



THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA
(Set up by an Act of Parliament)

ORDER UNDER SECTION 21B(3) OF THE CHARTERED ACCOUNTANTS ACT 1949 READ WITH RULE 19(1) OF THE CHARTERED ACCOUNTANTS (PROCEDURE OF INVESTIGATION OF PROFESSIONAL AND OTHER MISCONDUCT AND CONDUCT OF CASES) RULES, 2007.

File no. : [PR-172/2013-DD/178/13/DC/513/2017]

In the matter of:

**Shri A. K. Mahapatra, Deputy Director (Insp.),
Govt. of India, Ministry of Corporate Affairs,
O/o the Regional Director, Eastern Region,
Nizam Palace, 3rd Floor, 234/4, A.J.C. Bose Road,
Kolkata-700 020**

.....Complainant

Versus

**CA. Ashok Guha.....(M. No. 015143)
M/s U.S. Saha & Co.,
Chartered Accountants,
228, Kamalalaya Centre, 2nd Floor,
156-A, Lenin Sarani,
Kolkata-700 013**

.....Respondent

Members Present:

**CA. Prafulla Premasukh Chhajed, President
Smt. Anita Kapur, Member (Govt. Nominee)
Shri Ajay Mittal, IAS (Retd.), Member (Govt. Nominee)
CA. Debashis Mitra, Member**

Date of Final Hearing : 16th July 2019

Place of Final Hearing : Kolkata

Parties Present:

(i) CA. Ashok Guha – Respondent

1. Vide report dated 11.01.2019, (Copy enclosed) the Disciplinary Committee was of the opinion that **CA. Ashok Guha (M. No. 015143)** was **GUILTY** of Professional Misconduct falling within the meaning of Clause (7) of Part I of the Second Schedule to the Chartered Accountants Act, 1949 with respect to the allegations relating to the statutory audit of M/s Rose Valley Real Estates & Construction Limited (hereinafter referred to as the “**Company**”) for F.Y. 2009-10 wherein on the basis of technical scrutiny of Balance Sheet various deficiencies and contraventions in the reporting requirement were noticed.



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2. An action under Section 21B (3) of the Chartered Accountants Act, 1949 was contemplated against the Respondent and communication dated 28th June 2019 was addressed to him thereby granting him an opportunity of being heard in person and/or to make a written representation before the Committee on 16th July 2019 at Kolkata.

3. The Respondent appeared before the Committee on 16th July 2019 at Kolkata and made his representations wherein, he, *inter alia*, stated that he did not agree with the last allegation made in the findings of the Disciplinary Committee as the allegation was based on note 16 to Schedule P (D-27) and Schedule F (D-41) to the Audited Accounts for the year ended on 31st March, 2010. He further stated that the financial statements were prepared by the Management of the Company and given to him for audit and he in his Audit Report for the year ended on 31st March, 2010 on the Accounts submitted by the management, reported at point No. 9 in the annexure to the main Audit Report of even date for the year ended 31st March, 2010 that no provision for accretion had been made on accrual basis for the allotment of land with enhanced credited value towards the advance received for plot booking. Thus, as per him, he had duly disclosed the matter in his Audit Report along with the annexure to the main Report of even date.

4. The Committee considered the written submissions made by the Respondent and noted that the Respondent was the Statutory Auditor of the Company for the F.Y. 2009-10 and he had issued his audit report on 2nd September 2010. It was noted that the alleged non-disclosures in respect of **first charge** relating to unsecured loan given to Companies Covered under section 301 of the Companies Act, 1956, **second and third charge** relating to non-convertible redeemable debentures issued on 01.08.2007 and 15.11.2007, **fourth charge** relating to violation in disclosure requirement of investments, **sixth charge** relating to violation in disclosure requirement of nature of security in respect of the secured loans and **eighth and ninth charge** relating to non-disclosure of dividend income from mutual funds as to from long term/current investment or trade/non-trade investment, as dealt with in paragraphs 6,7,8,10 and 11 of the 'Findings of the Committee', were in relation to non-compliance of specific mandatory requirements of Schedule VI. It was viewed that non disclosure of such information might not be affecting the true and fair view of the financial statements, but alleged non compliances and number of such instances signified lack of due diligence on the part of the Respondent.



