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CHAPTER

COMPANY AUDIT

CHAPTER OUTLINE

- 7.1 Introduction
- 7.2 Company Auditor
- 7.3 Branch Audit
- 7.4 Joint Audit
- 7.5 Maintenance of Books of Accounts
- 7.6 Related Party Disclosures
- 7.7 Segment Reporting
- 7.8 Divisible Profits and Dividends
- 7.9 Depreciation
- 7.10 Written Representation by Management
- 7.11 Annual Report
- 7.12 New Areas under Companies Act, 2013

7.1 INTRODUCTION

A company is a form of organisation which is created, maintained and even abolished through the application of law. In other words, every single event in a company is subject to certain legal provisions. Accordingly, auditing in a company is exclusively guided by the provisions of various acts, rules and other legal decisions. In this context, the following sources of legal provisions may be mentioned.

- (i) Companies Act, 2013 (along with all relevant amendments)
- (ii) Various Company Rules (along with all relevant amendments)
- (iii) Relevant sections of The Chartered Accountants Act, 1949
- (iv) Accounting Standards notified by the Ministry of Corporate Affairs
- (v) Various Standards of Auditing issued by the Institute of Chartered Accountants of India

Our discussion in the rest of this chapter will be based on the above provisions exclusively.

7.2 COMPANY AUDITOR

A company is characterised by the separation of management and ownership. Though shareholders are the owners of company's assets, they do not actively take part in the management of the company. Company is rather managed by a group of managers who are entrusted with the proper utilisation of the resources of the company for the maximum benefit of its shareholders. Therefore, in this context, it is imperative that management's stewardship is properly vouched by an independent third party. This is why audit of books of accounts has been made mandatory in every company. At the same time, specific provisions covering all relevant aspects of audit and auditor have been incorporated to attain the highest possible standard.

7.2.1 Qualifications of a Company Auditor

Irrespective of the actual form, every company is required to undergo statutory audit by a qualified auditor. As per Section 141 of Companies Act, 2013, the following persons should be considered as qualified for this purpose.

- (i) A person shall be eligible for appointment as an auditor of a company, only if he is a chartered accountant [Section 141(1)].
- (ii) A firm can also be appointed by its firm name to be the auditor of a company if majority of partners practising in India are qualified for appointment as company auditor [Section 141(1)].
- (iii) Where a firm including a limited liability partnership is appointed as an auditor of a company, only the partners who are chartered accountants shall be authorised to act and sign on behalf of the firm [Section 141(2)].

Note: In this context, the meaning of the term 'chartered accountant' shall be interpreted based on the provisions of The Chartered Accountants Act, 1949 as follows.

- (i) "Chartered Accountant" means a person who is a member of the Institute [Section 2].
- (ii) A person will be a member of the Institute if his name appears in the Register of the Institute [Section 3].
- (iii) The following persons shall be entitled to have his name entered in the Register [Section 4]:
 - (a) any person who is a registered accountant or a holder of a restricted certificate at the commencement of this Act.
 - (b) any person who has passed such examination and completed such training as may be prescribed for members of the Institute.
 - (c) any person who has passed the examination for the Government Diploma in Accountancy or an examination recognised as equivalent thereto by the rules for the award of the Government Diploma in Accountancy before the commencement of this Act and fulfils such conditions as specified by the Central Government in this behalf.

- (d) any person who, at the commencement of this Act, is engaged in the practice of accountancy in any State and fulfils such conditions as specified by the Central Government in this behalf.
- (e) any person who has passed such other examination and completed such other training without India as is recognised by the Central Government or the Council as being equivalent to the examination and training prescribed for members of the Institute.
- (f) any person domiciled in India, who at the commencement of this Act is studying for any foreign examination and is at the same time undergoing training, whether within or without India, have passed the examination or completes the training within five years after the commencement of this Act.

In order to become the member of the Institute, the aforesaid persons must reside in India or must be in practice in India. For any person outside India with all other requisite qualifications, the Central Government or the Institute may impose additional conditions. Moreover, any qualified persons will have to formally apply for the membership to the Institute with requisite fees. His name will be included in the Register only if the application is accepted.

7.2.2 Disqualification of a Company Auditor

As per Section 141(3), read with Rule 10 of Company (Audit and Auditor) Rule 2014, the following persons shall not be eligible for appointment as an auditor of a company:

- (i) a body corporate other than a limited liability partnership registered under the Limited Liability Partnership Act, 2008;
- (ii) an officer or employee of the company;
- (iii) a person who is a partner, or who is in the employment, of an officer or employee of the company;
- (iv) a person who, or his relative or partner:
 - (a) is holding any security of or interest in the company or its subsidiary, or of its holding or associate company or a subsidiary of such holding company, of face value not exceeding rupees one lakh;
 - (b) is indebted to the company, or its subsidiary, or its holding or associate company or a subsidiary of such holding company, in excess of rupees five lakh;
 - (c) has given a guarantee or provided any security in connection with the indebtedness of any third person to the company, or its subsidiary, or its holding or associate company or a subsidiary of such holding company, in excess of rupees one lakh;
- (v) a person or a firm who, whether directly or indirectly, has business relationship with the company, or its subsidiary, or its holding or associate company or subsidiary of such holding company or associate company of such nature as may be prescribed;

Note: For this purpose, the term 'business relationship' shall be construed as any transaction entered into for a commercial purpose, except—

- (a) commercial transaction which are in the nature of professional services permitted to be rendered by an auditor or audit firm under the Companies Act, 2013 or the Chartered Accountants Act, 1949 and the rules or regulations made under those Acts;
 - (b) commercial transactions which are in the ordinary course of business of the company at arm's length price-like sale of products or services to the auditor as customer.
- (vi) a person whose relative is a director or is in the employment of the company as a director or key managerial personnel;
 - (vii) a person who is in full time employment elsewhere or a person or a partner of a firm holding appointment as its auditor, if such persons or partner is at the date of such appointment or reappointment holding appointment as auditor of more than twenty companies;
 - (viii) a person who has been convicted by a court of an offence involving fraud and a period of ten years has not elapsed from the date of such conviction;
 - (ix) any person whose subsidiary or associate company or any other form of entity, is engaged as on the date of appointment in consulting and specialised services as provided in Section 144.

Where a person appointed as an auditor of a company incurs any of the disqualifications mentioned in sub-section (3) after his appointment, he shall vacate his office as such auditor and such vacation shall be deemed to be a casual vacancy in the office of the auditor [Section 141(4)].

