

DISCIPLINARY COMMITTEE [BENCH-III (2019-20)]

(Constituted under section 21B of the Chartered Accountants Act, 1949)

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

File No. : PPR/P/3/W/13/DD/6/W/INF/13-DC/655/17

In the matter of :

CA. Sunilkumar R. Sanghvi (M.No.093922)

913, Atma House,

Ashram Road,

AHMEDABAD- 380009

----- Respondent

Members Present:

CA. Prafulla Preme Sukh Chhajed, President

Smt. Anita Kapur, Member (Govt. Nominee)

Shri Ajay Mittal, IAS (Retd.), Member (Govt. Nominee)

CA. Manu Agrawal, Member

Date of Final Hearing: 20th August, 2019 (decided on 23rd September 2019)

Place of Final Hearing: Mumbai

Parties Present:

(i) CA. Sunilkumar R. Sanghvi – Respondent

(ii) Shri Deepak R. Shah – Counsel for Respondent

Allegations of the Informant, DGM, RBI:

1. The Respondent was the statutory auditor of M/s Bhuj Mercantile Co-operative Bank Ltd., Ahmedabad (hereinafter referred to as the “**Bank**”) for the year ending 31st March, 2010. During statutory inspection of the bank, it was observed that there was wide divergence in the financial parameters assessed by the Respondent vis-à-vis that assessed by the Inspecting Officer of Reserve Bank of India for the year ending March 31, 2010. On an examination of the inspection report, the audit report and the submissions of the Respondent, it was observed by the Informant that there were serious shortcomings in the statutory audit of the bank carried out by the Respondent and on account of same, as per the Informant, false and incorrect information was provided by the Respondent regarding the financial position of the bank in its audited annual accounts for the year 2009-10. Thus, it was alleged that the Respondent did not adhere to RBI directions/guidelines/instructions and was responsible for material misstatement of the financial position of the Bank. Thus, he failed to point out the non-provisioning of Rs.10.48 Lakhs for unrealized interest on NPA accounts, non-provisioning of interest payable, short provisioning of gratuity and non-verification of asset liability management policy of the Bank.

Proceedings:

2. At the time of hearing on 20th August, 2019, the Committee noted that the Respondent along with his Counsel was present in person during the hearing of the matter. Since this was the first hearing in the matter, the Respondent was put on oath. Thereafter, the Committee asked the Respondent whether he wished the charges be read out or those could be taken as read. The Respondent stated that he was aware of the allegation raised against him and the same might be taken as read. On being asked as to whether he pleaded guilty, he replied that he did not plead guilty and opt to defend his case.
3. The Committee proceeded ahead in the matter. During the hearing, the Counsel for the Respondent made oral submissions. The Committee also examined the Respondent in the matter. After hearing the submission made by the Counsel for the Respondent, the Committee directed the Respondent

to provide a copy of the communication held between the bank and RBI in relation to alleged matter within 30 days from the date of hearing. Accordingly, the hearing in the matter was concluded and reserved its decision on the matter.

4. On 23rd September, 2019, the Committee noted that the Respondent vide his letter dated 11th September, 2019 had submitted on record the correspondence between the Bank and the RBI relating to audit of accounts for F.Y. 2009-10. The Committee, thereafter, considered the documents available on record as well as the oral and written submissions made thereof and decided the matter.

Findings of the Committee:

5. The Committee noted that in the instant case, the first charge alleged against the Respondent was that there were wide divergences in the financial parameters assessed by the Respondent vis-à-vis that assessed by the Inspecting officer of RBI in the financials of the bank for the year 2009-10 and thus there were serious shortcomings in the statutory audit of the bank carried out by the Respondent for the year 2009-10. It further alleged that the Respondent failed to identify 58 accounts as NPA and thus failed to make the provision of Rs. 101.40 Lakhs on the same.
6. The Committee noted that the Respondent had submitted that the Bank was having 1852 loan accounts aggregating to Rs. 10,718.27 Lacs as on 31st March 2010 and it was not feasible to check each and every account. He had adopted the sampling technique and concept of materiality and accordingly verified 900 loan accounts which constituted approx. 50% of the total accounts in number and 70% of the loan accounts in value. He had submitted a detailed report which included his observation on irregularities in 254 accounts aggregating to Rs. 3,273.18 Lacs outstanding opening balance as on 31st March 2010 relating to non-availability of inspection/valuation report, late receiving of stock report, not having proper KYC documents and also where renewal was pending. He also submitted that an account is classified as an NPA only if recoveries are not made for a certain period and not for any

other reason and on this basis, further 8 accounts out of 13 cannot be classified as NPA. He had further submitted that on seeking information, the Bank vide letter dated 09-09-2019 had informed to the Respondent the outcome of the compliance of the inspection report after communication with the RBI which states as under:

"We would like to state that further action/remarks were informed by the Reserve Bank of India in above refer points after our submission of the further compliance report dated 30th April 2011. There was full recovery in all accounts (58 accounts) mentioned in Annexure-V of the inspection report and no account was turned in actual NPA. Compliance submitted by the bank in above referred points were accepted by RBI."