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5. As regard the **eleventh charge** in respect of treating the enhanced credit value as appreciation in the value of land, the Committee noted that Note 16 to Schedule P **(D-27)** stated as follows:

“16. Enhance credit value paid for settlement with the customers during the year for relinquishment of their right to occupancy of the land on expiry of the term are treated as appreciation in the value of land and accordingly shown along with the value of lands for the year Nil (P.Y. for Rs.68.38crore) instead of charging to Profit and loss account.”

It further noted that said appreciation was effected in the value of land was shown as inventories under Schedule F **(D-41)**. It was viewed that an increase in the value of inventory although in the form of land was an expense in relation to that inventory and accordingly, the same should have been charged to P & L account. Thus, the Committee was of the view that on this charge too, lack of due diligence on the part of the Respondent in conduct of his duties was evident. As regards the Respondent’s submission that he had duly reported the fact in his audit report, it was noted that firstly the said information was written in CARO in paragraph 9 **(W-17)** with no information on the face of audit report. It was noted that the said paragraph only recorded a note that said provision was not accounted but did not report that it affected true and fair view of profit. Accordingly, the Committee is of the considered opinion, as regard this charge that the Respondent was guilty of professional misconduct falling within the meaning of Clause (7) of Part I of the Second Schedule to the Chartered Accountants Act, 1949.

6. Thus upon overall consideration and looking in to the facts of the case, the Committee noted that in such circumstances, the Respondent should have been more cautious while conducting the statutory audit of the Company as numerous contraventions of statutory compliances were noted by the Complainant on technical scrutiny of the financial statements of the Company for the F.Y 2009-2010. Thus in view of the Committee, the Respondent had failed to exercise due diligence in performance of his duties as his the negligence in conduct of his professional duties was quite evident.

7. The Committee was thus of the opinion that the misconduct on the part of the Respondent had been established within the meaning of clause (7) of Part I of the Second Schedule to the Chartered Accountants Act, 1949 and keeping in view the facts and circumstances of the case



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as aforesaid, ordered the removal of name of Respondent **CA. Ashok Guha (M. No. 015143)** from Register of Members for a period of 2 (two) years.

Sd/-
CA. Prafulla Premsukh Chhajed,
Presiding Officer

Sd/-
Smt. Anita Kapur
Member, (Govt. Nominee)

Sd/-
Shri Ajay Mittal
Member (Govt. Nominee)

Sd/-
CA. Debashis Mitra
Member

Date: 16th July 2019
Place: Kolkata



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CONFIDENTIAL

DISCIPLINARY COMMITTEE [BENCH-III (2018-19)]

[Constituted under section 21B of the Chartered Accountants Act, 1949]

Findings under Rule 18(17) of the Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007

File no. : [PR-172/2013-DD/178/13/DC/513/2017]

In the matter of :

Shri A. K. Mahapatra,
Deputy Director (Insp.),
Govt. of India,
Ministry of Corporate Affairs,
O/o the Regional Director,
Eastern Region,
Nizam Palace, 3rd Floor,
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Versus

CA. Ashok Guha.....(M. No. 015143)
M/s U.S. Saha & Co.,
Chartered Accountants,
228, Kamalalaya Centre, 2nd Floor,
156-A, Lenin Sarani,
Kolkata-700 013

.....Respondent

Members Present:

CA. Naveen N. D. Gupta, Presiding Officer
Smt. Anita Kapur, Member (Govt. Nominee)
CA. Shyam Lal Agarwal, Member

Date of Final Hearing : 30th November, 2018

Place of Final Hearing : Kolkata

Parties Present:

- (i) Shri Manoj S. Bang, Deputy Director–Complainant’s representative**
- (ii) CA. Ashok Guha – Respondent**

Allegations of the Deputy Director (Isp.), Govt. of India, Ministry of Corporate Affairs:



