

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/12/2016/DD/5A/INF/16] -DC/618/17

In the matter of :

CA. Rajesh Batham (M. No.035941),
A-301, Clemnsons Croft,
Plot No.434, TPS-V
Off. Gujarati Mandal Road,
Vile Parle East,
Mumbai 400 092

.....Respondent

Members Present:

CA. Prafulla Preamsukh Chhajer, President
Shri Ajay Mittal, IAS (Retd.), Member (Govt. Nominee)
CA. Debashis Mitra, Member
CA. Manu Agrawal, Member

Date of Final Hearing: 25th November, 2019 (decided on 15th January, 2020)

Place of Final Hearing: New Delhi

Parties Present:

- (i) CA. Rajesh Batham – Respondent
- (ii) Shri S. G. Gokhale, Advocate - Counsel for Respondent

Allegations of the Informant, Joint Director, MCA:

1. In the extant case, it was stated that an Investigation of M/s Geodesic Limited (hereinafter referred to as the **Company**) was ordered by the Hon'ble High Court of Bombay vide its Order dated 02-03-2015 passed in Company Petition No.660 of 2014 filed by ICICI Bank Limited against M/s Geodesic Limited & three Directors. Accordingly, the Investigation Report was submitted before the Hon'ble High Court on 13-01-2016 which took the said Investigation Report on record and directed to forward the same to ICAI for necessary action. The background of the instant complaint as alleged by the Complainant is as under:

1.1 In the said report, it was stated that M/s Borkar and Muzamdar, Chartered Accountants, Mumbai (herein after referred to as the **Respondent Firm**) were the Statutory Auditors of the Company beside its Indian subsidiaries for more than six years and was re-appointed as Statutory Auditors of the Company for the year 2011-12 in the AGM held on 30th September 2011. The Respondent had certified and submitted his Audit Report of the company dated 3rd December 2012 for the Financial Year 2011-2012 (1.4.2011 to 30.6.2012) which alongwith the Annual Accounts were adopted and approved by the shareholders based on the recommendations of the Board of Directors in the AGM held on 11.02.2011. On perusal of the said Audit Report including Annexure thereto, it was noticed that the Auditors made only one adverse comment that too in the Annexure being Company's Auditors Report Order (CARO), viz. "the company has not deposited statutory dues of Rs. 1,66 crores". In spite of the Annual Accounts for the year 2011-12 (for 15 months) was approved by the shareholders on 11.2.2013 as stated above and filed thereafter with ROC, Maharashtra under Section 220 of the Companies Act, 1956, it was noticed from the Directors' Report for the year 2012-13 (1.7.2012 to 30.6.2013) that the company had re-casted and revised duly approved Balance Sheet and Profit & Loss account for the year 2011-12 (as at 31.6.2012), even though there was no provision in the Companies Act., 1956 to do so, unless it was a requirement of other Laws.

Against the aforesaid back ground, it has been alleged against the Respondent as under:

1.2 That in spite of huge problems in the Company and its strained Financial position from 2010-2011 onwards, the Respondent as Statutory Auditors ignored or chose not to report the actual Financial position of the company. As the Audit Report dated 03.12.2011 and its annexure for the year 2011-2012 was totally free from qualification/adverse comments and it was rather a clean Report. However, when the Company had revised the Financial Statement for the year 2011- 2012 which was approved by the Members/Shareholders in the AGM held on 11.02.2013, the Respondent being the Statutory Auditors also revised his Audit Report and its annexure by giving many adverse comments/qualificatory remarks. Thus, the Revised Audit Report dated 14.2.2014 and its Annexure for the year 2011-12 (01.04.2011 to 30.6.2012) was full of far reaching adverse comments and qualifications which the Respondent ignored when he submitted his Audit Report dated 3.12.2012 and its annexure for the same period. Thus, the Financial Statement dated 03/12/2012 was full of incorrect, untrue and wrong statement and did not show true and fair view of the state of affairs of the Company, for which the Respondent being the statutory auditor failed to take responsibility by not raising these issues and bringing them to the notice of shareholders and regulators. Further, while reviewing the Balance Sheets as at 30/06/2012 and 30/06/2013, the Inspectors noticed many non-compliances of Accounting Standards and Schedule-VI resulting in violation of Sec. 227 r/w Sec.233 of the Companies Act, 1956.

Proceedings:

2. At the time of hearing on 25th November 2019, the Committee noted that the Respondent's Counsel was present at the time of hearing. Since, it was first hearing in the matter, the Respondent was put on oath. Thereafter, the Committee asked the Respondent as to whether he wished the Charges to be read out or those could be taken as read. The Respondent stated that he was aware of the charges against him. On being further asked whether he pleaded guilty or not, the Respondent pleaded not guilty and opted to defend the matter. Thereafter, the Counsel for

Respondent was asked to make his submissions. The Counsel for the Respondent made his oral submissions. The Committee examined the Respondent on the submissions made by him. The Committee, thereafter, directed the Respondent to file the following documents within 10 days of the date of hearing:

(i) Submission in respect of reported violation of Schedule VI to the Companies Act, 1956 alongwith proper references and documents in support of his defense more specifically with respect to allegations in respect of which the third column of the table (in the *Prima-Facie* Opinion containing summary of allegations and written submission of the Respondent) was left out blank.

Accordingly, based on the documents on record and the oral and written submissions made by the Respondent, hearing in the matter was concluded by the Committee and the judgment in the matter was reserved.

3. Thereafter, on 15th January 2020, the Committee noted that the Respondent vide his letter dated 2nd December 2019 had submitted the documents sought which along with the other information/ documents available on record , were considered by the Committee. On consideration of the same, the Committee decided the case on merits.

