of the words "a person aggrieved" is sometimes given a restricted meaning in certain statutes which provide remedies for the protection of private legal rights. The restricted meaning requires denial or deprivation of legal rights. A more liberal approach is required in the background of statutes which do not deal with property rights but deal with professional conduct and morality. The role of the Bar Council under the Advocates Act is comparable to the role of a guardian in professional ethics. The words "persons aggrieved" in Sections 37 and 38 of the Act are of wide import and should not be subjected to a restricted interpretation of possession or denial of legal rights or burdens or financial interests. The test is whether the words "person aggrieved" include "a person who has a genuine grievance because an order has been made which prejudicially affects his interests". It has, therefore, to be found out whether

the Bar Council has a grievance in respect of an order or decision affecting the professional conduct and etiquette."

[53] The Supreme Court, while interpreting "any person aggrieved" in relation to Section 17 of the NPA Act, 2002, has held in [Jagdish Singh v. Heeralal](#), 2014 1 SCC 479 : (2014) 1 SCC (Civ) 444 : 2013 SCC OnLine SC 978 at page 488:

"18. Any person aggrieved by any order made by the DRT under Section 17 may also prefer an appeal to the Appellate Tribunal under Section 18 of the Act.

19. The expression "any person" used in Section 17 is of wide import and takes within its fold not only the borrower but also the guarantor or any other person who may be affected by action taken under Section 13(4) of the Securitisation Act. Reference may be made to the judgment of this Court in Satyawati Tondon case [[United Bank of India v. Satyawati Tondon](#), 2010 8 SCC 110: (2010) 3 SCC (Civ) 260] .

20. Therefore, the expression "any person" referred to in Section 17 would take in the plaintiffs in the suit as well. Therefore, irrespective of the question whether the civil suit is maintainable or not, under the Securitisation Act itself, a remedy is provided to such persons so that they can invoke the provisions of Section 17 of the Securitisation Act, in case the Bank (secured creditor) adopt any measure including the sale of the secured assets, on which the plaintiffs claim interest.

[54] The Supreme Court in ([Sachidananda Banerjee, Assistant Collector of Customs, Calcutta vs. Sitaram Agarwal](#), 1966 AIR(SC) 955) has held the word "concerned" to be of wide import.

[55] The NCLT is required to decide within 15 days. (See the 1st unnumbered proviso sub-section (5) of Section 140 of the Companies Act, 2013)

[56] If the Tribunal is approached either by the Central Government or by any person concerned which includes the C&AG, then the NCLT has to decide such an application within 15 days as prescribed under the first proviso to sub-section (5) of Section 140 of the Act, 2013.

[57] The Supreme Court in the case of [Leelabai Gajanan Pansare vs. Oriental Insurance Co. Ltd](#), 2008 9 SCC 720, speaking through Kapadia, J. (as His Lordship then was) held that the "Public Sector Undertakings" are in the form of statutory corporations, public sector companies, government companies and companies in which the public are substantially interested. The litigation before the Supreme Court was one

in context of the Income Tax Act, 1961 vis-a-vis the provisions of the Maharashtra Rent Control Act, 1999. We quote the relevant observations:

"62. The word "PSU" is not a term of art. It is not defined in the said Rent Act. It is not defined in the Companies Act. However, the said term finds place in the Report of the Study Team on Public Sector Undertakings. One such report of the Study Team is dated 10-6-1967. The Study Team was appointed on 20-5-1966. It submitted its report to the Chairman, Administrative Reforms Commission, Government of India. Under Chapter XIV, the committee has discussed the forms of organisation, namely, departmental undertaking, government company and PSU. It observed that departmental undertakings are unsuitable for industrial and commercial enterprises. It is further observed that, in India, the Government has adopted the method of running companies by directly holding shares in them. According to the committee, this is the pattern of public sector in India. This, according to the committee, is apart from statutory corporations which are set up or established under Central/State Acts. According to the committee, a public corporation as a form covers statutory corporation, government company and public sector company. According to the Committee, PSU and government company are to be equated in the sense that these two entities are the same when it comes to autonomy and flexibility as compared to departmental undertakings.