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1. In the present case, the, on the basis of technical scrutiny of Balance Sheet for the year ending 31.03.2010 in regard to the Company namely M/s Rose Valley Real Estates & Construction Limited (hereinafter referred to as the “**Company**”), raised the allegation against the Respondent, who had signed the said Balance Sheet, with regard to the following contraventions:-
 - i) In respect of unsecured loans given to Companies covered under Section 301 of the Companies Act 1956, (hereinafter, referred to as ‘the Act’) the Respondent did not report
 - (a) number of parties involved and amount involved;
 - (b) whether payment of principal and interest was regular;
 - (c) whether terms and conditions for giving the loans were prejudicial to the interest of the Company.
 - ii) In respect of the 50,000 secured non-convertible redeemable debentures of Rs 1000/- each (private placement) aggregating Rs 500 lakhs, issued on 01.08.2007, no disclosure was made about the nature of security and the terms of redemption of the debentures. This resulted in violation of the provision of Section 211(1) read with Schedule VI to the Act.
 - iii) In respect of the 50,000 secured non-convertible redeemable debentures of Rs 1000/- each (private placement) aggregating Rs 500 lakhs, issued on 15.11.2007, no disclosure was made about the nature of security and terms of redemption of the debentures. This resulted in violation of the provisions of Section 211(1) read with Schedule VI to the Act.
 - iv) In respect of the Investments in shares/securities (Rs 18240.02 lakhs) no disclosure was made as to
 - (a) whether the Investments were long term in nature or short term in nature, contrary to the provisions of Accounting Standard-13.
 - (b) regarding the number of shares of each Company in which investment was made, contrary to the provisions of Part I of Schedule VI to the Act.



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- (c) whether the Investment was Trade Investment or other Investment, contrary to the provisions of Part I of Schedule VI to the Act.
- v) The cash in hand (Rs. 130.08 lakhs) was reported as certified by management. The Respondent therefore did not verify the cash.
- vi) No disclosure was made in the Balance Sheet regarding the nature of security in respect of the secured loans. This violated the provisions of Part I of Schedule VI to the Act.
- vii) No disclosure was made regarding earnings per share, leading to violation of Accounting Standard-20.
- viii) In respect of dividend earned from investment in mutual fund no disclosure was made as to whether the earning arose out of long term investments or current investments. This violated Accounting Standard-13.
- ix) In respect of dividend earned from investment in mutual fund no disclosure was made as to whether the earning arose out of trade investment or other investments. This violated provisions of Part I of Schedule VI to the Act.
- x) In respect of repairs and maintenance expenses (Rs. 13,45,773) no break-up was disclosed as required under Part II of Schedule VI to the Act.
- xi) Enhanced credit value paid for settlement with customers during the year in lieu of lands on expiry of term, was treated as appreciation in value of land and shown along with value of land. The said enhancement was actually accrual of liability towards interest payable to the customers and should have been charged to the profit and loss account. This ,therefore, resulted in violation of the provisions of Section 211(2) of the Act as profits were overstated.



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2. The Committee noted that at the time of hearing on 26th July 2018, Ms. Ishani Pandya, Assistant ROC appeared as the Complainant's representative and the Respondent appeared in person. As it was the first hearing, the Respondent was put on oath. Thereafter, the Committee asked the Respondent whether he wished the charges to be read out or these could be taken as read. The Respondent stated before the Committee that he was aware of the allegations raised against him and the same may be taken as read. On being asked, as to whether he pleaded guilty, he replied that he did not plead guilty and would defend his case.

3. Thereafter, the Complainant's representative submitted that their Department had nothing further to add and hence they stood by their opinion communicated to the Committee earlier. The Respondent submitted that he had in his defence, already submitted his written statement. Based on the documents available on record and after considering the oral and written submissions made by the parties before it, the Committee considered the case.

4. At the time of last hearing on 4th December 2018, the Committee noted that the Complainant's representative and the Respondent both were present. The Committee thereafter informed the Respondent that since the composition of the Committee had undergone a change, an option of de-novo hearing in the matter was available to him. The Respondent stated that since he had submitted his oral as well as written defense when matter was heard last time, the case may be proceeded from the stage where it was left. The Committee agreed to the same and thereafter, considering the documents available on record, the oral and written submissions made by the Respondent, the Committee concluded the hearing in the matter.

Findings of the Committee:

5. On perusal of papers on record, the Committee noted that in respect of above allegations the Respondent was held not guilty in respect of allegation mentioned at para 1 (vii) and 1(x) by the Director(Discipline) and the same was accepted by the Committee at the time of considering the prima-facie opinion.



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As regards balance charges, the Committee gives its findings in following paragraphs.

