

# **LIABILITIES OF A STATUTORY AUDITOR**

Submitted by

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# INTRODUCTION

Normally , the liabilities of auditor in all cases , regarding the work undertaken by him will depend upon ,whether he carried out his work with care, diligence or not. If he perform his duty exercising his professional skills with care and diligence, he will escape the liability for non detection of any fraud etc. However , if he found to be negligent in the performance of his duties his liabilities will follow.

# **An auditor can , in no case , escape his liability**

- When an auditor is appointed under a statute or under an agreement, **it is to be presumed that he shall carry out his work completely and with care and diligence.**

**If the auditor fails and  
the client suffers loss ,  
he would be held liable**

# LIABILITIES OF COMPANY AUDITOR

- ▶ The liabilities of a company auditor can be grouped in following category
  - ❖ civil liabilities for negligence and misfeasance
  - ❖ Liabilities under company act
  - ❖ Liabilities under other statute
  - ❖ Liabilities for professional misconduct

# 1. Civil liabilities

- **FOR NEGLIGENCE:** :- it implies acting carelessly or failing to perform his duty.

Breach of duty owed by one person to another, a duty to take care, to do things a reasonably prudent man would do.

Duty  
+  
Reasonable Care  
+  
Damages  
+  
Reasonably Foreseeable  
-----  
Negligence



- If auditor found guilty of negligence, he would have to pay damages.

# Contd...

- In other words to hold an auditor liable, it should be shown that
  - there has been negligence in the performance of his duty. and
  - The loss or damage is the result of his negligence. And
  - The loss was suffered by a client to whom he owed a duty

# Is an auditor liable for negligence to third party?

In cases like **De Savory v. holden howard and co. & candler v. crane christmas and co.**

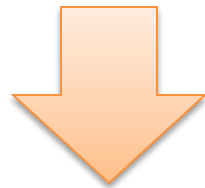
In case of absence of a contractual relationship, a plaintiff could not hold a suit against the auditor

The turning point: **HEDLEY Byrne and co. ltd case**

Action can be brought for negligence against the auditor in tort.

- **FOR MISFEASANCE:** willful inappropriate action that injures the other party.
- Breach of trust or duty.
- Auditor may be held liable to pay damages to the company.

## THE LONDON AND GENERAL BANK CASE



Auditor, who does not report the fact that balance sheet is not properly drawn up, is guilty.



# 2.LIABILITIES UNDER COMPANY ACT

## Misstatement in prospectus (section 35):

- prospectus issued to invite persons to subscribe for shares or debentures in a company.
- Auditor to pay damages to all those who subscribed on the faith of the prospectus containing untrue statement.
- However he can escape if he proves that

- He withdraw his consent, in writing before delivery of the prospectus for registration
- After delivery for registration and before allotment , he , on aware of untrue statement , withdraw his consent
- He was competent to make the statement and that he had reasonable grounds to believe , and did up to the time of allotment ,believe , that the statement was true

# Criminal liabilities

## UNDER COMPANIES ACT ,2013

- **FAILURE TO DISCLOSE FRAUD( SECTION 143(15))**

Section 143(12) states that if an auditor has a reason to believe that an offence involving fraud is committed, he shall report immediately to central government.

In case of failure, Fine = 1,00,000 to 25,00,000

- **NON COMPLIANCE WITH PROVISIONS OF SECTIONS 139,143,144 AND 145: (SECTION 147)**

Section 139	Section 143	section 144	Section 145
Appointment of auditor	Power and duties of auditor and accounting standards	Auditor not to render certain services	Auditor to sign certain reports , etc.

**Section 147(1):** fine shall not be less than Rs. 25000 but which may extend to Rs. 5,00,000

# Contd...

**Section 147(2):** an auditor contravenes such provisions knowingly with the **intention to deceive the company.**

Imprisonment

up to 1 year

Fine

Rs. 1,00,000 to  
Rs. 25,00,000

**Section 147(3):** if auditor has been convicted under section 147(2), he shall

1. Refund the remuneration received by him.
2. Pay for damages to those suffered loss.

## **Section 147 (5) liability of an audit firm**

Partner or partners concerned shall be liable jointly or severally.

### **GUILTY OF FRAUD (SECTION 447)**

**IMPRISONMENT** – 6 months to 10 years

**FINE**- not be less than the amount involved in fraud but may extend to 3 times the amount

Where fraud in question involves public interest, the term of imprisonment shall not be less than 3 years.

