

CONFIDENTIAL

**COUNCIL OF THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA
384TH MEETING OF THE COUNCIL –18TH AND 19TH AUGUST, 2019
FINDING OF THE COUNCIL – 19TH AUGUST, 2019
UNDER SECTION 21 OF THE CHARTERED ACCOUNTANTS ACT, 1949**

**T. G. RAMANATHAN IN RE:
[25-CA (S-49)/2008]**

MEMBERS PRESENT:

CA. Atul Kumar Gupta (Vice-President)(In the chair)
CA. Chandrashekhar Vasant Chitale
CA. Nandkishore Chidamber Hegde
CA. Nihar Niranjana Jambusaria
CA. Durgesh Kabra
CA. Prasanna Kumar D
CA. Rajendra Kumar P
CA. Ranjeet Kumar Agarwal
CA. Sushil Kumar Goyal
CA. (Dr.) Debashis Mitra
CA. Anuj Goyal
CA. Satish Kumar Gupta
CA. Prakash Sharma
CA. Hans Raj Chugh
CA. Pramod Jain
CA. Nanda Charanjot Singh
Shri Vijay Kumar Jhalani

[Out of four Signatories to the Report of the Disciplinary Committee dated 5th February, 2018, two signatories namely, CA. Manu Agrawal and Dr. P.C. Jain were not present at the time of consideration of the Report on 19th August, 2019 and the remaining two signatories namely CA. Nilesh Shivji Vikamsey and CA. Sanjay Vasudeva were no longer members of the Council.]

[CA. Atul Kumar Gupta, Vice-President in Office, was in the Chair when this Report was taken up for consideration on 19th August, 2019]

1. On a perusal of a letter dated 28th December, 1999 received from Shri J. Premkumar, General Manager-in-charge of Industrial Investment Bank of India Limited, Chennai, M/s. T. G. Ramanathan & Co., Chartered Accountants (hereinafter referred as the "**Respondent firm**") was requested to offer their clarifications thereon vide Institute's letter dated 28th April, 2006. However, no clarification was received from the Respondent firm on the matter. Accordingly, on the basis of papers/information on record, it was decided to treat the matter as "Information" falling within the meaning of Clauses (5), (7) and (9) of Part I of the Second Schedule under Section 21 read with Section 22 of the Chartered Accountants Act, 1949. The specific charge(s) against the Respondent firm as per the "Information" letter dated 17th October, 2008 are stated below:-

- 1.1. The General Manager-in-charge of Industrial Investment Bank of India Limited (IIBI) sanctioned a medium term working capital loan of Rs. 300 lakhs to M/s. Femnor Minerals (India) Limited (hereinafter referred to as **the "Company"**) and released an amount of Rs. 135 lakhs.
- 1.2. Dena Bank had also extended working capital facilities to the Company but the secured loan extended by the Dena Bank was not disclosed in the Balance Sheet of the Company for the year ended 1997-98, signed and audited by the Respondent firm, which was submitted to them.
- 1.3. When the facts were brought to the notice of the Company, the Company submitted another set of Balance Sheet duly audited by the Respondent firm for the same year showing the secured loan of Dena Bank and inflated figures in respect of debtors, creditors and current liabilities.
- 1.4. Further, against a total secured loan of Rs. 207 lakhs, a disappropriate sum of Rs. 151 lakhs was debited to the Profit & Loss Account as "interest payable". The cash flow attached to the Balance Sheet also confirmed the payment of interest of Rs. 150 lakhs which was also certified by the Respondent firm on 24th December, 1998, but in reality, the same was not paid to any of the Banks. The Industrial Investment Bank of India Limited had sent letters to the Respondent firm to meet and discuss the issues with them but the Respondent firm neither cared to visit the Bank or explain in any manner, the discrepancies pointed out by them in the Balance Sheet/Cash Flow Statement certified by the Respondent firm

2. The Respondent vide his letter dated 5th November, 2008, submitted his written statement.

3. Thereafter, in accordance with the provisions of Regulation 12(11) of the Chartered Accountants Regulations, 1988, the above papers containing the 'Information' along with the Written Statement, were considered by the Council at its 284th meeting held in January, 2009 at New Delhi. The Council being prima facie of the opinion that the Respondent was guilty of professional and/or other misconduct, decided to cause an enquiry to be made in the matter by the Disciplinary Committee.