6. In respect of first charge relating to unsecured loan given to Companies covered under section 301 of the Companies Act, 1956, it was noted that the Respondent, in this context, had submitted in his written statement that there was no difference between the amount, classification, presentation of unsecured loan to companies under same group as on 31.03.2010 as reported in financial statement and the actual amount, classification, presentation that were required for unsecured loans to companies in accordance with the applicable financial reporting framework. He further submitted that the Company was a closely held i.e. not a listed company. It was also submitted by him that non furnishing of the specific data and information in his report (CARO) did not bear any intention and did not effect the economic decisions of users of financial statement as it did not affect true and fair view. The Committee noted that there was a specific requirement made under para 4(iii) of CARO 2003 regarding reporting which was not complied with. Being a specific reporting requirement, the defence that it was a closely held company or that it did not affect the decisions of users of financial statements, is not acceptable. The Committee is of the view that such non-reporting may not be affecting the true and fair view but it signifies lack of due diligence. Accordingly, the Committee is of considered opinion as regard this charge that the Respondent was guilty of professional misconduct falling within the meaning of Clause (7) of Part I of the Second Schedule to the Chartered Accountants Act, 1949.

7. In respect of second and third charge relating to non-convertible redeemable debentures issued on 01.08.2007 and 15.11.2007, it was noted that the Respondent in his written statement had submitted that security against debenture issued on 01.08.2007 and 15.11.2007 was created by way of creation of mortgage /charge on immovable property of the company with Registrar of Companies and accordingly he checked the detail of documents like Resolution, Minutes of Meeting Debenture Trust deed and property charged and the same was evidenced in Form 10 and Certificate of Registration dated 31.08.2007 . He further submitted that if both the documents were taken



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together, the relevant provision of Section 211(1) of the Companies Act, was complied with. It was also submitted by him that the factors relating to issue of non-convertible redeemable debenture with the nature of security and the term of redemption alongwith audited financial statement for the financial year 2007-08 were also disclosed to shareholders in annual general meeting of the company for the said period and it did not impact the disclosure of the nature of security and the terms of redemption of the debenture. The Committee noted that there is specific mandatory requirement of Schedule VI of the Companies Act 1956 in respect of disclosure of information with respect to nature of security as well as the terms of redemption of the debentures which has not been complied with in extant case. Non-adherence of the same under pretext of closely held company or that it was not affecting the decisions of users of financial statements cannot be accepted. The Committee is of the view that such non-disclosure may not be affecting the true and fair view, but it signifies lack of due diligence. Accordingly the Committee is of the considered opinion as regard this charge that the Respondent was guilty of professional misconduct falling within the meaning of Clause (7) of Part I of the Second Schedule to the Chartered Accountants Act, 1949.

8. In respect of fourth charge relating to violation in disclosure requirement of investments, it was noted that the Respondent in his written statement had submitted that upon checking the nature of investments in line with the provisions of Accounting Standard -13, he had found that all the investments shown in the Schedule K forming part of Balance Sheet as on 31.03.2010 were long term in nature and accordingly there were disclosed as Long Term Investment alongwith their valuation in note 7 of the notes forming part of the accounts as on 31.03.2010. He further submitted that in Schedule E– forming part of Balance Sheet as on 31.03.2011, the classification of trade investment and other investment mentioned within the Schedule G **(W-23)** forming part of Balance Sheet as on 31.03.2010, was represented under the head with specific word “Trade Investment” & “Other Investment” as was presented in previous year’s record. The said classification under the head “Trade Investment and Other Investment” was also presented in Schedule E and Note 13 forming part of Balance Sheet as on 31.03.2011 & 31.03.2012 respectively. The Committee



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noted that the investments had not been classified either as 'long term investments'/ 'current investments' or trade/other investment in F.Y. 2009-10. Further the details of number of shares held thereof with respect to each investment was also not disclosed. It is noted that the Respondent had claimed to have classified the same in F.Y. 2010-11 and 2011-12 but there is a lapse in the audited financial statement of the Company for the Financial Year 2009-10, as mandatory requirements of AS-13 and Schedule VI have not been complied with. Considering that there was lack of due diligence, the Committee is of the view that with regard to said charge, the Respondent was guilty of professional misconduct falling within the meaning of Clause (7) of Part I of the Second Schedule to the Chartered Accountants Act, 1949.