Note: According to Section 144 of the Companies Act, 2013, an auditor appointed under this Act shall provide to the company only such other services as are approved by the Board of Directors or the audit committee, as the case may be. However, such services shall not include the following services, whether rendered directly or indirectly to the company or its holding company or subsidiary company.

- (a) accounting and book keeping services;
- (b) internal audit;
- (c) design and implementation of any financial information system;
- (d) actuarial services;
- (e) investment advisory services;
- (f) investment banking services;
- (g) rendering of outsourced financial services;
- (h) management services; and
- (i) any other kind of services as may be prescribed:

Any auditor or audit firm who or which has been performing any non-audit services on or before the commencement of this Act shall comply with the provisions of this section before the closure of the first financial year after the date of such commencement.

7.2.3 Appointment of a Company Auditor

Appointment of a statutory auditor in case of a company is governed by Section 139 of Companies Act, 2013.

A. Appointment in Normal Course

The provisions in this respect can be discussed under the following two broad categories:

(i) Provisions Relating to Appointment of First Auditor

(a) In case of a company other than a Government company [Section 139(6)]

- 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.
- 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.
- The auditor, so appointed, shall hold office till the conclusion of the first annual general meeting.

(b) In case of a Government company [Section 139(7)]

- 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.
- In case the Comptroller and Auditor-General of India does not appoint such auditor within the aforesaid period, the Board of Directors of the company shall appoint such auditor within the next thirty days.
- Further, 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 sixty days at an extraordinary general meeting.
- The auditor, so appointed, shall hold office till the conclusion of the first annual general meeting.

Note: For the aforesaid purpose 'Government Company' shall mean a company in which not less than 51% 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.

(ii) Provisions Relating to Appointment of Subsequent Auditor

(a) In case of a company other than a Government company [Section 139(1), read with Rule 3 and 4 of Company (Audit and Auditors) Rule 2014]

- Every company shall, at the first annual general meeting, appoint an individual or a firm as an auditor who shall hold office from the conclusion of that meeting till the conclusion

of its sixth annual general meeting, with the meeting wherein such appointment has been made being counted as the first meeting.

- The company shall place the matter relating to such appointment for ratification by members at every annual general meeting till the sixth such meeting by way of passing of an ordinary resolution [Rule 3(7)].

If the appointment is not ratified by the members of the company, the Board of Directors shall appoint another individual or firm as its auditor or auditors after following the procedure laid down in this behalf under the Act [Rule 3(7)].

- Before such appointment is made, the written consent of the auditor to such appointment and a certificate¹ from him or it that the appointment, if made, shall be in accordance with the conditions as prescribed, shall be obtained from the auditor. The certificate shall also indicate whether the auditor satisfies the criteria provided in Section 141.
- The company shall inform the auditor concerned of his or its appointment, and also file a notice of such appointment with the Registrar within fifteen days of the meeting in which the auditor is appointed in Form ADT-1 [Rule 4(2)].

(b) In case of a Government company [Section 139(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 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 180 days from the commencement of the financial year.
- The auditor, so appointed, shall hold office till the conclusion of the annual general meeting.

B. Appointment in Case of Filling a Casual Vacancy [Section 139(8)]

(i) In case of a company other than a company whose accounts are subject to audit by an auditor appointed by the CAG i.e. for Non-Government companies

- (a) Any casual vacancy will be filled by the Board of Directors within thirty days.

¹ As per Rule 4(1) of CAAR 2014, the auditor appointed under Rule 3 shall submit a certificate that—

- (a) the individual or the firm, as the case may be, is eligible for appointment and is not disqualified for appointment under the Act, the Chartered Accountants Act, 1949 and the rules or regulations made thereunder;
- (b) the proposed appointment is as per the term provided under the Act;
- (c) the proposed appointment is within the limits laid down by or under the authority of the Act;
- (d) the list of proceedings against the auditor or audit firm or any partner of the audit firm pending with respect to professional matters of conduct, as disclosed in the certificate, is true and correct.

- (b) If such casual vacancy is as a result of the resignation of an auditor, such appointment shall also be approved by the company at a general meeting convened within three months of the recommendation of the Board.
- (c) The auditor, so appointed, shall hold the office till the conclusion of the next annual general meeting.

(ii) In case of a company whose accounts are subject to audit by an auditor appointed by the CAG i.e. for Government companies

- (a) Any casual vacancy will be filled by the Comptroller and Auditor-General of India within thirty days.
- (b) In case the Comptroller and Auditor-General of India does not fill the vacancy within the aforesaid period, the Board of Directors shall fill the vacancy within next thirty days.

Note: Though not defined clearly, 'casual vacancy' for the aforesaid purpose usually implies cessation of service of an existing auditor due to his death, resignation, disqualification, etc.

Note: As per Section 140(2) of Companies Act, 2013, the auditor who has resigned from the company shall file within a period of thirty days from the date of resignation, a statement in the prescribed Form ADT – 3 (as per Rule 8 of CAAR 2014) with the company and the Registrar, indicating the reasons and other facts as may be relevant with regard to his resignation.

In case of companies referred to in sub-section (5) of Section 139, the auditor shall also file such statement with the Comptroller and Auditor-General of India.

C. Re-appointment of Company Auditor [Section 139(9)]

A retiring auditor may be re-appointed at an annual general meeting, if—

- (i) he is not disqualified for re-appointment;
- (ii) he has not given the company a notice in writing of his unwillingness to be re-appointed; and
- (iii) a special resolution has not been passed at that meeting appointing some other auditor or providing expressly that he shall not be re-appointed.

D. Automatic Re-appointment of Company Auditor [Section 139(10)]

Where at any annual general meeting, no auditor is appointed or re-appointed, the existing auditor shall continue to be the auditor of the company.

E. Recommendation of Audit Committee [Section 139(11)]

Where a company is required to constitute an Audit Committee under Section 177, all appointments, including the filling of a casual vacancy of an auditor shall be made after taking into account the recommendations of such committee.

