



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 THE RULE 19(1) OF THE CHARTERED ACCOUNTANTS (PROCEDURE OF INVESTIGATION OF PROFESSIONAL AND OTHER MISCONDUCT AND CONDUCT OF CASES) RULES, 2007.

File No.: PR 240/2016-DD/264/2016-DC/642/2017

In the matter of:

Shri K.S. Kaushik,
Serious Fraud Investigation Office
Ministry of Corporate Affairs,
Government of India,
2nd Floor, Paryavaran Bhawan,
CGO Complex, Lodhi Road,
NEW DELHI - 110 003

.....Complainant

Versus

CA. Parthasarathi Chanda (M. No. 056653)
Partner, M/s Nandy Halder & Ganguli (FRNo.302017E)
Chartered Accountants
18, Netaji Subhash Road, Top Floor
KOLKATA – 700 001

..... Respondent

Members Present:

CA. Prafulla Preme Sukh Chhajed, Presiding Officer
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. Parthasarathi Chanda–Respondent

1. Vide report dated 11.01.2019 (**copy enclosed**), the Disciplinary Committee was of the opinion that **CA. Parthasarathi Chanda (M. No. 056653)** was **GUILTY** of Professional Misconduct falling within the meaning of Clauses (6) and (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 Mega Mould India Ltd.(hereinafter referred to as the '**MMIL**) for the Financial Year 2011-12, wherein he did not qualify the statutory violations done by the MMIL regarding non accounting of deposit collected in the financial statements.



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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 04th July 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 written representations dated 16th July 2019 as well as oral submissions before the Committee wherein, he stated that

(i) He had requested for keeping the hearing u/s 21B(3) pending till final adjudication of writ petition filed by him before Hon'ble Calcutta High Court for providing him Appendix 'A', 'B' and 'C' of SFIO report as well as transcripts dated 27th July, 2018 and 27th Aug 2018.

(ii) The extant case was not properly authorized as the Complainant was not specifically authorized to investigate the affairs of Mega Moulds India Ltd.

(iii) The Disciplinary Committee had thoroughly misunderstood the reporting relating to Rs.202 crore. This amount was not collected during the year 2011-12. The said amount appeared as an opening balance from the previous years, and the Respondent was not the auditor in the previous years. The said amount of Rs. 202 crore was contained in the financial statements for the year 2010-11 as long term deposit. During the year 2011-12 consequent to the allotment of debentures, the nomenclature related to the related figure had been appropriately changed in the financial statements. The audit report of the Respondent was subject to certain specific observations of the Respondent; further the Respondent had clearly stated his disclaimer relating to reporting of transactions with respect to issue/allotment of debentures. Accordingly, holding the respondent to be guilty of professional misconduct because his audit reported stated that the balance sheet gave a true and fair view and that he had received all explanations, is not maintainable.

(iv) The Complainant had not brought on record any proof/evidence about a material statement which appeared in the financial statements of the company for the year ended 31st March 2012, which the Respondent had failed to report and mere statements without details, and without documentary proof or evidence, could not be the basis for adjudging the respondent guilty of professional misconduct.

4. The Committee considered the written as well as oral submissions made by the Respondent and noted that in respect of his writ petition, pursuant to the orders dated 14th June, 2019 passed by Hon'ble Justice Debangsu Basak, the Petitioner's advocate mentioned the matter on 2nd July 2019 before the Bench dealing with the Ponzy Scheme who in turn returned the



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matter as the same was observed to be not pertaining to any ponzy scheme but to professional misconduct. There was no interim /stay order by the said Bench on the date of hearing u/s 21B. In absence of interim orders, the Committee decided to proceed ahead with the matter. It was also incidentally noted by the Committee that the Appendix being referred in said writ petitions were not relied upon by the Committee in forming its opinion and that the transcripts were being supplied to the Respondent from time to time. Accordingly, the matter was proceeded with.

