

CONFIDENTIAL

DISCIPLINARY COMMITTEE [BENCH – I (2019-2020)]

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

Findings cum Order under Rule 18(17) and Rule 19(2) of the Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007.

**[Ref. No. PR-100/13-DD/99/2013/DC/456/2016 &
PR-101/13-DD/100/2013/DC/457/2016**

In the matter of:

Vice President

IFCI Ltd, IFCI Tower,
61, Nehru Place,
NEW DELHI - 110 019

.....Complainant

Versus

CA. Shamsher Singh... (M.No.083898)

H.No.1595, Sector-33D
CHANDIGARH - 160 020

.....Respondent

MEMBERS PRESENT:

**CA. Prafulla Premsukh Chhajed, Presiding Officer,
Shri Jugal Kishore Mohapatra, I.A.S.(Retd.), Government Nominee,
Ms. Rashmi Verma, I.A.S. (Retd.), Government Nominee,
CA. Babu Abraham Kallivayalil, Member,
CA. Dayaniwas Sharma, Member**

DATE OF FINAL HEARING : 23.05.2019

PLACE OF FINAL HEARING : ICAI, New Delhi

PARTIES PRESENT:

Respondent : CA. Shamsher Singh

Counsel for the Respondent : CA. C.V. Sajan

Brief of the Disciplinary Proceedings:-

1. In respect of hearing held on 9th July, 2018, the Committee noted that the notice of said hearing was duly sent to the Complainant and the Respondent to appear before the Committee. However, the said hearing was adjourned at the request of the Respondent and both the parties was duly informed about the same.

2. The Committee noted that on the day of next hearing i.e., 23.05.2019, neither the Complainant nor any representative from the Complainant Institution was present. The Respondent was present along with his Counsel. Since the Complainant was absent from the hearing without any prior intimation or request for adjournment of hearing, the Committee decided to proceed ahead with the hearing ex-parte the Complainant. The Committee noted that two complaints on similar charges were filed by the Complainant. First complaint was filed against the Respondent in his individual capacity (PR-100/13-DD/99/2013/DC/456/2016) and second complaint was filed against the Respondent firm (M/s. AAD & Associates) (PR-101/13-DD/100/2013/DC/457/2016). Since charges in both the complaints were same and parties were also the same, the Committee decided to conduct joint hearing in both the cases.

2.1 The Respondent was put on oath. On being enquired from the Respondent as to whether he is aware of charges leveled against him in the instant matters, the Respondent replied positively and pleaded not guilty to the charges. The Counsel for the Respondent raised question on the conduct of the Complainant as they neither submitted their Rejoinder on the Written Statement of the Respondent nor appeared before the Committee. The Counsel for the Respondent made his submissions on the charges. The Committee raised questions to the Counsel for the Respondent. After hearing the submissions of the Respondent, the Committee directed the Respondent to submit the following information / details within 30 days of the hearing: -

- i) In respect of profit of the Company as on 31.03.2011, details of statutory taxes required to be paid and details as to when payment against these statutory liabilities / taxes were made (along with documentary evidence).
- ii) Validation / Justification for the reasons identified by the Board of Directors for no profitability during the financial year 2011-12 (i.e. what was the price of product as on 31.03.2011, 31.03.2012 and during the months of October, November, December, 2011,

details of exchange losses as on 31.03.2011, 31.03.2012 and in quarters ending on December, 2011).

iii) Justification as to why impairment was done in last quarter ended on 31.03.2012. Is there any sign of impairment in previous quarters or as on 31.03.2011.

With the above directions, the Committee decided to conclude the hearing in above cases.

2.2 In compliance of the above directions, the Respondent vide his letter dated 31st July, 2019 submitted his submissions /documents.

CHARGES IN BRIEF AND FINDINGS OF THE COMMITTEE:-

3. On perusal of the complaints, the Committee noted that the IFCI had sanctioned loan of Rs. 50 Cr. to Ess Ess Exim Private Limited (**EEEPL**) on the strength of other company's business i.e. Surya Pharmaceutical Limited & its financial results and net worth statement of Mr. Rajiv Goyal. Further the said loan was secured by way of pledge of shares of Surya Pharmaceutical Limited (which was 200% of loan) and also on personal guarantee of Mr. Rajiv Goyal. The net worth statement of Mr. Rajiv Goyal was certified by the Respondent.

4. It is noted that the charge of the Complainant is that Surya Pharmaceuticals Limited (hereinafter referred to as the "**SPL**") within one month of publishing the results for the quarter ended December 2011 (showing PBT of Rs. 21.69 Crores and substantial cash accruals of Rs. 30.65 crores on 11th February, 2012), made reference in March 2012 to Corporate Debt Restructuring (**CDR**) Cell for restructuring of its debts. Further, for the quarter ended 31st March, 2012, huge loss of Rs. 110.75 crores was shown by the SPL. The Respondent as statutory auditor of SPL, failed to point out that quarterly result published in February, 2012 were not reflecting true & fair view of the Company (SPL).