7.2.4 Manner and Procedure for Selection of Auditors

Rule 3 of the Company (Audit and Auditor) Rules, 2014 prescribes the following procedures for selection of any auditor:

- (i) In case of a company that is required to constitute an Audit Committee under Section 177, the Committee, and, in cases where such a Committee is not required to be constituted, the Board, shall take into consideration the qualifications and experience of the individual or the firm proposed to be considered for appointment as auditor and whether such qualifications and experience are commensurate with the size and requirements of the company.
The Audit Committee or the Board, as the case may be, shall have regard to any order or pending proceeding relating to professional matters of conduct against the proposed auditor before the Institute of Chartered Accountants of India or any competent authority or any Court [Rule 3(1)].
- (ii) The Audit Committee or the Board, as the case may be, may call for such other information from the proposed auditor as it may deem fit [Rule 3(2)].
- (iii) Where a company is required to constitute the Audit Committee –
 - (a) The Committee shall recommend the name of an individual or a firm as auditor to the Board for consideration [Rule 3(3)].
 - (b) If the Board agrees with the recommendation of the Audit Committee, it shall further recommend the appointment of an individual or a firm as auditor to the members in the annual general meeting [Rule 3(4)].
 - (c) If the Board disagrees with the recommendation of the Audit Committee, it shall refer back the recommendation to the Committee for reconsideration citing reasons for such disagreement [Rule 3(5)].
 - (d) If the Audit Committee, after considering the reasons given by the Board, decides not to reconsider its original recommendation, the Board shall record reasons for its disagreement with the committee and send its own recommendation for consideration of the members in the annual general meeting [Rule 3(6)].
- (iv) Where a company is not required to constitute the Audit Committee, the Board shall consider and recommend an individual or a firm as auditor to the members in the annual general meeting for appointment [Rule 3(3)].

7.2.5 Rotation of Company Auditor [Section 139(2) read with Rule 5 of CAAR 2014]

A. Applicability of Rotation

The provisions for rotation of auditors will be applicable to–

- (i) All listed companies excluding one person companies and small companies.
- (ii) All unlisted public companies having paid up share capital of rupees ten crore or more;
- (iii) All private limited companies having paid up share capital of rupees twenty crore or more;

- (iv) All other companies having public borrowings from financial institutions, banks or public deposits of rupees fifty crore or more.

B. Manner of Rotation

- (i) No individual shall be appointed or reappointed as auditor for more than one term of five consecutive years.
- (ii) No audit firm shall be appointed or reappointed as auditor for more than two terms of five consecutive years.

C. Other Conditions

- (i) An individual auditor or an audit firm who/which has completed his/its term shall not be eligible for re-appointment as auditor in the same company for five years from the completion of such term.
- (ii) During the above cooling off period, even audit firm having one or more common partners with the firm which has completed the term, shall not be appointed as auditor.
- (iii) Every company, existing on or before the commencement of this Act which is required to comply with provisions of Section 139(2), shall do so within three years from the date of commencement of this Act.
- (iv) The above provisions shall not prejudice the right of the company to remove an auditor or the right of the auditor to resign from such office of the company.

D. Rotation of Partners

As per Section 139(3), the members of a company may resolve to provide that—

- (i) in the audit firm appointed by it, the auditing partner and his team shall be rotated at such intervals as may be resolved by members; or
- (ii) the audit shall be conducted by more than one auditor.

7.2.6 Rules Framed by the Central Government for Rotation of Auditor

[Section 139(4)]

As per Section 139(4), the Central Government may, by rules, prescribe the manner in which the companies shall rotate their auditors in pursuance of Section 139(2). Accordingly, the Central Government has prescribed the following provisions under Rule 6 of the Company (Audit and Auditor) Rules 2014.

- (i) Where a company is required to constitute an Audit Committee u/s 177 of the Act, the Audit Committee shall recommend to the Board, the name of an individual auditor or of an audit firm who may replace the incumbent auditor on expiry of the term of such incumbent.
- (ii) Where a company is not required to constitute an Audit Committee u/s 177 of the Act, the Board shall itself consider the matter of rotation of auditors and make its recommendation for appointment of the next auditor by the members in annual general meeting.

(iii) For the purpose of the rotation of auditors—

- (a) the period for which the individual or the firm has held office as auditor prior to the commencement of the Act shall be taken into account for calculating the period of five consecutive years or ten consecutive years, as the case may be;
- (b) the incoming auditor or audit firm shall not be eligible if such auditor or audit firm is associated with the outgoing auditor or audit firm under the same network of audit firms. The term “same network” shall include the firms operating or functioning, hitherto or in future, under the same brand name, trade name or common control.

Note: For the purpose of rotation of auditors—

- (i) a break in the term for a continuous period of five years shall be considered as fulfilling the requirement of rotation;
- (ii) if a partner, who is in charge of an audit firm and also certifies the financial statements of the company, retires from the said firm and joins another firm of chartered accountants, such other firm shall also be ineligible to be appointed for a period of five years.

In order to explain the above provisions, Rule 6 has provided the following illustrations (a transition period of 3 years has been provided to a company to comply with mandatory rotation of auditor).

Illustration 1 In case of individual auditor

Number of consecutive years for which an individual auditor has been functioning as the auditor in the same company [in the first AGM held after the commencement of provisions of Section 139(2)]	Maximum number of consecutive years for which he may be appointed in the same company (including transitional period)	Aggregate period which the auditor would complete in the same company in view of column I and II
I	II	III
5 years (or more than 5 years)	3 years	8 years or more
4 years	3 years	7 years
3 years	3 years	6 years
2 years	3 years	5 years
1 year	4 years	5 years

Illustration 2 In case of audit firm including LLP

Number of consecutive years for which an audit firm has been functioning as auditor in the same company [in the first AGM held after the commencement of provisions of [Section 139(2)]	Maximum number of consecutive years for which the firm may be appointed in the same company (including transitional period)	Aggregate period which the firm would complete in the same company in view of column I and II
I	II	III
10 years (or more than 10 years)	3 years	13 years or more
9 years	3 years	12 years
8 years	3 years	11 years
7 years	3 years	10 years
6 years	4 years	10 years
5 years	5 years	10 years
4 years	6 years	10 years
3 years	7 years	10 years
2 years	8 years	10 years
1 year	9 years	10 years

7.2.7 Removal of a Company Auditor

A company auditor can be removed from his office in the following ways:

A. Removal of the Auditor before Expiry of his Term

The auditor appointed under Section 139 may be removed from his office before the expiry of his term, subject to the fulfillment of the following conditions under Section 140(1) read with Rule 7 of CAAR 2014:

- (i) An application to the Central Government for removal of the auditor shall be made in Form ADT-2. The application shall be accompanied with fees as provided for this purpose under the Companies (Registration Offices and Fees) Rules, 2014.
- (ii) The application shall be made to the Central Government within thirty days of the resolution passed by the Board.
- (iii) The company shall hold the general meeting within sixty days of receipt of approval of the Central Government for passing the special resolution for removal of the said auditor.
- (iv) The auditor concerned shall be given a reasonable opportunity of being heard.