4. The Disciplinary Committee conducted the enquiry in the case and the hearing in the matter was concluded at its meeting held on 8th June, 2017 at Mumbai. The Disciplinary Committee submitted its report dated 5th February, 2018 with the conclusion that the Respondent was **Not Guilty** of professional misconduct falling within the meaning of Clauses (5), (6) & (7) of Part I of Second Schedule to the Chartered Accountants Act, 1949 read with Section 21 of the said Act.

5. While arriving at its aforesaid conclusion, the Disciplinary Committee had relied on the following reasonings/arguments:-

5.1. The Committee noted that this is an information case arising out of a letter dated 28th December, 1999 received from Mr. S. J. Prem Kumar, General Manager - In charge Industrial Investment Bank of India (IIBI), Chennai. In the said letter it was alleged that the Bank had sanctioned a Medium Term Working Capital loan of Rs.300 lakhs to M/s. Femnor Mineral (India) Ltd (FMIL) and released an amount of Rs.135 lakhs. When the Annual Report for the year 1997-98 was

submitted, the Bank observed that Dena Bank had also extended the working capital facilities to the Company, but the secured loan extended by Dena Bank was not disclosed in the Balance Sheet of the Company for the year 1997-98 signed and audited by the Respondent firm. Upon the above fact being brought to the notice of the Company by Dena Bank, another Balance Sheet (duly audited by the Respondent firm) was produced showing the unsecured loan of Dena Bank and with inflated figures of debtors and creditors. Amongst the irregularities that were noticed in the revised balance sheet, it was seen that against the total secured loan of Rs.207 lakhs a disproportionate sum of Rs.151 lakhs was debited to the Profit & Loss Account as "Interest & Finance charges". The cash flow statement details of the Financial Statement also confirmed the payment of Rs.151 lakhs which was certified by the Respondent on 24th December, 1998, but in reality the same was not paid to IIBI / Dena Bank.

- 5.2. In order to consider the defence of the Respondent in respect of the aforesaid allegations against him, the Committee perused his written statement dated 5th November, 2008 alongwith subsequent written submissions dated 8th April, 2010, 7th May, 2013, 6th June, 2017 and 31st August, 2017. In the said statements, the Respondent had clarified that in respect of the office letter dated 28th April, 2006, addressed to him, he had vide his letter dated 27th May, 2006, replied to the same and it was not clear as to how the letter which had been posted on 27th May, 2006 had not reached the Institute. In the aforementioned letter, the Respondent had clarified the charges and the Respondent stated that it was surprising to him when he received "Information Letter" against him on the same

allegations despite the clarifications sent by him earlier. However, the facts indicate that the letter claimed to have been posted by the Respondent had not reached the ICAI and the Respondent had not been able to substantiate his claim.

- 5.3. Thereafter elaborating on the allegations, the Respondent stated that he had certified ONLY one set of Financial Statement dated 24th December, 1998 and no other. In this set of financial statement certified by him, he had disclosed the loan from Dena Bank towards working capital facilities of the Company. However, the sum of Rs.151.21 lakhs being interest paid represents Interest Paid/payable to Dena Bank/IIBI and others. The Respondent enclosed duly certified copy of the financial statements submitted by him as obtained from the office of the Registrar of Companies, Chennai, Tamil Nadu. Therefore, the Respondent denied the allegation of IIBI to the fact that he had certified 2 sets of financial statements for the period 31st October, 1998. He also stated that in response to the communication received from IIBI, his office had interacted with the Bank's officials and conveyed to them the denial of the matter. However, the Committee noted that the Respondent did not bring on record the documents regarding his denial to the IIBI.
- 5.4. The Respondent further stated that the financial statement dated 24th December, 1998 was the **only one** set that was certified by him after going through the books of accounts of the Company and applying standard auditing practices. As per the Respondent, this set of financial statement that was approved by the Board of Directors of the Company and also filed with the Registrar of

Companies, Chennai, Tamil Nadu. Thus, as per him, the allegations of his having certified two versions of the financial statements for the same accounting period ending 31st October, 1998 was baseless and had no merits. The alleged versions of the financial statements as stated by the IIBI were given by the Company and not by him.