63. One point may be noted at this stage. The concept of PSU and the concept of government company became relevant after introduction of economic reforms in 1991. With the said reforms, market orientation was given to our economy. It is around this time that the role of PSU became important. Both, the PSU as well as the government company, were given autonomy and flexibility in commercial sectors. Annexure I to the Report of the Study Team on PSUs dated 10-6-1967 indicates clearly that government companies stood covered under the concept of PSUs. In the present matter, the High Court has taken a view that government companies stand excluded from PSUs under Section 3(1) (b) as government companies are separate and distinct entities from PSUs, and since government company is not in the enumerated items in Section 3(1)(b) one cannot include the said entity within the meaning of the word "PSU". This view of the High Court is erroneous for the simple reason that the word "PSU" is not defined under any Act. The word "PSU" is indicated in various Parliamentary Committees on administrative reforms so that in financial, employment and in policy matters, the Central/State Government could evolve norms/standards.

.....

73. Moreover, if we are to hold that PSUs do not include government companies, as held by the High Court, we would be disturbing the package offered by the legislature of allowing increase of rent annually at 5%, allowing the landlords to accept premium and exclusion of certain entities from the protection of the Rent Act under Section 3(1) (b). On the other hand, acceptance of the arguments advanced on behalf of the respondents on the interpretation of Section 3(1)(b) would make the Act vulnerable to challenge as violative of Article 14 of the Constitution. Therefore, we are of the view that on a plain meaning of the word "PSUs" as understood by the legislature, it is clear that, India's PSUs are in the form of statutory corporations, public sector companies, government companies and companies in which the public are substantially interested (see the Income Tax Act, 1961). When the word PSU is mentioned in Section 3(1)(b), the State Legislature is presumed to know the recommendations of the various Parliamentary Committees on PSUs. These entities are basically cash-rich entities. They have positive net asset value. They have positive net worths. They can afford to pay rents at the market rate.

....

81. Before concluding, we may note that we have interpreted the word "PSUs" in Section 3(1)(b) purely in the context of the provisions of the Maharashtra Rent Control Act, 1999. Our judgment is, therefore, confined strictly to the said provisions of the Rent Act.

82. For the aforesaid reasons, we hold that OIC, UIC and BPCL and such other government companies as defined under Section 617 of the Companies Act are not entitled to protection of the Maharashtra Rent Control Act, 1999 in view of the provisions of Section 3(1)(b)."

[58] The CAG has a limited control over the auditor of the Government Company appointed Section 139(5) of the Companies Act, 2013.

[a] Section 143(5) - [A] direct such auditor the manner in which the accounts of the Government company are required to be audited and

[b] thereupon the auditor so appointed shall submit a copy of the audit report to the Comptroller and Auditor-General of India.

[c] Section 143(6) - [A] CAG has within 60 days the right to conduct supplementary audit.

[d] comment on the audit report

[e] Section 143(7) - [A] CAG can cause test audit under Section 19A of Comptroller and Auditor- General's (Duties, Powers and Conditions of Service) Act, 1971.

[59] It appears that when the CAG appoints a statutory auditor, it does so in accordance with the policy/guideline/conditions of appointment which is titled the "Appointment of auditors of Government Company/Government controlled other company under Section 139 (5) & (7) of the Companies Act, 2013".

II. CONDITIONS FOR THE AUDITOR:

1. *The Firm/LLP may please intimate their acceptance as auditors of the Company within 3 weeks of receipt of this appointment letter (i) to the Company (ii) to this Office (iii) to the concerned DG/PAG/AG/MAB entrusted with the Supplementary Audit of the Company. If, for any reason the Auditors are not in a position to accept the appointment, they may intimate all the above-mentioned offices immediately along with the reasons for their decision.*

2. *The appointment / re-appointment of Firm/LLP is subject to its performance in the previous years' audit being adjudged as satisfactory by the DG/PAG/AG /MAB concerned.*

3. *The appointment/re-appointment of the auditors is subject to the Auditors making the following declarations/undertakings:*

(i) That the firm/LLP is not disqualified under section 141 of the Companies Act, 2013

(ii) That no unreasonable TA/DA, out of pocket expenses will be claimed from the company. In case where audits are allotted to the Branch office of the Firm no TA/DA should be claimed by the firm from the company for the audit of the Company/Units located at the same station of the branch.