B. Removal of the Auditor by the Tribunal

The provisions in relation to removal of an auditor as contained in Section 140(5) are as follows:

- (i) The Tribunal either *suo motu* or on an application made to it by the Central Government or by any person concerned, may, by order, direct the company to change its auditor, if it is satisfied that the auditor 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.
- (ii) 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 to the removal of the auditor from his office.
- (iii) The Central Government may appoint another auditor in his place.
- (iv) 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.

In addition to the above provisions, any auditor can be removed in the following circumstances as mentioned in the Chartered Accountants Act, 1949.

- (i) If the auditor does not communicate with the previous auditor before accepting his appointment in place of the previous auditor.
- (ii) If any chartered accountant neglect his professional duties.
- (iii) If any chartered accountant starts any venture or is appointed elsewhere, other than the accounting profession, without any prior approval of the Council of Chartered Accountants in India.
- (iv) If any chartered accountant violates any provision of the Chartered Accountants Act.

7.2.8 Resignation by a Company Auditor

As per Section 140(2) of Companies Act, 2013, a company auditor resigning from his post shall have to comply with the following steps:

- (i) The auditor shall file within a period of thirty days from the date of resignation, a statement in the prescribed Form ADT-3 with the company and the Registrar, indicating the reasons and other facts as may be relevant with regard to his resignation.
- (ii) In case of companies referred to in sub-section (5) of Section 139, i.e., Govt. Companies, the auditor shall file such statement with the Comptroller and Auditor-General of India.
- (iii) If the auditor does not comply with the above provision, he or it shall be punishable with fine which shall not be less than fifty thousand rupees but which may extend to five lakh rupees.

7.2.9 Remuneration of a Company Auditor

The statutory provisions in relation to remuneration of auditors are contained in Section 142 of Companies Act, 2013. These are as under:

- (i) The remuneration of the auditor of a company shall be fixed in its general meeting or in such manner as may be determined therein. However, the Board may fix remuneration of the first auditor appointed by it.
- (ii) The above remuneration shall, in addition to the fee payable to an auditor, include the expenses, if any, incurred by the auditor in connection with the audit of the company and any facility extended to him but does not include any remuneration paid to him for any other service rendered by him at the request of the company.

The above remuneration shall be shown under the head 'Other Expenses' in the Statement of Profit and Loss to be prepared as per Schedule III of Companies Act, 2013.

7.2.10 Ceiling on the Number of Audit

As per Section 141(3)(g), a person or a partner of a firm shall not be eligible for appointment as the auditor of a company if –

- (i) Such person is in full time employment elsewhere; or
- (ii) Such person or partner is, at the date of such appointment or reappointment, holding appointment as auditor of more than twenty companies.

Accordingly, the following points are noteworthy:

- (i) Each qualified chartered accountant not in full time employment can be the auditor of at most twenty companies.
- (ii) In case of a partnership firm, the limit will be twenty companies for each individual partner. That is, for a firm with three partners, the overall limit is $(20 \times 3) = 60$ companies.
- (iii) While computing the ceiling in case of a partnership firm, a partner with full time employment elsewhere should not be taken into account.
- (iv) If any chartered accountant is a partner in a number of audit firms, then all the firms together will be entitled to audit 20 companies with respect to such common partner.
- (v) Similarly, if a chartered accountant is practicing individually and is also the partner in other firm or firms, the overall ceiling with respect to him as individual and also the partner will be 20 companies.
- (vi) If any chartered accountant in practice, at any time, holds appointment of more than the specified number of audit assignments of companies, he shall be deemed to be guilty of professional misconduct. (Council General Guidelines 2008, Chapter VIII)

Note: While calculating the above ceiling, a joint audit assignment will be taken as one unit. Similarly, if an auditor is appointed to audit even a part of company's accounts, it will be considered as one unit.

Tutorial Note: The specified number of tax audit assignment that every auditor, as an individual or as a partner of a firm, can accept is 60 in number.

7.2.11 Status of the Company Auditor

There is hardly any consensus among experts regarding the real status of a company auditor. While shareholders may consider him as their agent, to others he may be an officer of the company. Again a third group wants to consider him as a servant of the company. These alternative views regarding the status of an auditor are discussed below:

A. Auditor is an Agent of the Shareholders

- **Arguments in Favour:**

- (i) Except in a few cases where he is appointed by the BOD or by the Central Government, a company auditor is appointed by the shareholders at the AGM of the company. Moreover, even if he is appointed by others, a company auditor is required to protect the interest of the shareholders through his work and to submit the report to them. Hence, he may well be considered as the agent of the shareholders.
- (ii) In the case, *Spackman vs. Evans* (1868), the honourable Justice Cranworth said 'The auditor may be the agent of the shareholders, so far as it relates to the audit of the accounts. For the purpose of the audit, the auditors will bind the shareholders'.
- (iii) As per Section 182 of the Law of Contract, an agent is a person who is appointed to work on behalf of an individual or an entity or to represent the individual or the entity to any third party. As per the decision of the case, *H. Hedley Byrne Co. vs. Heller & Partners Ltd.* (1963), an auditor does have liability to third parties though in a few specified situations. Hence, the auditor can surely be considered as the agent of the company.

- **Arguments Against:**

- (i) As per Section 183 of the Indian Contract Act, a minor cannot appoint an agent. However, a minor can be a shareholder and accordingly, may have direct role in appointing an auditor. Thus auditor cannot be an agent of the shareholders.
- (ii) As per Section 213 of the Indian Contract Act, an agent is required to submit accounts to his principal 'on demand'. However, an auditor does not submit any such accounts to the shareholders. Whether demanded or not, he is only to submit his report to the shareholders.
- (iii) As per Indian Contract Act, 'knowledge of the agent is the knowledge of the principal'. Accordingly, if an auditor is an agent of the shareholder, he is required to inform all information that he will gather during audit. However, in reality, an auditor is not legally bound to do so. His duty is only to report on the financial results and financial state of affairs of the company.

- (iv) As per Indian Contract Act, 'he who does by another, does by himself'. Hence, any act of the agent will be considered as the act of the principal. However, this is not true in case of auditor and shareholders. If an auditor distorts any fact in collusion with the directors, shareholders will never be held responsible for that act.

Based on the above arguments, it may be concluded that an auditor is not an agent of the shareholders.