- 5.5. He, therefore categorically stated that any other version of the financial statement dated 24th December, 1998 apart from the one he had submitted to ROC was farce and not prepared/authenticated by him and had no seal or signature on it. The Respondent further pointed out that it was not out of place to state that in any copy given to a financial institution, it had been an accepted practice to certify the copy as a true copy by the auditors whereas in the instant case, it appeared that no such practice was followed either by the Company or that IIBI had not insisted on the same. Therefore to saddle him with the allegation of having prepared two variants of financials for the period ended 31st October, 1998 was of no substance.
- 5.6. The Committee had conducted a detailed enquiry in this case and also taken cognizance of the submissions made by the Respondent and by the witness before it and before the earlier Disciplinary Committee(s) in hearings spread over 3 to 4 hearings in which the Respondent and his Counsel were present. The Committee had examined the Respondent and had also directed him to cause production of certain documents. The Respondent also made oral submissions apart from written submissions. The Committee pointed out that in view of the denial made by the Respondent through his oral and various written

submissions, the witness from IFCI was specifically asked to provide copy of the financial statements which were signed by the Respondent. However, the IFCI instead of submitting the copy of the financial statements which were signed by the Respondent, provided copy of the Financial Statement containing signature of the Respondent as "Sd/-". The IFCI vide its letter dated 21st June, 2017 stated that they had no further documents in their records apart from the said documents provided by them.

- 5.7. The Committee perused Respondent's written submission dated 8th April, 2010. In his written submissions, it was submitted that the saddling of him with allegation of having prepared two varying financial statements of the company had no legal basis, which caused untold mental agony and hardship to him. He had an un-blemished professional record in the dignified profession since 1977. According to the Respondent, the IIBI and Dena Bank or the said company should have obtained due certificate from him herein before submitting / processing the loan applications. The Complainant or the Company had failed to obtain the necessary certificates from the Registrar of Companies for reasons best known to them.
- 5.8. The Respondent vide letter dated 9th May, 2013 produced certain related documents such as copies of his resignation letter as statutory auditor of Femnor Mineral (India) Ltd and the NOC issued to the subsequent auditor of Femnor Mineral (India) Ltd. He stated that he had not undertaken any professional work from the Company from 1998-99 onwards. He also tried to raise before the Committee, the issue of the matter being time barred citing limitation of time

period and the non-availability of any records after so many years. The Committee decided that since the Council had already referred the case to it for enquiry and the Respondent had not raised any such issues of limitation earlier, such issue is not maintainable at this stage. Accordingly, the Committee decided that it would look into the facts and evidences available on record and accordingly decide the case on merits. The Committee also noted that the Respondent was trying to apply the provisions of the Amended Act on the case because the said relevant provisions which were quoted are applicable under the new disciplinary mechanism, whereas his case pertained to old un-amended provisions of the Act.

- 5.9. Therefore, the Committee decided to look into the submissions of the Respondent based on facts/records. Accordingly, the Committee highlighted the following points:
- 5.10. The Respondent submitted that in the audited Balance Sheet filed with ROC on 19.05.1999 he had duly shown the loan availed by the Company from Dena Bank. The Respondent stated that having already audited and certified the Balance sheet on 24th December, 1998 which was filed with ROC on 19.05.1999, there was no reason for him either to prepare or certify another balance sheet without disclosing the loan availed by FMIL from Dena Bank. It was further submitted that even in the letter dated 23th July, 1999 from Dena Bank to IIBI annexed to the balance sheet of FMIL, Rs.208 lakhs was shown under "Secured Loans" for financial year ending 31.09.1998, which was approximately near to the exact amount of Rs.207.53 lakhs shown in the balance sheet filed with ROC.