(iii) That during the year of audit, and for one year (to be counted from the date of conclusion of the relevant Annual General Meeting of the Company) after the Firm/LLP ceases to be Auditor, the Firm/LLP or its partner, cannot accept Directorship or any assignment for consultancy or other services including those specified in section 144 of the Companies Act, 2013 and non-audit assignments that involve performing management functions or making management decisions, directly or indirectly (as per explanation given under section 144 of the Companies Act, 2013), of the company or its holding company / subsidiaries (irrespective of the shareholding) / joint ventures of the Company whether under production sharing contract or otherwise. The above restriction would also be applicable to

audit of annual accounts of subsidiary companies / Joint Ventures/Associates except where auditors of such subsidiary companies /Joint Ventures/Associates are appointed by CAG. This condition would not apply to assignments for the tax audit under Income Tax Act, VAT audit required under various State Legislations, review of Quarterly/half yearly accounts as per SEBI guidelines and other statutory certificates related to the audit assignment

(iv) That no partner/chartered accountant employee of the firm /LLPs has been held guilty of professional misconduct by the Institute of Chartered Accountants of India during last year (in case any partner of the firm/LLP has been held guilty of professional misconduct by the Institute of Chartered Accountant of India, please furnish details thereof).

(v) The audit should not be conducted by a person (i) who is not a CA partner /CA employee/ CA article of the firm/LLP to which the audit has been allotted; (ii) who was earlier associated with the audit of the said PSU as a partner/employee of the retiring auditor. (vi) No partner of the firm/LLP would hold post of Director (except in the case of financial companies) or undertake audit or any other job/assignment of any Private organization/ Company which is in the same line of business or having any business relation with that of the PSU.

4 The auditor may start the audit of the Company immediately on receipt of the accounts of the Company. However, they should certify the accounts for the year only after the audited accounts for the previous year has been laid before the AGM for their consideration. In case audited accounts of the previous years has been considered but finally not adopted by the shareholders, the auditor can certify the accounts of the succeeding year indicating the fact of the non-adoption of the previous years accounts in their report.

5 The time schedule for conducting the audit may be drawn up with scheduling of audit i.e indicating the period of audit of different departments/ units of the PSU and also the name of personnel & their qualification who will be deployed for audit of each unit. A copy of the time schedule so fixed may be sent to the concerned DG/PAG/AG/MAB so that they may also draw their time schedule for supplementary audit.

6 The Firm/LLP must complete the audit of the units/branches allotted to them within the time schedule stipulated by the management so that the statutory time schedule for placing the accounts in the AGM could be adhered to.

7 Record of audit work done in the form of working papers should be retained with sufficient information so as to support the auditors' significant conclusions and

judgments.

8 The Auditors shall have to comply with the directions issued by this office under 143(5) of the Companies Act, 2013. The remuneration is inclusive of the fee on account of the additional work involved in this regard. Directions under section 143(5) is available at this office's official website i.e. [www. saiindia.gov.in](http://www.saiindia.gov.in) (CA Empanelment)

9. Statutory auditors of the companies who have adopted SAP should deploy at least one partner/employee having ISA/CISA qualification to conduct the audit. Auditors appointed for Listed PSU should have a valid peer review certificate issued by Peer Review Board of ICAI.

10. The Company/Auditors will have to comply with all the provisions of the Companies Act, 2013. as also all other applicable statutes including directions/guidelines issued by various Regulatory Bodies/ Authorities viz Securities & Exchange Board of India, Reserve Bank of India, Insurance Regulatory Development Authority etc.

11. In case of violation of any of the above conditions by the appointed auditor, this office reserves the right to withdraw the audit(s) allotted to the auditor at any point of time after following the due administrative process."

[60] Thus, it is evident from the aforesaid that in case of violation of any of the aforesaid conditions by the appointed Auditor, the C&AG has the right to remove the Auditor at any point of time after following the due administrative process. What is this administrative process is not clear. Even while following the due administrative process, the opportunity of hearing has to be given to the concerned Auditor before his removal. The principles of natural justice are implicit in clause 11 referred to and highlighted. However, in the case on hand, it is not the stance of the C&AG that action against the writ applicant has been taken in terms of clause 11 referred to above.

[61] Prima facie, we are of the opinion that the aforesaid is not in conformity with the scheme of the 2013 Act. However, we do not propose to delve much into this aspect.

[62] We may now answer the third question posed by us. We propose to answer the third question independent of all the aforesaid discussion. In other words, even if we had not to take into consideration the relevant provisions of the Companies Act and other relevant provisions, as discussed above, we are of the view that the action on the part of the C&AG is not sustainable in law.

[63] We should first look into the letter dated 21st August 2020 of the General Administrative Department, State of Gujarat addressed to the Additional Chief Secretary, Department of Finance. The same reads thus:

*"No.PRCH-1-2020-240-TA
General Administrative
Department, Sachivalaya
Gandhinagar*

Date : 21/08/2020

*To,
Additional Chief Secretary,
Department of Finance,
Sachivalaya, Gandhinagar.*

Subject: To take up the proceedings as per the recommendations made by the Anti Corruption Bureau of Ahmedabad.