B. Auditor is an Officer of the Company

• Arguments in Favour:

- (i) There are a number of legal decisions where an auditor has been treated as an officer of the company. For example, in *London vs. General Bank Ltd.* (1895), it was held by Justice Lindley that it seems impossible to deny that for some purposes and to some extent, an auditor is an officer of a company. Similarly, in *Connell vs. The Himalaya Bank* (1895), it was held that if an auditor is appointed at the General Meeting and is in receipt of remuneration from the company, he will be considered as the officer of the company.
- (ii) As per Section 2(59) of the Companies Act 2013, an auditor will be treated as the officer of the company with respect to the following sections:
 - (a) **Section 299:** Power to summon persons suspected of having property of company;
 - (b) **Section 300:** Power to order examination of promoters, directors, etc.;
 - (c) **Section 336:** Offences by officers of companies in liquidation;
 - (d) **Section 337:** Penalty for frauds by officers;
 - (e) **Section 340:** Power of Tribunal to assess damages against delinquent directors, etc.;
 - (f) **Section 342:** Prosecution of delinquent officers and members of company;
 - (g) **Section 463:** Power of court to grant relief in certain cases.

• Arguments Against:

- (i) Except in a few cases, companies do not consider the auditor to be its officer.
- (ii) In *Findley vs. Waddell* (1910) it was held that auditor appointed in a casual vacancy is not an officer of the company.
- (iii) In *The Western Counties Steam Bakeries and Milling Co. Ltd.* (1897), it was held that every auditor who was appointed to audit the accounts may not be considered as the officer of the company.

C. Auditor is a Servant of the Company

Some experts want to consider an auditor to be a servant of the company. They argue that like directors and employees, the auditor also gets remuneration from the company. However, this argument cannot be entertained. A person cannot be called servant only on the ground that he is paid for his service. If this is true, then a lawyer or doctor will also be a servant of the client. In *London vs. General Bank Ltd.* (1895) also, it was held that an auditor is not a servant

of the management. In reality, the relation between an auditor and his client is just like an independent professional and his client.

Based on the above discussion, it may be concluded that the real status of a company auditor is debatable. Though, in a few discrete circumstances he is considered as an officer of the company, he should never be viewed as a servant of the company.

7.2.12 Rights of an Auditor of a Company

In order to discharge his duties effectively every auditor needs certain rights and power. In case of statutory audit of a company, these rights are entrusted upon the statutory auditor by the Companies Act itself. In addition, every auditor customarily enjoys a few rights based on the decisions of a few case laws.

A. Right or Power According to Companies Act, 2013

- (i) **Right to Inspect Books of Accounts and Vouchers** Every auditor of a company shall have the right of access at all times to the books of account and vouchers of the company, whether kept at the registered office of the company or at any other place. In addition, auditor a holding company shall also have the right of access to the records of all its subsidiaries in so far as it relates to the consolidation of its financial statements with that of its subsidiaries [Section 143(1)].
- (ii) **Right to Obtain Information and Explanations** The auditor shall be entitled to require from the officers of the company such information and explanation as he may consider necessary for the performance of his duties as the auditor [Section 143(1)].
- (iii) **Right to Inspect Branch Offices and Branch Accounts** The company auditor is also entitled to inspect the accounts of any branch office in case he considers it necessary in order to discharge his duties as the company auditor. He can do so, even if a separate auditor has already been appointed to audit the branch accounts [Section 143(8)].
- (iv) **Right to Receive the Report of Branch Audit from the Branch Auditor** In case a separate auditor has been appointed to audit the branch accounts, the company auditor has the right to receive the branch audit report from the branch auditor so appointed and use it to prepare the overall audit report [Section 143(8)].
- (v) **Right to Receive Notices and Attend General Meetings** The company auditor is also entitled to receive all notices of, and other communications relating to, any general meeting and to attend such meetings either by himself or through his authorised representative, who shall also be qualified to be an auditor. The auditor shall also have the right to be heard at such meeting on any part of the business which concerns him as the auditor [Section 146].
- (vi) **Right to Sign the Audit Report and Other Documents** The company auditor also has the right to sign the auditor's report or sign or certify any other document of the company in accordance with the provisions of sub-section (2) of Section 141 [Section 145].

- (vii) **Right to Have Audit Report Read at the AGM** The company auditor has the right to have the report read before the company in the General Meeting (especially in case the qualifications, observations or comments on financial transactions or matters, mentioned in the auditor's report, have any adverse effect on the functioning of the company) and the same shall be open to inspection by any member of the company [Section 145].
- (viii) **Right to Attend the Meeting of the Audit Committee** The auditors of a company shall have a right to attend the meetings of the Audit Committee and to be heard in the meetings when the Committee considers the auditor's report, but shall not have the right to vote [Section 177(7)].
- (ix) **Right to be Indemnified** The auditor of a company shall also have the right to be indemnified for any expenses incurred by him in defending himself in case the judgement in any law suit (whether civil or criminal) against the company goes in favour of the auditor.

B. Rights or Power Based on Judgements in Case Laws

- (i) **Right to Take Legal and Technical Advice** As per the judgement in *London and General Bank* (1985) case, the auditor has every right to take any legal, expert and technical advice in discharging his duty as an auditor. However, the auditor himself has to take the responsibility of any opinion expressed in his report.
- (ii) **Right to Claim Remuneration** The auditor has every right to claim remuneration as per the agreement after completion of his duties. He shall also enjoy this right, even if he is removed before the completion of his term [*Homer vs. Quitler*, 1908].

Auditor's rights and power are protected by law. Hence, neither any clause of the Articles of Association nor any resolution adopted in any meeting can supersede them.

7.2.13 Duties of a Company Auditor

The Companies Act, 2013 contains comprehensive provisions regarding the duties of a company auditor. These are discussed below:

A. Duty to Make Enquiry

As per Section 143(1), it is the duty of the auditor to enquire into the following matters:

- (i) Whether loans and advances made by the company on the basis of security have been properly secured and whether the terms of loan are prejudicial to the interests of the company or its members.
- (ii) Whether transactions of the company which are represented merely by book entries are prejudicial to the interests of the company.

- (iii) In case the company is not an investment company or a banking company, whether shares, debentures and other securities have been sold at a price less than that at which they were purchased by the company.
- (iv) Whether loans and advances made by the company have been shown as deposits.
- (v) Whether personal expenses have been charged to revenue account.
- (vi) Where it is stated in the books and documents of the company that any shares have been allotted for cash, whether cash has actually been received in respect of such allotment, and if no cash has actually been so received, whether the position as stated in the account books and the balance sheet is correct, regular and not misleading.