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Thus, the Respondent reiterated that he had audited and certified only one balance sheet of FMIL for the Financial Year ending on 31.10.1998.

- 5.11. The Respondent further stated that with his having personally clarified to IIBI and also having provided to them the Balance Sheet filed by him on 19th May, 1999 with ROC, he was under the bonafide impression that the matter was closed. The Respondent was shocked to see the letter dated 28th December, 1999 that too when it was sent to him by the Institute as an enclosure to its letter dated 28th April, 2006. The Respondent contended that had the letter of 28th December, 1999 come to his knowledge earlier he would have had an opportunity to reply at that point of time itself and he would have informed IIBI about his meeting with Mr. Nair and Mr. Jain for clarifying the issues.
- 5.12. In respect of the allegation that the Respondent had acted in connivance with the Company in deliberately presenting its better picture while submitting the balance sheet of the Company to IIBI without disclosing the loans from Dena Bank, the Respondent stated that it was pertinent to mention that the balance sheet of FMIL alleged to have been submitted at the time of submission of application for loan to it also disclosed the amount of Rs.135 lakhs as a "Secured Loan" from IIBI under Schedule 3. Thus the above statement of the Bank was preposterous because it was impossible for the Respondent to disclose the loan of Rs.135 lakhs much before it was released by IIBI to the Company in the Balance Sheet alleged to have been prepared by the Respondent and stated to have been submitted at the time of application for the loan by the Company to IIBI. The Respondent also stated that he had produced the draft of the loan

application form prepared by the Company while availing the working capital facilities from Dena Bank to prove that he has aware of the loan being taken from Dena Bank and thus was included in one and the only Balance Sheet certified by him. The Respondent also expressed about the unavailability of working papers relating to the loan obtained from Dena Bank/IIBI, or justifying and/or interest with full details of the loan because of the time gap and also due to the fact that he was no longer the statutory auditor of the Company. In fact on 5th August, 1999, the Respondent had informed the Company about his intention not to continue as its statutory auditor. He had also issued NOC to the next incoming auditor.

5.13. Further, as regard the allegation of IIBI that as against a total secured loan of Rs.207 lakhs, a disproportionate sum of Rs.151 lakhs was debited as "Interest and Finance Charges", the Respondent in his letter dated (as early as on) 17.05.2006 to the Director (Discipline) had clarified that the amount represents the interest paid / payable to Dena Bank / IIBI and others (i.e.) there was no bifurcation of the interest paid to financial institutions and towards market borrowings, which was the then common practice among corporates. It was further submitted that the interest on market borrowings were incorporated as and when the proof of the borrowings were produced to the satisfaction of the Respondent in accordance with the financial guidelines which were not available with him for the reasons aforesaid.

5.14. The Respondent also submitted that as seen from the balance sheet filed with the ROC, the turnover of the Company for the FY ending on 31.10.1998 was ✓

Rs.2,467.18 lakhs i.e. about Rs.25 crores for 16 months with an average of about Rs.139 lakhs turnover per month. The Bank loan of Rs. 72.53 lakhs availed by the Company which was only about 50% of its monthly turnover. Moreover, FMIL for the FY ending on 31st October, 1998 had resorted to market borrowings at heavy interest rate/s on promissory note which resulted in debiting the sum of Rs.151 lakhs towards "Interest and Finance Charges".