5. The Committee noted that the Respondent was held prima facie not guilty by the Director (Discipline). However, the Board of Discipline while considering the prima facie opinion disagreed with the opinion of the Director (Discipline) and decided to refer the matter to the Disciplinary Committee for further enquiry. The Board of Discipline was of the view that the Company turned from a profit making to a huge loss making one within a span of three months

and in fact applied for corporate CDR for restructuring of debts. Thus, the reporting by the Respondent as statutory auditor in December 2011 was misleading.

6. The Respondent in his defence stated that the complaints have been filed by the Complainant just to save themselves from any action against them. The Respondent was not auditor of EEEPL. The loan was sanctioned to EEEPL in January 2011. Hence, the loan was not sanctioned based on financial result of SPL. Further, the loan was sanctioned nearly 1 year before the publication of December, 2011 result.

6.1 After doing the statutory audit for the year ended 31st march, 2011, he has also done the audit for the next year i.e. 2011-12. In both the years, all the facts were brought correctly in the financial statements of the SPL. On 31st March, 2011, the Company was in profit. The Respondent stated that a profit making company can turn into loss making company at any moments so whether it is in three months or in one day that is not at all an aspect to be considered by the Board of Discipline. Further, Net worth certificate issued by him was of the promoters and not of the Company.

6.2 The Respondent through his written statements as well verbal submissions stated that due to the following reasons, the Company incurred loss in fourth quarter of 2011-2012:-

- a. Steep fall in prices of products and the slowdown in the industry.
- b. Time and cost overrun in commissioning of plant at Jammu due to changes in the regulatory framework and the change in product profile owing to competition from Chinese players resulted into increased fixed costs.
- c. The menthol business could not do as per the expectation due to volatility in prices of menthol products.
- d. There was cancellation of Orders due to closure of Company's facility at Baddi unit for about 2 months.
- e. The Company has borrowed funds for financing its rapid expansion in business and formation of subsidiaries which resulted in disproportionate increase in debt as compared to revenues.
- g. The Company had entered into formulations business in FY 10-11 but it could not do well in this segment.

h. The Company incurred a forex exchange loss of Rs. 43 crores during the FY 2012.

6.3 The Respondent stated that when the Company has losses due to above reasons, it has declared it and hence, question of fabricating the accounts does not arise at all. To a question as to why he did not point out material changes in quarterly audit result, the Respondent stated that quarterly result is the property of the Company and the same is presented before the auditor only for limited review purpose and he had performed his duties as per applicable auditing requirements.

7. On perusal of sanction letter dated 25th January, 2011, it appears that loan of Rs.50 Cr. was sanctioned in January, 2011 to EEEPL. As per the Complainant, shares of SPL were pledged by EEEPL as security against the said loan. Further, Net worth certificate of the promoter of SPL, Shri Rajiv Goyal, issued by the Respondent were also relied upon by the bank for sanctioning the loan to EEEPL. As regard the quarterly results of SPL for the third quarter i.e. December, 2011, it is noted that the same was published in February, 2012 showing profit of Rs.21.60 Cr. The quarterly result for the fourth quarter ended 31st March, 2012 was published on 15th May, 2012.

7.1 It is also observed that since EEPL could not timely repaid the loan to the Complainant and there was sharp decline in the price of shares pledged with the bank, recovery of loan amount came under threat. The Company also made reference to Corporate Debt Restructuring Cell for restructuring of its debts. The Complainant's contention was that if the Respondent had exercised due diligence, he would have been able to report the negative impact of different financial decision on the profit of the Company.

8. From the documents on record, the Committee noted that the loan was not sanctioned based on the net worth certificate of the promoters and quarterly result of December, 2011 as loan was sanctioned much earlier in January, 2011. Further, the Respondent brought on record documentary evidence to show that substantial decline in the price of final product and other circumstances impacted the profitability of the Company and the same consequently resulted in loss in the fourth quarter of financial year 2011-12. The Respondent also brought on record copy of documentary evidence of payment of statutory dues to

support his defense that the Company was financially sound to pay its obligations in the previous year 2010-11 and there was nothing on record to raise questions on going concern ability of the Company. Hence, the Committee is of the view that the Respondent cannot be held responsible for losses arises due to unforeseen circumstances and thus, it cannot be stated that he failed to discharge his professional duties in accordance with the generally accepted auditing principle while reviewing quarterly results of SPL for the third & fourth quarters of financial year 2011-12. Accordingly, the Committee decided to hold the Respondent 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.

Conclusion:-

9. Thus in the considered opinion, the Respondent is held **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.

9.1. Accordingly, in terms of Rule 19 (2) of the Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007, the Committee passes Order for closure of this case against the Respondent.

Sd/-
(CA. PRAFULLA PREMSUKH CHHAJED)
PRESIDING OFFICER

Sd/-
(SHRI JUGAL KISHORE MOHAPATRA, I.A.S. (Retd.))
GOVERNMENT NOMINEE

Sd/-
(MS. RASHMI VERMA, I.A.S. (Retd.))
MEMBER

Sd/-
(CA. BABU ABRAHAM KALLIVAYALIL)
MEMBER

Sd/-
(CA. DAYANIWAS SHARMA)
MEMBER

DATE: 03rd February, 2020
PLACE: New Delhi