B. Duty to Prepare and Submit Report on Financial Statements

According to Section 143(2), the auditor shall prepare and submit a report to the members of the company (i.e. shareholders) on the accounts examined by him and on every financial statements required by or under this Act after taking into account the provisions of this Act, the accounting and auditing standards, etc. Moreover, he has also to report whether in his opinion and according to the best of his information and knowledge, the said accounts, financial statements give a true and fair view of the state of the company's affairs as at the end of its financial year and profit or loss and cash flow for the year.

C. Duty Regarding Inclusion of Certain Matters in the Audit Report

As per Section 143(3), the company auditor, in his audit report, shall clearly state –

- (i) Whether he has sought and obtained all the information and explanations which to the best of his knowledge and belief were necessary for the purpose of his audit and if not, the details thereof and the effect of such information on the financial statements.
- (ii) Whether, in his opinion, proper books of account as required by the law have been kept by the company and proper returns adequate for the purposes of his audit have been received from branches not visited by him.
- (iii) Whether the report on the accounts of any branch office of the company audited by a person other than the company's auditor has been sent to him and the manner in which he has dealt with it in preparing his report.
- (iv) Whether the company's balance sheet and profit and loss account dealt with in the report are in agreement with the books of account and returns.
- (v) Whether, in his opinion, the financial statements comply with the accounting standards.
- (vi) The observations or comments of the auditors on financial transactions or matters which have any adverse effect on the functioning of the company.
- (vii) Whether any director is disqualified from being appointed as a director under sub-section (2) of Section 164.
- (viii) Any qualification, reservation or adverse remark relating to the maintenance of accounts and other matters connected therewith.

- (ix) Whether the company has adequate internal financial controls system in place and the operating effectiveness of such controls.

D. Duty to Give Reasons for any Negative Remarks/Qualification

According to Section 143(4), where any of the above mentioned matters required to be included in the audit report is answered in the negative or with a qualification, the report shall state the reasons therefor.

E. Duty to Comply with the Directions of CAG

In the case of a Government company, where the auditor is appointed by the Comptroller and Auditor-General of India, the auditor shall, in his report, include–

- (i) The directions, if any, issued by the Comptroller and Auditor-General of India regarding the manner of audit of accounts; and
- (ii) The action taken on such directions and its impact on the accounts and financial statement of the company.

F. Duty to Comply with Auditing Standards

As per Section 143(9), it is the duty of every company auditor to comply with the applicable auditing standards in conduct of his audit.

G. Duty to Report any Fraud to the Central Government

According to Section 143(12), if an auditor, in the course his audit of a company, finds any fraud involving such amount or amounts as may be prescribed, committed by any officers or employees of the company, he shall immediately report the same to the Central Government within such time and in such manner as may be prescribed. In case of a fraud involving lesser than the specified amount, the auditor shall report the matter to the Audit Committee constituted under Section 177 or to the Board in other cases within such time and in such manner as may be prescribed. [Section 143(12) has been amended by Section 13 of the Companies (Amendment) Act, 2015. However, the same has not been notified yet.]

H. Duty of Cost Accountant and Company Secretary Regarding Audit

The provisions of this section regarding the duties of an auditor also apply to the cost accountant in practice conducting cost audit under Section 148 and the company secretary in practice conducting secretarial audit under Section 204 [Section 143(14)].

I. Duty to Pay Penalty

As per Section 15, it will be the duty of every auditor, cost auditor or company secretary to pay fine which shall not be less than one lakh rupees but which may extend to twenty-five lakh rupees, if they fail to comply with the provisions of sub-section (12) of Section 143.

J. Duty to Make Comments Sought by the Audit Committee on Certain Matters

According to Section 177(5), it is the duty of the company auditor to offer comments on internal control systems, the scope of audit, including the observations of the auditors and review of financial statement, if asked by the Audit Committee.

K. Other Duties under the Companies Act

In addition to the above, the auditor shall have the following duties under the Companies Act, 2013 –

- (i) To report on the accounts of the company which will be included in the prospectus of the company while issuing new shares [Section 26].
- (ii) To sign on the audit report [Section 145].
- (iii) To report on Profit and Loss Account and Balance Sheet of the company to be accompanied with the declaration of the Directors in the event of a company's winding up [Section 305].

The above duties of a company auditor are in accordance with the provisions of the Companies Act, 2013 only. Since an auditor is necessarily a qualified chartered accountant and a registered member of the Institute of Chartered Accountants of India, it shall be the duty of every auditor to follow the professional code of conduct issued by the Institute and to maintain the highest standard of professional integrity in the pursuit of their professional service.

7.2.14 Liabilities of an Auditor

An auditor is appointed to verify whether the financial statements prepared based on the books of accounts represent a true and fair view of the financial results and financial state of affairs. In addition, he is also to discharge some other duties as required by the law. Therefore, if an auditor fails to discharge the above duties, he will be legally held liable. Moreover, there are a number of circumstances where an auditor may be held liable either to his appointing authority or any other persons including a third party.

The liabilities of an auditor, and more specifically a company auditor, can be discussed in the following three broad heads:

A. Contractual Liabilities

An auditor is usually appointed by a written contract. The contract determines the scope of the audit work. Accordingly, if the auditor violates any term of the contract, he may be held liable under the Contract Act. Even in a case where there is no written contract between the auditor and the appointing authority, he is expected to conduct complete audit. Under such a circumstance, if he conducts partial audit and any error or fraud is discovered later on, he will not be relieved of his liability. The auditor will also be held liable, if he discloses any secret information of the client to any third party. In the case *Wilde and Others vs. Cape*

and *Dalgeish* (1897) also, it was held that if the client suffers any loss due to the auditor not complying with the contract, the auditor will have to compensate the client for such loss.

B. Statutory Liabilities

Statutory liability of the auditor arises in case of organisations that are legally required their books of accounts audited. In Indian context, the statutory liabilities of an auditor can again be classified into two types — liabilities under Companies Act and liabilities under other Acts.