5. As regard the plea of Respondent that the extant complaint case was not properly authorized, as the Complainant was not specifically authorized to investigate the affairs of Mega Moulds India Ltd, the Committee perused the Complaint filed with the Institute alongwith its Annexures (C-7 to C-20) and viewed that Sh K S Kaushik, the Complainant, was authorized to file complaints in respect of four separate Investigation Reports of SFIO. Hence, plea of the Respondent that the Complainant was not specifically authorized for the stated case is not correct and unacceptable. Further, as regards compliance with Rule 3(2), the matter has been dealt in detail in para 6 of the 'Findings Report'. It was further viewed that Investigation report provides detailed findings which were germane to the extant case and that rightful authority was granted to the Complainant.

6. It was noted that the Respondent was the statutory auditor of the Company for the Financial Year 2011-12 alongwith being the statutory auditor of other Icore-group companies for the said financial year and/or subsequent financial year. It was noted that the audit opinion was expressed "subject to the observation given in pt. no.3 & 4(d)" of the Audit Report as well as the "observation given separately in Annexure – I" **(W-11)**. It was further noted that in paragraph 3 reference is given to only CARO Report given in pursuance to Sec 227(4)(A) of the Companies Act, 1956 and in paragraph 4 with respect to debentures through which disclaimer is claimed to have been expressed. However, no explicit disclaimer was made that no evidence was obtained to verify Debentures amounting Rs. 202 crore which was material considering the fact that the size of the balance sheet amounted Rs. 262.95 crore. It was noted that explanation in relation to same was given by way of Annexure to Audit report. On face of the Audit Report despite such observation, the Respondent in opinion paragraph had stated that the balance sheet of the company gave true and fair view and also that in paragraph 4 (a) the Respondent had reported to have obtained all the information and explanation which to the best of his knowledge and belief were necessary for the purpose of the audit **(W-10)**.



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7. Thus, upon overall consideration and looking in to the facts of the case and considering the principles of reporting in audit report as envisaged in SA 700 (AAS 28) 'The Auditor's Report On Financial Statements', the Committee noted a qualified opinion could be expressed only when the amount involved is material but not pervasive. Further, adverse/disclaimer of opinion is expressed when there is limitation in the scope on account of insufficient audit evidence and the effect is pervasive. However, when financials are misleading, then an adverse opinion is expressed. In extant case, considering the materiality of the matter in view of the balance sheet size and also the fact that audit evidence was not available to the Respondent, it was viewed that expressing qualification was against the requirements of SA 700(AAS 28) 'The Auditor's Report On Financial Statements'. In view of then prevailing circumstances, the Respondent should have given the disclaimer of opinion or adverse opinion as the auditor could deem fit as per his professional judgment, since the limitation of scope was also not mentioned. The Committee was of the view that in such a scenario mere issuance of qualified audit report by the Respondent was not enough and the Respondent should have refrained himself from stating that the financial statements give a true and fair view as stated under para (f) of his audit report (W-11). Thus, in view of the above, the Committee noted that the Respondent had not exercised proper caution and due diligence while conducting the audit of MMIL and had been grossly negligent.

8. The Committee was thus of the opinion that the misconduct on the part of the Respondent had been established within the meaning of Clauses (5), (6) and (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 as aforesaid, ordered the removal of name of Respondent **CA. Parthasarathi Chanda (M. No. 056653)** from Register of Members for a period of **4 (four) years** and imposed a fine of **Rupees 2 (two) lakhs**.

Sd/-
[CA. Prafulla P. Chhajed]
Presiding Officer

Sd/-
[Smt. Anita Kapur]
Member, Govt. Nominee

Sd/-
[Shri Ajay Mittal, IAS (Retd.)]
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
(Amendments) 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 240/2016-DD/264/2016-DC/642/2017

In the matter of:

**Shri K.S. Kaushik,
Serious Fraud Investigation Office
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Government of India,
2nd Floor, Paryavaran Bhawan,
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**CA. Parthasarathi Chanda ... (M. No. 056653)
Partner, M/s Nandy Halder & Ganguli (FRNo.302017E)
Chartered Accountants
18, Netaji Subhash Road, Top Floor
KOLKATA – 700 001
Respondent**