- 5.15. The Respondent had taken on record the applicable and approved interest payments following the auditing standards applicable at the relevant point of time after verifying the books of accounts maintained by the Company at its registered office for verifying the balance sheet for the FY ending on 31st October, 1998, which was later filed with the ROC.
- 5.16. The Respondent submitted that even otherwise, it is a universal fact that the true purpose of an audit is to examine the accounts and records maintained by the Company with a view to establish whether the books and other records reflect the transactions to which they purported to relate. Further, in terms of Standard Accounting Principles, an auditor audits the financial statement based only on the books of accounts and records maintained and provided by his client. The Respondent had contended that he had exercised reasonable and competent care, skill and cautions to ascertain that the accounts and records of the Company did so. As per him, the extent of reasonable skill, care and caution depends on the particular circumstances of each case. The Respondent was not bound to do more than exercise reasonable care and skill in making enquiries and investigations and was also not bound to be a detective or to approach his

work with suspicion or with a foregone conclusion that there was something wrong. He was a watch dog but not a blood hound. In such circumstances, an auditor could not be burdened with any responsibility if/when the client had manipulated the records not discernible to the auditor's skill and care.

- 5.17. The Respondent in his written submissions further contended that the competent authority of IFCI, as the assignee of IIBI, through its letter dated 23.04.2013 had after examination of the issue at all levels notified its decision not to pursue the complaint against the Respondent presumably as there was no failure to disclose a material fact necessary in making financial statement and/ or there was no material departure from the generally accepted procedure and audit principles or no willful omission or gross negligence in professional capacity on his part.
- 5.18. The Respondent also stated that he had been repeatedly insisted to produce the working papers justifying and/or relating to the loans obtained from Dena Bank / IIBI, interest with full details of the loan and other details of the financial statement and Profit & Loss Account and the signed financial statement etc. In this regard, the Respondent clarified that he was not in possession of any working papers etc. or any other material pertaining to the Company for the financial year 1997-98 due to the time gap, as well as, due to the fact that he was no more statutory auditor of the said Company from 1998-99 onwards.
- 5.19. The Committee took note of the above submissions of the Respondent and also noted that in response to the summons issued by it to the witness from IIBI and the Company, no one could produce copy of the alleged financial statements

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duly signed by the Respondent. In fact, vide its letter dated 23rd April, 2013 received from Shri Kundoo, Associated Vice President, IFCI, stated as under :

"IFCI has acquired the case of M/s. Femnor Minerals India Ltd (FML) along with other NPA accounts in Basket - Q from Industrial Investment Bank of India (IIBI) vide duly registered Deed of Assignment dated 20.06.2012. Post acquisition, IFCI has stepped into the shoes of IIBI regarding rights and liabilities under the loan account of Femnor Minerals India Ltd.,

On receipt of the letter from ICAI, the matter has been examined at all levels and the Competent Authority has taken the decision that IFCI does not wish to pursue the complaint filed against CA. T.G. Ramanathan in the case of M/s. Femnor Minerals India Ltd on 28.12.1999 and the same is withdrawn."

5.20. The Committee was of the view that with the Respondent had categorically disclaimed that he had issued only the one set of the balance sheet, the benefit of doubt could be given to him on account of the following points:-

(a) The authenticity of the first balance sheet submitted to the Bank was in doubt because it did not bear the seal or signature of the Respondent. The witness from IFCI, on specifically being asked, could not produce signed copy of the financial Statement to negate the submissions of the Respondent that he had not signed the second set of the Financial Statement of the Company.

(b) The argument of the Respondent that it was an accepted practice for any financial institution to accept copies of balance sheet as certified true copy and in this case, neither the company nor the financial institution had appeared to do so.

(c) The irregularities / deficiencies pointed out by the Bank had been suitably addressed by the Respondent in his written submissions which in the absence of

any counter-rebuttal by the concerned Bank(s) and also keeping in view the period of time lapsed needs to be accepted.

(d) The Respondent had mentioned the loan of FMIL in the draft loan application to Dena Bank.

(e) Though the Respondent was unable to produce his working papers due to reasons well stated by him, the fact that IFCI was also not interested in pursuing the matter and their inability to produce any related records leads to give a benefit of doubt to the Respondent.

In the absence of corporation/documents from IFCI, the documents on record were not sufficient to hold beyond any doubt that the Respondent had signed two sets of financial statement as the "Sd/-" signed copy of the Financial Statement could not be used as authenticated and admissible documents/evidence against the Respondent.