I. Liabilities Under the Companies Act

The Companies Act, 2013 specifies the following two broad categories of liabilities of an auditor:

- **Civil Liabilities** Civil liabilities of an auditor under the Companies Act, 2013 include the following:
 - (i) **Civil Liability for Misstatement in the Prospectus** As per Section 35, where a person has subscribed for securities of a company acting on any statement included in the prospectus, or on the inclusion or omission of any matter in the prospectus which is misleading and thereby has sustained any loss or damage and where the auditor as an expert² has either made such statement or has given written consent to the issue of the prospectus, he shall be held liable.
 - (ii) **Liability for Misfeasance** Misfeasance implies breach of trust or negligence in the performance of duties. As per Section 340, a company auditor may be charged with misfeasance only at the time of liquidation of the company, if it is found that he—
 - (a) has misapplied, or retained, or become liable or accountable for, any money or property of the company; or
 - (b) has been guilty of any misfeasance or breach of trust in relation to the company
- **Criminal Liability** Criminal liabilities of an auditor under the Companies Act, 2013 may arise in the following circumstances:
 - (i) **Criminal Liability for Misstatement in the Prospectus** As per Section 34, where the auditor has authorised the issue of any prospectus which includes any statement which is untrue or misleading or where the prospectus has included or omitted any matter which may mislead, the auditor shall be held liable under Section 447. Accordingly (i.e., as per Section 447), the auditor shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to ten years and shall also be liable to fine which shall not be less than the amount involved in the fraud, but which may extend to three times the amount involved in the fraud.

² As per the provision of Section 26(5), an auditor being a person is a person who is not, and has not been, engaged or interested in the formation or promotion or management.

(ii) Punishment for Non-compliance with Sections 139, 143, 144 and 145 of the Act [Section 147]

- (a) In case an auditor makes any false statement to secure his appointment under Section 139, fails to discharge his power and duties under Section 143 in conducting an audit, renders any services which has been prohibited under Section 144 or fails to sign on the audit report and other documents as required by Section 145, he shall be punishable with fine which shall not be less than ₹ 25,000 but which may extend to ₹ 5,00,000.
- (b) If an auditor has contravened such provisions knowingly or willfully with the intention to deceive the company or its shareholders or creditors or tax authorities, he shall be punishable with imprisonment for a term which may extend to 1 year and with fine which shall not be less than ₹ 1,00,000 but which may extend to ₹ 25,00,000.
- (c) Convicted auditor shall refund the remuneration received by him from the Company and pay for damages to the company, bodies or authorities or to any other persons for loss arising out of incorrect or misleading statements of particulars made in his audit report.

(iii) Punishment for Refusal or Failure to Produce Documents As per Section 217, if any auditor refuses or fails to produce any papers as sought by the inspector appointed by the Central Government to investigate the affairs of a company or by any person authorised by such inspector, he shall be punishable with imprisonment for a term which may extend to six months and with fine ranging from twenty-five thousand rupees to one lakh rupees, and also with a further fine which may extend to two thousand rupees for every day after the first during which the failure or refusal continues.

(iv) Fraud in Relation to a Company in Winding-up As per Section 336, if any auditor is engaged in any fraudulent activities in relation to any company in winding up, he shall be punishable with imprisonment for a term which shall not be less than three years but which may extend to five years and with fine which shall not be less than one lakh rupees but which may extend to three lakh rupees.

(v) Punishment for False Statement As per Section 448, if any auditor deliberately makes any false statement in any return, report, certificate, financial statement, prospectus, statement or other document required by the act or deliberately omits any material fact, he shall be liable under Section 447 and shall subject to the punishment as stated earlier [Refer to Point (a)].

(vi) Punishment for False Evidence As per Section 449, if the auditor or any other person intentionally gives false evidence upon any examination on oath or solemn affirmation or in any affidavit, deposition or solemn affirmation, in or about the winding up of any company or about any matter under this Act, he shall be punishable with imprisonment for a term which shall not be less than three years but which may extend to seven years and with fine which may extend to ten lakh rupees.

II. Liabilities Under Other Acts

- **Liabilities under Banking Regulation Act, 1949** An auditor's liabilities under Banking Regulation Act, 1949 include the following:
 - (i) **Section 46** If an auditor in any return, balance sheet, or other document willfully makes a statement, which is false in any material particulars, knowing it to be false, or willfully omits to make a material statement, he shall be held liable.
 - (ii) **Section 45G** An auditor may be publicly examined in the winding up proceedings of a company. If on examination, the High Court is of the opinion that such auditor is not fit to act as an auditor, he shall not act as an auditor of any company for a period not exceeding five years without the permission of the High Court. In case the auditor is a partnership firm, the above provisions shall apply to any partner of such firm.
- **Liabilities under Life Insurance Act, 1956** As per Section 104 of Life Insurance Act, 1956, if an auditor makes any false statement in any return, report or other such forms to be issued under this Act, he shall be sentenced to imprisonment or fine or both.
- **Liabilities under Indian Penal Code** Under Section 197 of the Indian Penal code, if any auditor issues or signs any certificate required by law to certify any fact of which such certificate is to be treated as an evidence, knowing or believing that such fact is false in some material aspect, he shall be punishable in the same manner as if he gave false evidence.
- **Liabilities under Income Tax Act, 1961** As per Section 278 of the Income Tax Act, 1961, if any auditor abets or induces in any manner another person to make and deliver an account, statement or declaration relating to any income chargeable to tax which is false and which the auditor either knows or does not believe to be true, he shall be punished.
- **Liabilities under Chartered Accountants Act, 1949** Schedule I and II of the Chartered Accountants Act, 1949 contains a list of instances where a chartered accountant shall be guilty of professional misconduct under Section 22 of the Act. However, the instances are only illustrative and the Council of the Institute may hold enquiry about any conduct of the member not mentioned in the above schedules.

III. Liabilities Established Under Different Case Laws

- **Civil Liabilities for Negligence**
 - (i) ***Leeds Estate Building and Investment Co. vs. Shepherd (1887)*** In this case, Justice Sterling said that the duty of any auditor is not only to check the arithmetical accuracy of the balance sheet but also to evaluate whether the balance sheet exhibits a true view of the state of affairs of the company. If the auditor fails to comply with such duty, he shall be held responsible for negligence and be required to indemnify.