He also submitted that the Bank had objected to consideration of these accounts as NPA in its compliance report submitted to the RBI. Even in respect of 13 accounts considered by ICAI as NPA, he stated that there was full recovery in these accounts and none of the accounts had turned doubtful or bad. He accordingly submitted that the said correspondence between the Bank and RBI implied that the provisioning norms were duly complied with and thus there was no issue remained pending with RBI.

7. The Committee, on perusal of the documents available on record, noted that out of 58 loan accounts, in 41 accounts such divergence was reported on account of book debt/ stock statement not being valid **(A 17-20)**. It was noted that para 4.2.4 of 'Prudential norms on Income Recognition, Asset Classification and Provisioning pertaining to Advances' states as follows:

The classification of an asset as NPA should be based on the record of recovery. Bank should not classify an advance account as NPA merely due to the existence of some deficiencies which are temporary in nature such as non-availability of adequate drawing power based on the latest available stock statement, balance outstanding exceeding the limit temporarily, non-submission of stock statements and non-renewal of the limits on the due date, etc.

From the above it was noted that the basis of raising allegation on the Respondent was not valid in case of 41 accounts. As regards remaining 13 accounts the Respondent had given detailed submission (dated 5th Sept,

2018) in respect of each and every account and also provided copy of their ledger account to justify the classification followed based on which, the Committee viewed that 8 accounts out of 13 could not be classified as NPA. It was noted that remaining 5 accounts amounting to Rs. 26.87 lacs could not be considered material out of total 1852 loan accounts which when compared to the total advances of Rs. 10718 lacs constituted only 0.25% of total advances which were not material to affect the true and fair view of the accounts. Further, the Committee pertinently noted that the Bank had objected to consideration of the accounts as NPA in its compliance report submitted to the RBI which was much germane to allegations of the extant case and also that 13 NPAs had been full recovered and none of the accounts have turned doubtful or bad. Thus, the Committee was of the opinion that the provisioning norms were duly complied and accordingly held that the Respondent is not guilty of professional misconduct with respect of this charge.

8. The Committee further noted as regard the allegation relating to non-provisioning of Rs.10.48 Lakhs for unrealized interest on NPA accounts it was noted that the extant charge has arisen due to first charge i.e. if a loan or advance account becomes NPA then any interest accrued thereon should be reversed. As discussed above, if the Respondent was found to have classified the said advance/loan account as per RBI norms then the extant charge could not be held against him. Further, with respect of non-provisioning of interest payable on matured fixed deposits amounting Rs.80.05 lacs, it was noted that the bank was not following the policy of providing for interest on matured fixed deposits and the same was never reported earlier either by previous statutory auditor or under RBI Inspection. It was noted that stated amount pertains to entire provision of interest required irrespective of fact whether FDs matured in previous period or current period. The Respondent also pleaded to have reported on it in 'Samanyo Sero' Report. Further, the Informant chose to stay silent in this respect rather than producing evidence to contradict it. Accordingly, the Respondent is held not guilty of professional misconduct with respect of this charge.

9. With respect to remaining charges relating to short provisioning of gratuity and non-verification of asset liability management policy of the Bank, it was noted that while the former charge was raised by the the Informant Bank, later was an observation of Director(Discipline). It was noted that Informant had failed to provide any corroborative details and/or evidences to reason out the basis to maintain the charge of short provisioning of gratuity against the Respondent. Although, the Director (Discipline) had held the Respondent *prima facie* guilty for these charges as a matter of fact, he had recommended these matters needed to be further investigated. At the hearing stage, since no evidences were found to be submitted by the Informant to substantiate these allegations against the Respondent, the Committee was of the view that in absence of the same, the Respondent could not be held guilty of professional misconduct for which proof of evidence was required to establish misconduct.

Conclusion:

10. Thus, in conclusion, in the considered opinion of the Committee, the Respondent is held **NOT GUILTY** of Professional Misconduct falling within the meaning of Clauses (6), (7) & (8) of Part I of the Second Schedule to the Chartered Accountants Act 1949.
11. The Committee accordingly passes Order for closure of this case against the Respondent.

Sd/-
CA. Prafulla Preme Sukh Chhajed,
Presiding Officer

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

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

Sd/-
CA. Manu Agrawal
Member

Date: 12th December, 2019

Place: New Delhi