Findings of the Committee:

4. The charge alleged against the Respondent was that the unqualified audit opinion given by him on financial statements dated 03/12/2012 as the statutory Auditor of the company was full of incorrect, untrue and wrong statement, did not show true and fair view of the state of affairs of the Company and the Respondent being the statutory auditor did not raise issues and bring to the notice of shareholders and regulators as the Revised Audit Report dated 14.2.2014 and its Annexure for the year 2011-12(01.04.2011 to 30.6.2012) was full of far reaching adverse comments and qualifications. Further, the financial statements as at 30/06/2012 and 30/06/2013, contained many non-compliances of Accounting

Standards and Schedule-VI resulting in violation of Sec. 227 read with Sec.233 of the Companies Act, 1956 which the respondent failed to report in his audit report.

5. The Committee noted the submissions made by the Respondent wherein he stated that the audit report of the Company for the period from April 2011 to June 2012 dated 03.12.2012 contained only one qualification relating to non-depositing of statutory dues of Rs.1.66 crores. The company, thereafter, revised the accounts for the year 2011-12 simultaneously with the preparation of accounts for the year 2012-13 which was attributable to revision in the accounts of its foreign subsidiary company. In the given case, the report on original accounts was dated 03.02.2012 and on revised accounts it was dated 14.02.2014. During this period, a number of changes had taken place which he took into account while giving the report. The report itself made specific observations as “recasted accounts” and in the Directors Report there was a specific reference about reason for recasting of accounts. He further stated that the balance sheet was not revised / recast on account of any fault or lapse on the Respondent’s part in the original accounts/audit; but it was necessitated due to some major developments / revelation in the financials of the Company’s foreign subsidiary (GTSL – Hongkong). Since GTSL accounts were revised in that country, the consolidated accounts of parent company in India (Geodesic) also had to be revised. Apart from the consequence of GTSL’s revision due to the efflux of time between 03.12.2012 (original signing) and 14.02.2014 (revised signing), there were many happening that had bearing on the financials for 2011-12. All these were taken care of in the revised accounts in that country, the consolidated accounts of parent Company in India (Geodesic) also had to be revised.

6. The Committee on perusal of papers noted that the Respondent had carried out the Statutory Audit of the Company from the financial year 2007-08 and in particular for the following years referred to in the MCA report:

- (i) Financial Year 2010-11 dated 29th August, 2011.
- (ii) 15 month period from 01.04.2011 to 30.06.2012
- (iii) Recast financial statements for the same period

(iv) Accounting Year 2012-13 (01.07.2012 to 30.06.2013)

The Committee while perusing the submissions of the Respondent that the balance sheet was not revised / recasted on account of any fault or lapse on the Respondent's part in the original accounts / audit; but it was necessitated due to some major developments / revelation in the financials of the Company's foreign subsidiary (GTSL – Hongkong) since GTSL accounts were revised in that country, was of the view that there was nothing objectionable rather was quite reasonable for the statutory auditor to revise the consolidated accounts of parent company in India (i.e Geodesic). The Committee further noted that as an auditor of the Parent Company in India, the Respondent could not have been at all aware of the facts and circumstances that neither existed in the said subsidiary at the time of signing the accounts on 3rd December, 2012 nor was there any way for the Respondent to find out the same before that date. Thus the Committee was of the considered opinion that the Respondent's qualifications which had become the subject matter for raising allegations against the Respondent was consequential in nature and did not emanated from any negligence or failure on part of the Respondent in carrying out his professional duties. The Committee further was of the view as regard this charge that the Informant had merely compared and reported that the Respondent had not qualified the earlier financial statements but had qualified the restated accounts for the same period without justifying or reasoning out the basis on the Respondent should have made these qualifications in their earlier report, it was viewed that an opinion is always based on auditor's assessment of then prevailing facts and circumstances. In extant case, the circumstances had changed due to conditions then existing in one of the foreign subsidiaries. Thus the Committee was of the considered opinion that the extant allegation appeared to have been made based on surmises as no concrete or corroborative evidence was brought on record to substantiate the allegation raised. Accordingly, the Respondent is held not guilty with respect to this charge.

7. As regard the second allegation relating to non-reporting of non-compliances of Accounting Standards and Schedule-VI resulting in violation of Sec. 227 read with

Sec.233 of the Companies Act, 1956 in the Financial Statements as at 30/06/2012 and 30/06/2013, the Committee noted the detailed point wise submissions of the Respondent as submitted vide letter dated 14th May 2016 along with explanation submitted vide letter dated 2nd December 2019 and was of the considered opinion that the reported non-compliances were only pertaining to the way the facts were presented. It was of the view that such presentation did not affect the true and fair presentation of the Financial Statements as they were only related to the disclosure of the financial information, therefore, benefit of doubt may be given to the Respondent with respect to this charge and accordingly he is held not guilty for the alleged misconduct with respect to this charge.

CONCLUSION

8. Thus, in conclusion, in the considered opinion of the Committee, the Respondent is **NOT GUILTY** of professional misconduct falling within the meaning of Clauses (7) and (8) of Part I of the Second Schedule to the Chartered Accountants Act, 1949.

9. The Committee, accordingly, passed orders for closure of this case against the Respondent.

Sd/-
(CA. Prafulla Premeukh Chhajed)
Presiding Officer

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

Sd/-
(CA. Debashis Mitra)
Member

Sd/-
(CA. Manu Agrawal)
Member

Date: 3rd February, 2020

Place: New Delhi