

CONFIDENTIAL

DISCIPLINARY COMMITTEE [BENCH – II (2017-2018)]

[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

Ref. No. PR- 61/2014-DD/99/2014/DC/635/2017

In the matter of:

**Chief Manager
Allahabad Bank
Industrial Finance Branch
Kishore Bhawan, 17,
R N Mukherjee Road, 4th Floor,
KOLKATA- 700 001**

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Complainant

-vs.-

**CA. Devki Nandan Gupta (M. No. 052634)
M/s. D N Gupta & Associates
Chartered Accountants
10, Ganesh Chandra Avenue,
5th Floor, Suite No. 32
KOLKATA- 700 013**

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Respondent

MEMBERS PRESENT:

**CA. Naveen ND Gupta, Presiding Officer
Shri Amit Chatterjee, Government Nominee
CA. Sanjay Kumar Agarwal, Member
CA. Manu Agarwal, Member**

DATE OF FINAL HEARING : 10.01.2018

PLACE OF FINAL HEARING : ICAI, Russel Street, KOLKATA

PARTIES PRESENT:

**Complainant : Shri N C Samal, Chief Manager
: Shri Rajesh Choubey, Law Officer**

**Respondent : CA. Devki Nandan Gupta
Counsel for the Respondent : CA. A. P. Singh**

Finding of the Committee

1. The Committee noted that charge against the Respondent is that he had signed two Balance Sheets of the Company namely SPS Steels Rolling Mills Limited for the same period i.e., for FY 2011-12 with significant changes resulting in huge change in profit from Rs. 16,01,13,145/- to Rs. 30,32,829/-. It is also observed that two audit reports signed by the Respondent are available on record, one is dated 5th September, 2012 annexed to the Director's report dated 5th September, 2012 and another is the audit report dated 30th April, 2012. Upon comparing the said Balance Sheet(s) and Profit & Loss of both the audit reports, the following differences have been observed:

Particulars	Audit report dated 5th Sep., 2012	Audit report dated 30th April, 2012
Balance Sheet:-		
Reserves & Surplus	1,794,622,072	1,951,702,388
Trade Payables	3,148,281,942	2,914,301,626
Short term provisions	63,100,000	140,000,000
Profit & Loss A/c:-		
Purchase of Stock- in -trade	11,396,046,192	11,162,065,876
Profit Before Tax	3,415,663	237,395,979
Profit for the Year	3,032,829	160,113,145

2. The Committee further noted that the Respondent in his written statement admitted of having signed both the Balance Sheets as on 31.03.2012. The Respondent has clarified that after signing of his Audit Report on 30.04.2012, the Company vide letter dated 03.09.2012 informed that the accounts needs to be revised as certain debit notes in respect of purchases have not been admitted by the parties amounting to Rs. 23,39,80,317. The Respondent further submitted that Audit Committee of the Company in their meeting dated 05.09.2012 has reviewed accounts of the Company for the year ended 31.03.2012 and recommended for placing before the Board for approval.

3. The Respondent in his defence also submitted that fact of revision in accounts was duly disclosed by him in the revised audit report dated 05th September, 2012. Upon perusal of the same, it is observed that vide para (1) of audit report, the Respondent has stated as under:-

“We have audited the attached Balance Sheet of SPS STEELS ROLLING MILLS LIMITED as at 31st March, 2012 and also the Statement of Profit & Loss and the Cash Flow Statement for the year ended on that date, which are revised statement of the original Balance Sheet and the Statement of Profit & Loss and also Cash Flow Statement covered by our audit report dated 30th April, 2012. These financial statements are the responsibility of the Company’s management. Our responsibility is to express an opinion on these financial statements based on our audit.”

4. Further, in the notes to accounts, vide note no. 31, the following has also been reported by the Respondent:

31) Revision of the Financial Statements:

The Financial Statements were last approved by the Board of Directors and report thereon was issued by the auditors on 30th April, 2012. Subsequent to the said date and before the date the Financial Statements were circulated to the members, considering the true and fair presentation of Financial Statements and in the best interest of the stakeholders, it was considered necessary to revise the Financial Statements for the year, to give effect to certain claims relating to purchase during the year having not been admitted by the parties are reversed to the extent of Rs. 23,39,80,317/-.

5. The Committee considered the submissions of the Complainant and the Respondent and also considered various documents made available on record by both the parties.

6. The Committee also noted that in its meeting held on 25th November, 2017, the Respondent was directed to produce certain documents before the Committee which are as under:

- (i) Copy of accounts of Gauri Iron & Steel Pvt. Ltd. & SPS Steels & Rolling Ltd in the books of the Company.
- (ii) Since debit note pertains to quality difference, what was the quality difference and how it was ascertained by the company?
- (iii) Copy of technical report of quality difference, if any.
- (iv) Copy of all correspondences between the Company with M/s Gauri Iron & Steel Pvt. Ltd. in this regard before and after issuance of the debit note.