Members Present:

**CA. Naveen N.D. Gupta, Presiding Officer
Mrs. Anita Kapur, Member (Govt. Nominee)
CA. Shyam Lal Agarwal, Member
CA. Sanjay Kumar Agarwal, Member**

Date of Final Hearing: 27th August, 2018

Place of Final Hearing: Kolkata



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Parties Present:

- (i) CA. Parthasarathi Chanda–Respondent**
- (ii) CA. A. P. Singh – Counsel for Respondent**

Allegations of the Shri K.S. Kaushik, SFIO:

1. The Respondent was the statutory auditor of Mega Mould India Ltd. (hereinafter referred to as the 'MMIL') for the financial year 2011-2012, Icore Jewellery & Gems Pvt. Ltd. for the financial year 2012-2013, Icore Apparels Pvt. Ltd for the financial year 2012-2013, Icore Paints Pvt. Ltd. for the financial year 2012-2013, Icore Iron and Steel Pvt. Ltd. for the financial year 2011-2012 and 2012-2013, Icore Super Cements Pvt. Ltd. for the financial year 2011-2012, Icore Global Medicines Ltd. for the financial year 2011-2012 and 2012-2013, Icore Poly Fab Pvt. Ltd. for the financial year 2012-2013 and Icore Housing Finance Corporation Ltd. for the financial year 2012-2013.
2. During investigation, SFIO is stated to have found several material misstatements, misclassifications, concealment of information, fictitious accounting entries, acceptance of public deposits in the garb of Debentures and misappropriation of fund received from the public were revealed. It is alleged that such transactions/ entries should have been reported in the Auditor's Report. However, on perusal of the audit report of the Respondent in respect of Mega Mould India Ltd. for the Financial Year 2011-12, it is stated that the Auditor did not qualify the following statutory violations done by the Companies in their financial statements **(C-437):-**
 - (i) Non accounting of deposit collected in the financial statement;**
 - (ii) Non accounting of interest and commission in the balance sheet.**

PROCEEDINGS:

3. At the time of hearing on 27th August, 2018, the Committee noted that the Respondent was present in person along with his authorized Counsel to appear before the Committee. It was further noted that the



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Complainant vide its letter/email dated 24th August, 2018, beside providing the information sought from it during the previous hearing also submitted that the other documents in support of its complaint were already on record and that the matter was argued during the previous hearing. Accordingly, the Complainant requested the Committee to decide the matter based on merits.

4. It was noted that the matter was part heard on 26th July, 2018 and directions were given to the Complainant to submit the details of commission paid to the agents including the dates when such payments were made by the Company during the relevant financial year as referred in C-199 of the *Prima Facie* Opinion.
5. It was noted that a copy of the details, so received, was provided to the Respondent as well. The Committee proceeded ahead in the matter. The Counsel for the Respondent made his oral submissions in the matter. The Committee thereafter examined the Respondent. Then the Counsel for the Respondent made his final submission in the matter. The Committee thereafter directed the Respondent to submit his written submissions, if any, within 21 days from the date of hearing. It was noted that the Respondent made his final submissions vide Written Statement dated 10th September, 2018. Accordingly, after consideration of the material placed on record, the Committee concluded the hearing in the matter.

Findings of the Committee:

6. It was noted by the Committee that the Respondent in his final written submissions dated 10th September, 2018, had contended that the Ministry of Corporate Affairs (MCA) had not at all authorized the Complainant to investigate the affairs of the Company in question. It was further contended that the date when the Complainant Department had authorized the Complainant, vide its letter dated 12th January, 2016 was earlier than the date when MCA had authorized the Complainant Department, vide its letter dated 21st March, 2016, to take up the matter



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with ICAI. It was viewed that Rule 3 (2) of the Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007 prescribe the level of authority that may file complaint with under the said Rules which has been duly complied in extant case when the Director, SFIO authorized the Complainant to file the Complaint in the case **(C-20)**.