- (ii) ***Irish Woolen Co. vs. Tyson and Others (1900)*** In this case, it was held that an auditor shall be held responsible, only if it is possible for the auditor to identify the misappropriation by applying appropriate alertness and efficiency, otherwise he shall be relieved.
- (iii) ***London Oil Storage Co. vs. Seear, Hasluck & Co. (1904)*** In this case, it was held that an auditor shall be held responsible, if he does not take any measure to verify the assets shown in the balance sheet.
- (iv) ***Liverpool and Wigan Supply Association (1907)*** In this case, it was held that an auditor cannot be responsible, if it cannot be proved that the company has suffered any loss due to the negligence of duty by the auditor. Similarly, if the negligence on the part of the auditor is proved but the company does not suffer any loss for such negligence, then also the auditor cannot be held liable.
- (v) ***Arther E Green & Co. vs. The Central Advance and Discount Corporation (1920)*** In this case it was held that an auditor shall be held responsible, if he accepts any list of the debtors as true in spite of having sufficient doubt over such list of debtors, bad debt and doubtful debts.
- (vi) ***Armitage vs. Brewer and Knott (1932)*** Here, it was held that an auditor shall be held responsible if he fails to identify any misappropriation by verifying the wages account and voucher in spite of having the information that there is scope for misappropriation.
- (vii) ***Superintendent & Remembrancer of legal Affairs, Bengal vs. Akhil Bandhu Guha and Others (1936)*** Here, it was held that if an auditor certifies any balance sheet in spite of knowing that the balance sheet does not contain appropriate description of the assets and liabilities, he shall be held responsible.

• **Civil Liability for Misfeasance**

- (i) ***London and General Bank (1895)*** In this case, Justice Lindley said that if an auditor certifies the accounts based on the representation by the directors even if he is not satisfied with it and does not communicate the same to the shareholders through his audit report, he shall be held responsible for misfeasance.
- (ii) ***Kingston Cotton Mills Co. Ltd. (1896)*** Here, it was held that in the absence of any suspicion if an auditor relies on the certificate of the responsible officers of the company, he shall not be held liable for any misfeasance.
- (iii) ***Republic of Bolivia Exploration Syndicate Ltd. (1913)*** Here, it was held that an auditor must know his duties as per the articles of the company and the Companies Act. If the balance sheet does not exhibit the true and fair view of the state of affairs of the company and if the company suffers any loss due to that, it shall be the liability of the auditor to prove that such loss has not arisen due to his misfeasance.

- (iv) **The City Equitable Fire Insurance Co. Ltd. (1924)** In this case, it was held that an auditor shall be responsible for any loss of the company as a result of any misstatement of assets in the balance sheet of the company. He shall also be held responsible, if he certifies the investments of the company based on the certificates by any broker without actually verifying the investments.
- (v) **Union Bank of Allahabad (1925)** Here, it was held that if an auditor signs the balance sheet without verifying the same just because any responsible officer has signed the same and if the same is proved to be false subsequently, the auditor shall be held responsible.
- (vi) **The Westminster Road Construction and Engineering Co. Ltd. (1932)** In this case, it was held that in spite of having sufficient documentary evidence, if an auditor conducts verification of assets and liabilities without examining the same and accordingly fails to identify any overvaluation, he shall be held responsible for misfeasance.

• Criminal Liabilities

- (i) **Dumbell's Banking Company Ltd. (1900)** In this case, the auditor was held responsible for presenting false balance sheet to the shareholders in spite of knowing the same to be false.
- (ii) **Farrow's Bank Ltd. (1921)** In this case, the auditor was held responsible for willfully showing higher profit by overvaluing the assets in the balance sheet. The auditor was sentenced to one year imprisonment.
- (iii) **Official Liquidator of Karachi Bank Ltd. vs. Directors, Managers and Auditors of Karachi Bank Ltd. (1932)** In this case, the auditor was held responsible for certifying the balance sheet in spite of the fact that the directors had included the bad and doubtful debts in profit.

C. Other Liabilities

Other liabilities of an auditor include the following:

I. Liabilities to Third Parties

Every auditor owes duty to the person appointing him for the audit of books of accounts. Accordingly, in case of a sole proprietorship or a partnership firm the auditor is liable to the proprietor or the partners. In case of companies, even though in some cases, auditor is appointed by persons other than the shareholders (such as BOD or Govt.), an auditor has always to report to the shareholders and hence, is liable to them. This liability of the auditor is contractual. Moreover, in case of companies, the Companies Act also specifies a few other liabilities to be abide by the auditors. However, apart from the owners, a number of other stakeholders including the creditors, potential investors, bank, government, and income tax authorities, etc. depend on the audited accounts.

II. Liabilities in an Honorary Audit

When an auditor is appointed to audit the books of accounts of an organisation, he is expected to discharge all his duty with utmost care and diligence. Therefore, if he fails to discharge his duties subsequently, he may be held liable for either negligence or misfeasance. There is no difference between an auditor receiving remuneration and an honorary auditor in the context of the above liability. An honorary auditor cannot take shelter under the plea that he had taken up the assignment without any remuneration and hence should be relieved of any liability arising from his contract with the client. A contract without any consideration is totally valid in this case and hence, has legal binding on the auditor. In *Fairdeal Corporation, Bombay vs. K Gopal Krishna Rao* (1957) case, it was held by the Hon'ble Judge that in respect of the work performed, an honorary auditor is responsible in the same way as an auditor receiving remuneration.

III. Liabilities in Non-statutory Audit

In case of a sole proprietorship or partnership organisation, audit is not compulsory. Though in a few situations, the owner(s) decides to get their books of accounts audited, that are done to reap a few specific benefits. Since the audit of accounts in these organisations is not legally required, the duties and liabilities are also not specified in any law. However, in such a case also, the auditor cannot escape his liability. Such a liability will primarily arise out of the terms of engagement agreed between the auditor and his client in the agreement undertaken while accepting the appointment. Any violation of the terms of engagement or any negligence of his expected duties will result into breach of contract punishable under the Contract Act.

IV. Liabilities for Negligence of Assistants

As per the contract between the auditor and the client, it is required on the part of the auditor himself to discharge his duties as per the terms of engagement. However, in practice, the auditor does take the help of audit assistants as per requirement. Since these assistants are appointed by the auditor, it becomes the duty of the auditor to supervise their performance and also to guide them in the audit work. Therefore, if there arises any loss to the client due to any negligence on the part of any audit assistant, the auditor will personally be liable for such loss. In other words, the audit has to ensure that the audit work has been conducted with good care and there is no negligence on the part of the audit assistants. The legal decisions in this respect also support the above notion. In *Henry Squire vs. Ball Baker & Co.* (1911), it was held that a principal cannot claim himself to be non-guilty for any negligence on the part of a clerk. Similarly, in *Superintendent of Police vs. M. Rajamany* (1981) it was held that an auditor cannot escape liability on the plea that the fault was due to the misconduct by an employee.

7.3 BRANCH AUDIT

As per Section 128(1) of the Companies Act, 2013, every company shall prepare and keep at its registered office books of account and other relevant books and papers and financial statements for every financial year which give a true and fair view of the state of the affairs of the company, including that of its branch office or offices, if any, and explain the transactions