5.21. Thus, taking an overall consideration of the facts and circumstances of the case, the Committee is of the view that this is a fit case for giving the benefit of doubt to the Respondent. Therefore, considering the time gap that has elapsed, inability of the company or the financial institution to provide papers or pursue the proceedings, the Committee is of the view that the Respondent is not guilty of professional misconduct falling within the meaning of Clauses (5), (6) & (7) of Part-I of the Second Schedule to the Chartered Accountants Act, 1949.

6. The Council considered the Report of the Disciplinary Committee dated 05/02/2018 at its meeting held on 19/08/2019 and noted that the Respondent was not

present, however, he had made written representation dated 12/12/2018 on the Report of the Disciplinary Committee. On consideration, the Council noted that:

- 6.1 In the instant case the allegation against the Respondent is that Industrial Investment Bank of India (IIBI), Chennai (Bank) had sanctioned a Medium Term Working Capital loan of Rs.300 lakhs to M/s. Femnor Mineral (India) Ltd (FMIL) (Company) and released an amount of Rs.135 lakhs. When the Annual Report for the year 1997-98 was submitted, the Bank observed that Dena Bank had also extended the working capital facilities to the Company, but the secured loan extended by Dena Bank was not disclosed in the Balance Sheet of the Company for the year 1997-98 signed and audited by the Respondent/firm. Upon the above fact being brought to the notice of the Company by Dena Bank, another Balance Sheet (duly audited by the Respondent/ firm) was produced showing the unsecured loan of Dena Bank and with inflated figures of debtors and creditors.
- 6.2 The Council noted that the Respondent submitted that he had certified only one set of financial statements of the Company dated 24/12/1998 showing loan from Dena Bank towards working facilities of the Company.
- 6.3 Moreover, the Council accepted the report/ findings of the Disciplinary Committee and absolve the Respondent from the allegation of professional misconduct, on account of following observations:-
 - (a) The authenticity of the alleged first balance sheet submitted to the Bank was in doubt because it did not bear the seal or signature of the Respondent. The witness from IFCI, on specifically being asked, could not produce signed copy of the financial Statement to negate the submissions of the Respondent

that he had not signed the second set of the Financial Statement of the Company.

(b) The argument of the Respondent that it was an accepted practice for any financial institution to accept copies of balance sheet as certified true copy and in this case, neither the company nor the financial institution had appeared to do so.

(c) The irregularities/deficiencies pointed out by the Bank was addressed suitably by the Respondent in his written submissions which in the absence of any counter-rebuttal by the concerned Banks and also keeping in view the period of time since elapsed need to be accepted.

(d) The Respondent had mentioned the loan of FMIL in the draft loan application to Dena Bank.

(e) The IFCI which had acquired the NPA account of the Company in 2012 was not interested in pursuing the matter and it had expressed its inability to produce any related records lead to give benefit of doubt to the Respondent.

In absence of documents from IFCI, the documents on record were not sufficient to hold beyond any doubt that the Respondent had signed two sets of financial statement as the "Sd/-" signed copy of the Financial Statement could not be used as authenticated and admissible documents / evidence against the Respondent.

7. The Council upon consideration of the Report of the Disciplinary Committee dated 5th February, 2018 along with written representation dated 12th December, 2018 received from the Respondent, decided to accept the finding(s) of the Disciplinary Committee holding the



Respondent "Not Guilty" of professional misconduct falling within the meaning of Clauses (5), (6), & (7) of Part I of Second Schedule read with Section 21 of the Chartered Accountants Act, 1949.

9. The Council also decided that the papers related to the case be filed.

10. The Council further resolved that CA. Atul Kumar Gupta, Chairman of the meeting at the time of consideration of the report be authorised to sign the Finding of the Council in the case, on behalf of the Council.

Sd/-
(CA. ATUL KUMAR GUPTA)
CHAIRMAN

Certified to be true copy
A.S.
The Council of the Institute of
Chartered Accountants of India
New Delhi

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