9. In respect of fifth charge relating to non-verification of cash in hand, the Respondent submitted that in para 7 of CARO **(W-16)** reporting he had mentioned that Internal Audit Department of the Company conducted the audit on continuous basis during the financial year 2009-2010. He further submitted that as an auditor, he relied on the cash verification of internal audit department of the company and obtained confirmation for reliance regarding the existence of the assets. Further, the internal audit department conducted monthly cash verification of HO and Branch Offices on sample basis which were evidenced in their monthly internal audit report. Besides, the Respondent submitted that he had conducted cash verification of HO for the cash balance as on 31.03.2010 and found no differences as reported in internal audit report submitted to management and, therefore, decided to go by the certification of the management. The Committee on perusal of the reporting in CARO and disclosure in Schedule "I" **(W-25)** noted that cash on hand had been stated to be disclosed as certified by the management. The Committee noted the disclosure made and verification procedure adopted, and formed a view that the Respondent was Not Guilty of professional misconduct falling within the meaning of Clause (7) of Part I of the Second Schedule to the Chartered Accountants Act, 1949 with respect to this charge.

10. In respect of sixth charge relating to violation in disclosure requirement of nature of security in respect of the secured loans, it was noted that the



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Respondent in his written statement had submitted that there were no secured loan other than debentures mentioned in Schedule 'C' forming part of balance sheet as on 31.03.2010 and these represent the secured loan and non-convertible and redeemable debentures issued on 01.08.2007 and 15.11.2007. It is however noted that nature of Security was not mentioned which is not in line with the requirement of presentation of information as required in Schedule VI to Companies Act, 1956. It is viewed that such non-disclosure may not be affecting the true and fair view, but it signifies lack of due diligence on the part of the Respondent and accordingly the Committee is of the considered opinion, as regard this charge, that the Respondent was guilty of professional misconduct falling within the meaning of Clause (7) of Part I of the Second Schedule to the Chartered Accountants Act, 1949.

11. In respect of eighth and ninth charge relating to non-disclosure of dividend income from mutual funds as to from long term/current investment or trade/non-trade investment, it was noted that the Respondent in his written statement had submitted that upon checking the nature of investments he found that all the investments were as per the details shown in the Schedule G (**W-23**) to the Balance Sheet as on 31.03.2010. He further submitted that such investments were long term investments non-trade in nature and the Company had disclosed the aggregate of all such investments under the head Long Term Investments. However, inadvertently the dividend arising from said investments was not disclosed explicitly as that generating from long term non-trade investments. From the submission of the Respondent, it was noted that though the Respondent may be aware of the facts but disclosure as required in relation to dividend income was not reported as per the requirement of AS 13 and Schedule VI to Companies Act, 1956. It is viewed that, such non-compliance signifies lack of due diligence on the part of Respondent. The Committee, accordingly is of the considered opinion, as regard these charges, the Respondent was guilty of professional misconduct falling within the meaning of Clause (7) of Part I of the Second Schedule to the Chartered Accountants Act, 1949.



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12. The last and eleventh charge was in respect of treating the enhanced credit value as appreciation in the value of land. The Respondent in his written statement had submitted that he checked appropriate value of land with the valuation report produced and also checked the terms and conditions between the customers and the Company where it was clearly mentioned that the customers will be paid as per agreed value of land (Inventory) prevailing in the market if the customer opted out to take land on expiry of term. Hence, as per the Respondent, there was no overstatement of profit or understatement of loss in the instant case.

The Committee noted that Note 16 to Schedule P (D-27) stated as follows:

“16. Enhance credit value paid for settlement with the customers during the year for relinquishment of their right to occupancy of the land on expiry of the term are treated as appreciation in the value of land and accordingly shown along with the value of lands for the year Nil (P.Y. for Rs.68.38crore) instead of charging to Profit and loss account.”

It was further noted that said appreciation was effected in the value of land shown as inventories under Schedule F (D-41). It is viewed that an increase in the value of inventory although in the form of land was an expense in relation to that inventory. Accordingly, the same should have been charged to P & L account. Therefore, on this charge too, the negligence on the part of the Respondent in conduct of his duties was evident. Accordingly, the Committee is of the considered opinion, as regard this charge that the Respondent was guilty of professional misconduct falling within the meaning of Clause (7) of Part I of the Second Schedule to the Chartered Accountants Act, 1949.

Conclusion :

13. Thus, in conclusion, in the opinion of the Committee, the Respondent is held **GUILTY** of Professional Misconduct falling within the meaning of Clause (7) of Part I of the Second Schedule to the Chartered Accountants Act, 1949.

Sd/-
(CA. Naveen N.D. Gupta)

Presiding Officer
Nominee)

Sd/-
(Smt. Anita Kapur)

Member (Govt.



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Sd/-
(CA. Shyam Lal Agarwal)
Member

Date : 11th January, 2019

Place : New Delhi