7. As regard the charge mentioned at 2(i) above, regarding non accounting of deposit collected in the financial statements, the Respondent had submitted that Audit report was prepared by him based on the accounts prepared and relevant documents, papers, bank statement, disclosures (verbal as well as written) etc. given by Company. The Respondent also contended that mobilization of funds by the Company from undisclosed bank accounts and through undisclosed accounts of group concerns/Companies and also acceptance of cash from depositors of small towns and villages, which was not reflected in the books of accounts of the client, could not be found by deploying normal prudence. He further claimed that if paragraph 4(f) of the Audit Report **(W-11)** was read with Annexure I (W-15) referred therein, he had appropriately qualified the audit report in respect of the matter.

8. It was noted that the audit opinion was expressed “subject to the observation given in pt. no.3 & 4(d)” of the Audit Report as well as the “observation given separately in Annexure – I” (W-11). It was further noted that in paragraph 3 reference is given to only CARO Report given in pursuance to Sec 227(4)(A) of the Companies Act, 1956 and in paragraph 4 with respect to debentures, through which the alleged deposits were collected, it states disclaimer as follows:

“We further report that we give disclaimer opinion on:-

- (i).....
- (ii).....
- (iii).....



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(iv) Fund raised on application of debenture for which Debenture Trust Deed agreement entered with Icore-E-Services Ltd. and Mega Mould Debenture Trust and charge registered with ROC for Rs.350Crore.”

Further, Annexure I **(W-15)** provided a list of its observations in paragraph 6 and 7 as reproduced below:

“6. During audit , it was found that Rs. 63.59 crores was received and credited in Deposit Account of the company. However, no proper explanation was obtained regarding source and other relevant details and the same parted in short term deposit, we give disclaimer on same.

7. During verification of particulars of charges for Debentures as specified in Form 10 for the purpose of Compliance of relevant provisions of the Companies Act, 1956, it was found that charge has been created with ROC for issue Debentures (Secured) of Rs. 200.00 Crore (Trustee Icore – E-services Ltd.) on 22.09.2010. However, we were unable to identify the reflection of transaction regarding issue of debenture in the books of account and hence we give disclaimer opinion regarding the same and again on 22.10.2011 another charge has been created with ROC for issue of Debenture (Secure) of Rs. 150 crore (Trustee Mega Mould India Ltd) However long term deposit of Rs. 202.27 crore and short term deposit of RS. 63.59 crore reflected in the books which seem to be collected from application of debenture out of which Management Representation given for allotment of 1,77,671 nos for Rs. 193,58,32,700 in 2011-12, balance Rs. 8,68,61,300 is kept for refund. We give following observation on such allotment,

- Effect in Accounts given on the basis of Management Representation dated 23.08.2012 only.
- Process of issue of Debenture could not be verified regarding:-
 - I. Passing of Extra Ordinary Resolutions.
 - II. Appointment procedure of Trustees for Debentures holder
 - III. Creation of charge on which Assets.
 - IV. Debentures Folio.
 - V. Trust Deed.



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- Application procedure and external evidence/receipt of such application.
- The company being incurred huge loss no debenture Redemption Reserve has been created.
- Registrar regarding allotment details not maintained only one list of eligible investors entered in system.
- As the company heavily underperformed in the F.Y 2010-11, 2011-12 and till the date of Audit, the probability of redemption of fund to the investor is doubtful unless performance improves or Capital Inducted, however we give disclaimer on the same. As informed by Management, due to meager operation and consequential huge loss in operation no Debenture Redemption Reserve could be created.”

From a perusal of the above, it was noted that no explanation was given with respect to amount received on Deposit. It was, however, noted that despite such observation the Respondent in opinion paragraph has stated that the balance sheet of the company gives true and fair view and also that in paragraph 4 (a) the Respondent has also reported to have obtained all the information and explanation which to the best of his knowledge and belief were necessary for the purpose of the audit **(W-10)**.