Dear Mr.,

With reference to the subject noted above, I am to inform you that a copy of the letter dated 7/2/2020 of the Director, Anti Corruption Bureau, Ahmedabad is annexed herewith for your information.

By his aforesaid letter, the Director, Anti Corruption Bureau, ACB Police Station, Ahmedabad has recommended to take legal action against the Auditor Pipara & Company in connection with the case registered with Gandhinagar ACB Police Station vide its CR No.6/2018 for the offences punishable u/s.8, 10 and 13(2) of the Prohibition of Corruption Act came to be lodged against the accused persons, (1) K.C.Parmar, Joint Director and (2) K.S. Detroja, Managing Director, Gujarat State Land Development Corporation Limited, Gandhinagar as the cash of Rs.56,50,500/was seized during the course of search operation against them.

Looking to the details of the letter of ACB, some recommendations have been made by the ACB for prevention of misappropriation of government money. Moreover, ACB has also requested to launch Ideal guidelines for all Audit Agencies to bring purity and transparency in the financial administration in the Corporations and Public Sector offices of the Government.

That, Bureau of Public Enterprises working under your control, issues directions to all the Boards' and Corporations for smooth' running of administration. After taking into consideration the recommendations of ACB, I am forwarding a copy of the letter of ACB with a request to take necessary action in the matter.

Yours faithfully,

sd/- A.H. Mansuri

Deputy Secretary

General Administrative

*Department, Govt. of
Gujarat"*

[64] The aforesaid led to the letter dated 5th December 2020 of the Finance Department to the Managing Director of all the Corporations (PSUs) and it is this letter which created the controversy. The letter reads thus:

"No.JNV-102020-361769-A

Finance Department,

Block No.4/9, Sachivalaya,

Gandhinagar.

date : 05/12/2020

To,

1. Managing Director, Gandinagar Urban Development Authority, Nr. Swagat Rain Forest, 'Kh' Road, Sargasan,

Gandhinagar, Gujarat – 382423.

2. Managing Director, Gujarat State Police Housing Corporation Limited, B/h. Gujarat Lokayukt Office, 'Chh' Road, Sector-10B, Gandhinagar.

3. Managing Director, Tourism Corporation of Gujarat Limited, Block No.16/4, Udyog Bhavan, Sector -11, Gandhinagar – 382011.

4. State Project Director, Gujarat Council of Alimentary Education, Gandhinagar Office of the State Project Director, Sector – 17, Gandhinagar – 3820007.

5. Managing Director, National Highway Authority of India, 235-239, 2nd floor, super Mall 01, Above HDFC Finance, Info-city, Gandhinagar 382007.

6. Managing Director, Gujarat Council of Primary Education, Gandhinagar, Office of State Project Director, Sector – 17, Gandhinagar 382016.

7. Managing Director, Gujarat State Financial Investment Corporation Limited, 6th floor, HK House, Ashram Road, Navrangpura, Ahmedabad 380009.

8. Managing Director, Sardar Sarovar Narmada Nigam Limited, Block NO.12, 1st Floor, Sachivalaya, Gandhinagar.

Subject : To take up necessary procedure for the Audit Inspection and other concerning matters in respect of your public Sector Offices / Corporations carrying out by Pipara & Company LLP.

Reference : GAD Letter No.PRCH-102020-240-TA dated 21/08/2020.

Sir,

With reference to the subject noted above, I am to state that vide letter dated 21/8/2020 of the General Administrative Department and as mentioned in the letter dated 7/2/2020 of the office of ACB which is enclosed in the above letter, it is recommended to take up necessary procedure for the Audit Inspection and other concerning matters in respect of various Public Sector Offices and Corporations.

As mentioned at the Point No.12 of the letter dated 7/2/2020 of the ACB (Copy of the letter is enclosed herewith), Pipara & Company, LLP is carrying out Audit work of more than 10 Public Sector Offices/ Corporations of the State Government. If the Pipara & Company would have performed their Audit Work according to the terms and conditions of the work-order and with total devotion, commitment and loyalty, then they would have been able to bring such huge irregularities and misappropriation to the notice of Government and the Government could prevent misappropriation of government money but Pipara & Company has shown quite negligence and carelessness in its audit work. It clearly appears that there is breach of Chartered Accounts Ethics.

You are further informed that the audit work of your office has been carrying out or was carried out by Pipara & Company since last some years.

In view of the above facts, the ACB Office has made following recommendations as mentioned at the Point No.14 of their letter (Copy is enclosed herewith).