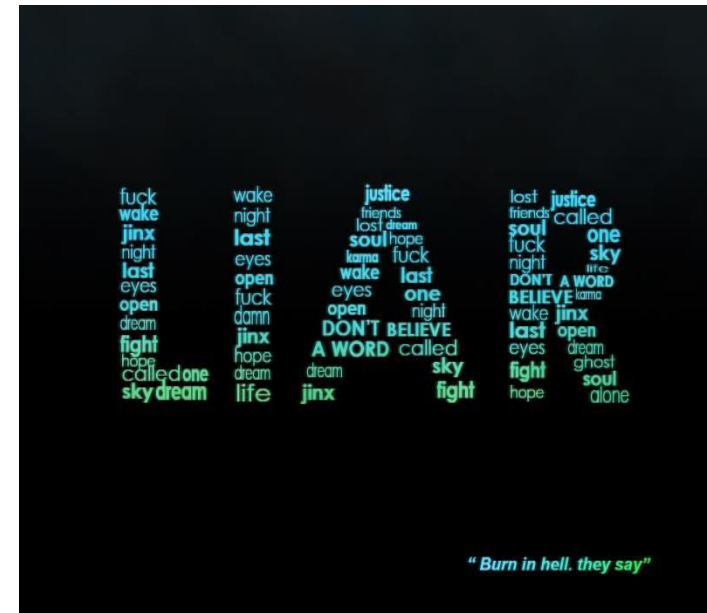


# .FALSE STATEMENT(SECTION 448)

If in any return, report, certificate , financial statement , prospectus, statement or other document required under this act, Auditor knowingly makes a statement:

- Which is false in any material particulars; or
- Which omits any material fact,

**Liablie under section 447**



# FALSE EVIDENCE ( SECTION 449)

If an auditor gives false evidence, he shall be liable

**Imprisonment-** 3 to 7 years

**Fine-** may extend to Rs. 10,00,000

- **PUNISHMENT IN CASE OF REPEATED DEFAULT (SEC. 451)**

if an offence is committed for the second or subsequent occasions within a period of three years



**Fine-** Twice the amount of fine for that offence

**Imprisonment-** provided for that offence.

# CLASS ACTION SUIT AGAINST AUDITORS (SEC.245)

Any 100 or more deposit holders or 10% of the total number of deposit holders can file a class action suit to claim damages against auditor for:

- Any misleading statement made in audit report;  
or
- Any fraudulent act.



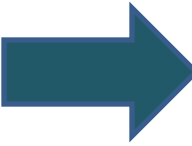

# 3 LIABILITIES UNDER OTHER STATUTES

## UNDER INCOME TAX ACT, 1961

- ABETTING OR INDUCING THE FILING OF FALSE RETURN (SECTION 278)
- CONVICTION OF AN OFFENCE RELATING TO TAX PROCEEDING (SECTION 288)  
DISQUALIFIED FROM REPRESENTING AN ASSESSEE  
(EXCEPT UNDER SECTION 271(1)(II))
- FALSE INFORMATION IN RETURN (RULE 12A)

## UNDER INDIAN PENAL CODE:

- **ISSUING OR SIGNING A FALSE CERTIFICATE  
(SECTION 197)**

Certificate to be used		imprisonment may
In any stage of judicial proceeding		extend to 7 years and fine also
Any other case		3 years max.

- **FALSIFICATION OF BOOKS, PAPERS ,ETC.  
(SECTION 477A)**

**Imprisonment** – may extend to 7 years and fine also

- LIABILITY UNDER CONSUMER PROTECTION ACT:- **The state forum of maharashtra held that** “the chartered accountant are amenable to consumer protection act when it is clearly established that they have given opinion or advice on payment of fees. If the opinion or advice is clearly contrary to the explicit provision of law and not supported by any judicial decision or textual commentary , the prayer for awarding the compensation in regard to deficiency in service can be agitated”

## 4.LIABILITIES FOR PROFESSIONAL MISCONDUCT:

- The Chartered Accountants Act, 1949, specifies a number of **acts and omissions that constitute professional misconduct** in relation to chartered accountants in practice.
- **A practising auditor** will be deemed to be guilty of professional misconduct, if he

- ✓ Fails to disclose material fact
- ✓ Fails to report material mis-statement known to him
- ✓ Is grossly negligent in the conduct of his professional duties
- ✓ Fails to invite attention to any material departure from the generally accepted procedure of audit applicable to the circumstances

## Contd...

- Punishment: the name of the auditor may be removed from the register of chartered accountants for a period not exceeding 5 years.

# CONCLUSION

It can be concluded that the law has become stringent in order to prevent any deliberate loopholes in the work of an auditor. It was certainly required especially when auditing profession holds many important responsibilities towards the society.



A Big  
THANK  
YOU!

A hand-drawn graphic featuring the text "A Big THANK YOU!" in a white, bubbly, outlined font. The word "THANK" is the largest and most prominent. To the left of the text is a large, hand-drawn red heart. The background is a light gray gradient.