9. It was noted that the allegation relates to receipt of Rs.280.18 crore on issue of debentures during FY 2011-12 whereas debentures were reported at only Rs. 202 crore in the balance sheet and that the size of the total balance sheet was Rs. 262.95 Crores. It was viewed that if out of Rs.262.95 crore there were no evidence for Rs. 202 crore, the Respondent cannot be absolved of the allegations even if he had explained the matter in the Annexure to the Audit report because on the face of the audit report he had only reported positively by stating that balance sheet gave true and fair view and that he had received all the information and explanation.



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10. It was noted that SA 700 (AAS 28) 'The Auditor's Report On Financial Statements' which was applicable in the extant case envisages the principles of reporting in audit report when it states as follows:

"38. A qualified opinion should be expressed when the auditor concludes that an unqualified opinion cannot be expressed but that the effect of any disagreement with management is not so material and pervasive as to require an adverse opinion, or limitation on scope is not so material and pervasive as to require a disclaimer of opinion. A qualified opinion should be expressed as being 'subject to' or 'except for' the effects of the matter to which the qualification relates.

39. A disclaimer of opinion should be expressed when the possible effect of a limitation on scope is so material and pervasive that the auditor has not been able to obtain sufficient appropriate audit evidence and is, accordingly, unable to express an opinion on the financial statements.

40. An adverse opinion should be expressed when the effect of a disagreement is so material and pervasive to the financial statements that the auditor concludes that a qualification of the report is not adequate to disclose the misleading or incomplete nature of the financial statements.

11. From the above, it was noted that a qualified opinion could be expressed only when the amount involved is material but not pervasive. Further, adverse/disclaimer of opinion is expressed when there is limitation in the scope on account of insufficient audit evidence and the effect is pervasive. However, when financials are misleading, then an adverse opinion is expressed. In extant case, considering the materiality of the matter in view of the balance sheet size and also the fact that audit evidence was not available to the Respondent, it was viewed that expressing qualification was against the requirements of SA 700(AAS 28) 'The Auditor's Report On Financial Statements'. In view of the then prevailing circumstances, the Respondent should have given the disclaimer of opinion or adverse opinion as the auditor could deem fit as per his professional judgment, since the limitation of scope was also not



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mentioned. The Committee was of the view that in such a scenario mere issuance of qualified audit report by the Respondent was not enough and the Respondent should have refrained himself from stating that the financial statements give a true and fair view as stated under para (f) of his audit report (**W-11**). Thus, in view of the above, the Committee noted that the Respondent had not exercised proper caution and due diligence while conducting the audit of MMIL and had been grossly negligent. In view of the above, the Committee is of the view that the Respondent is guilty of Professional Misconduct falling within the meaning of Clauses (5), (6) and (7) of Part-I of Second Schedule to the Chartered Accountants Act, 1949 on this charge.

12. As regard the charge mentioned at 2(ii) above, regarding non-accounting of Interest and commission in the balance sheet, the Respondent in his defence stated that the interest of Rs. 2735.85 lacs was provided in the accounts. Upon perusal of the financial statement of the Company, it was observed that under note no. 17, under the heading finance cost, amount of Rs. 273,485,085/- (**W-24**) was shown towards Interest on Debenture. Further, no amount was shown towards payment of commission as against the allegation that commission to the extent of Rs. 1.08 Crores Approx (**C-199**) paid to six individuals was not accounted for. When details regarding the transactions of commission were sought specifically in relation to concerned financial year, it was noted that the Complainant had furnished details with regard to payment of Rs. 44 Lacs and that too, made to a single person. Thus, it was viewed that firstly insufficient details were furnished in context of the charge and further the amount involved was not material. Accordingly, the Committee is of the view that the Respondent is not guilty on this charge in terms of the provisions of Clauses (5), (6) and (7) of Part-I of 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



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Clauses (5), (6) and (7) of Part I of the Second Schedule to the Chartered Accountants Act, 1949 on first charge.

Sd/-
(CA. Naveen N.D. Gupta)
Kapur)
Presiding Officer
Nominee)

Sd/-
(Mrs. Anita
Member **(Govt.**

Sd/-
(CA. Shyam Lal Agarwal
Agarwal)
Member

Sd/-
(CA. Sanjay Kumar
Member

Date : 11th January, 2019

Place : New Delhi