(1) It is recommended to hold detailed inspection of the audit work of the Corporations and other offices which earlier have been performed by Pipara & Company so that irregularities and misappropriations of government money can be prevented.

(2) It is also recommended to hold thorough verification of the terms and conditions of the appointment of Pipara & Company including detailed verification of bills etc. in respect of the Corporations and other offices and if found necessary, it is recommended to put the company in black-list as per the rules and regulations.

(3) It is suggested to hold inquiry against Pipara & Company through Vigilance Commission.

(4) It is desirable in the public interest that audit work of any Govt. public sector office and corporation should not be given to Pipara & Company in future."

You are therefore, requested to consider the aforesaid facts and to take necessary steps at the earliest.

Yours faithfully,

sd/- illegible

(Sapna V. Rana)

Deputy Secretary

(Public Sectors)

Finance Department"

[65] Although the contents of the letter dated 5th December 2020, prima facie, appear to be far fetched, yet we do not intend to get into any debate as regards the complaint of the State Government against the writ applicant for not bringing to its notice the alleged irregularities and misappropriation at the end of certain officials. We are only concerned with the manner in which the writ applicant has been dealt with. We are of the view that the respondent No.3 - C&AG ought not to have blindfoldedly accepted the say of the State Government. It should have first put the writ applicant to notice and should have given an opportunity of hearing. It is the principle of law or rather one of the principles of natural justice that no person should be condemned unheard.

[66] In the case on hand, we are at one with Mr. Bhatt, the learned counsel appearing for the writ applicant that the sudden removal has caused a lot of blemish to his client. We appreciate the bold and fair stance of Mr. Virk, the learned counsel appearing for the respondent No.3 - C&AG.

[67] Let us assume for the moment that Section 140 of the Act, 2013 has no application as Section 140 does not talk about removal of the Auditor by the C&AG and talks about removal of the Auditor by the company with the prior approval of the Central Government, even in such circumstances, the natural justice principle is implicit. It need not be expressly provided for in the statute. Where there is nothing in the statute to actually prohibit the giving of an opportunity of being heard, then having regard to the nature of the statutory duty imposed the decision maker itself implies an obligation to hear before deciding. Whenever an action of a public body results in civil consequences for the person against whom the action is directed, the duty to act fairly can be presumed and in such a case, the administrative authority must give an appropriate opportunity of hearing to the affected person. [See Prakash vs. State of Bihar, 2009 4 SCC 690 paras 13 and 14].

[68] If there is a power to decide and decide detrimentally to the prejudice of a person, the duty to act judicially is implicit in exercise of such a power and the rule of natural justice operates in areas not covered by any law validly made. The criteria for an adequate notice is that the Court's conscience must be satisfied that the concerned person had a fair chance to know the details of the case against him and of the action proposed to be taken against him. [See [CCE vs. Brindavan Beverages \(P\) Ltd](#), 2007 5 SCC 388].

[69] It goes without saying that any order or any decision which has civil consequences must be passed after giving an opportunity of hearing. There could be just one overriding reason to exclude the application of the principles of natural justice and that is in the case of national security. Such is not the stance of any of the respondents in the present case.

[70] For all the foregoing reasons, we are of the view that the writ applicants are entitled to get themselves once again uploaded on the portal. The removal of the writ applicant No.1, as the statutory authority, is hereby quashed and set aside. We also quash and set aside the letter dated 5th December 2020 issued by the respondent No.2 to the various PSUs including the respondents herein.

[71] The aforesaid relief granted by us is definitely going to cause some difficulties, not only for the respective companies, but also for the newly appointed Auditors. However, it is the paramount duty of this Court to set right the illegality and this is the fit case in which we should set the clock back. However, we grant four weeks time to the C&AG to do the needful in accordance with law, if at all it intends to do so. Till any fresh orders are not passed in accordance with law, the newly appointed Auditors shall not proceed with the work of audit and at the same time, the writ applicant No.1 shall also not proceed with the work of the audit. However, as stated above, the removal of the writ applicant No.1 is quashed and set aside and his name shall once again be reflected on the portal as the statutory Auditor for the respective companies.

[72] We are conscious of the fact that in view of some provisions of law under the Companies Act, the Company has to complete the work of audit by 31st August 2021 and submit the audit report before the competent authority. However, none of the respondent - companies shall be held responsible in any manner if they are not in a position to submit the audit reports within the prescribed time period having regard to the pendency of the present litigation.

[73] All the writ applications stand disposed off accordingly.