- (v) A note on general policy of the Company for such sort of debit note which are issued i.e. Company SOP on sales and how the quality is decided.
- (vi) Details of other total debit notes received by the Company of similar nature on account of quality difference with party-wise list of this year and of previous year;
- (vii) Management representations which were obtained by Respondent for confirmation of accounts and debit note; and
- (viii) What was the total amount and no. of such debit notes which were outstanding as on 31.3.2012 and how many of them were subsequently accepted and how many of those were rejected by the Company.
- (ix) Whether any further loan was sanctioned by any bank after 30.4.2012.
- (x) Date of Board meeting where this balance-sheet was considered.
- (xi) If any loans were sanctioned by the bank after 30.4.2012 what precautions were taken by the Respondent to ensure that the fact of revision is immediately intimated to the bank because reasonable care has to be ensured.
- (xii) If there were loans sanctioned by banks, when they were declared as NPA along-with copy of correspondence with bank in this regard.
- (xiii) Which set of financial statement was submitted to the Income Tax Authority? Also submit a copy of the same along-with copy of ITRs.
- (xiv) Proof of compliance of requirements of para A-15 & A-16 of SA-560 by producing following:-
 - (a) Copy of communication with the Company
 - (b) What steps taken by the Company.
 - (c) What steps taken by the Respondent to ensure the compliance.
 - (d) What efforts were made to ensure to notify the parties to whom the audited Financial Statements were formally issued by the Company to not to place reliance on them.
 - (e) Original copy of letter dated 03/09/2012 produced by the Respondent and appearing at W-48 and D-25 of Prima Facie Opinion of Director (Discipline) which are confronting as regard receipt seal of Respondent.

7. The Committee further noted that in response to above, the Respondent has submitted certain documents / submissions on the day of final hearing except (xiv)(e) above. The Committee also noted that the Respondent in his submission has mentioned that there is no correspondence available between Company and the bank. Further, in respect of documents sought at (6)(vi) above, it was noted that the

detail submitted by the Respondent do not relate to quality difference but the same were on account of discount due to rate differences.

8. On the day of final hearing, it was contended by the Respondent that tax audit report was filed by him only after 05.09.2012 i.e., after second set of Balance sheet but he does not remember the exact date of such filing. On this the Committee directed the Respondent to provide the exact date of filing of tax audit report within one week's time. However, no intimation received from the Respondent in this regard.

9. After consideration of submissions of both the parties and based on all papers / documents on record, the Committee made the following observations:

(i) the provisions of SA 560 on "Subsequent Events" vide para 13(b) states as under:-

If the auditor's report has already been provided to the entity, the auditor shall notify management and, unless all of those charged with governance are involved in managing the entity, those charged with governance, not to issue the financial statements to third parties before the necessary amendments have been made. If the financial statements are nevertheless subsequently issued without the necessary amendments, the auditor shall take appropriate action, to seek to prevent reliance on the auditor's report. (Ref: Para. A15-A16)

(ii) Further, para A15-A16 of SA 560 states as under:-

"A 15. The auditor may need to fulfill additional legal obligations even when the auditor has notified management not to issue the financial statements and management has agreed to this request.

A16. When management has issued the financial statements despite the auditor's notification not to issue the financial statements to third parties, the auditor's course of action to prevent reliance on the auditor's report on the financial statements depends upon the auditor's legal rights and obligations. Consequently, the auditor may consider it appropriate to seek legal advice"

(iii) In the instant case, although the fact of revision in the audit report has been disclosed in the revised audit report and notes to accounts, however, it is seen that

the act of the Respondent were not in compliance of the provisions of SA-560. It is observed that from the facts on record, the Respondent does not seem to have taken appropriate steps to prevent reliance on his earlier audit report as per the requirements of SA 560.

(iv) It is further seen that before signing the revised audit report on 5th September, 2012, the Respondent vide his letter dated 4th September, 2012 has requested the Management to confirm whether the audited financial statements for the year 2011-12 have not been filed with any regulatory authority and steps taken to ensure that anyone in receipt of the previously issued financial statements is informed of the situation. However, response of the Management on the said letter was not submitted by the Respondent at the time of Prima Facie Opinion and the same has now been submitted by him with his submissions dated 23.11.2017 which indicates an after thought on his part.

(v) The Committee was of the view that since this letter was not submitted earlier, it appears to be an afterthought on the part of the Respondent. Committee also noted the reference of dates i.e. request of management dated 3rd September, 2012, the letter of Respondent being 4th September, 2012. Reply of management dated 5th September, 2012 and signing date being 5th September, 2012 does show the same as orchestrated evidences and whereby the explanation of the Respondent do not become convincing indicating that the Respondent chosen to sign the revised audit report in hurriedly manner without ensuring the compliance of SA 560.

(vi) It was also observed by the Committee that the letter claimed to be written by the management to the Respondent dated 03rd September, 2012 was produced by the Respondent twice at Prima facie stage. One alongwith his written statement and another copy was provided at the time of providing additional documents as sought from him under provisions of Rule 8(5). Despite being instructed specifically, the Respondent could not clarify the confrontation between both of them as regard receipt seal of the Respondent indicating the same being an afterthought.

(vii) Further, it is observed that there is a gap of approx. 4 months between the issue of the original report dated 30th April, 2012 and the revised report dated 5th September, 2012 and during this period there was a clear possibility that the

management might have submitted the previous report dated 30th April, 2012 with Banks or other authorities. A copy of letter dated 5th May, 2012 addressed by the Company to the Complainant Bank goes to prove the same beyond doubt as the Company vide said letter has submitted audited Balance sheet dated 30th April, 2012 to Bank which is much earlier than the date of revised audit report i.e. 5th September, 2012.

(viii) It is also observed that the Complainant Bank brought on record Minutes of the meeting of Lenders Banks of M/s SPS Steels Rolling Mills Limited which shows that the account of the Company with all the Banks turned NPA in 2013 and few of the Lender Banks have filed objection with BIFR in the matter. In this regard, it is also important to quote the relevant paras of letter dated 26th October, 2013 addressed by United Bank of India to the Complainant Bank wherein it has been stated that,

“Upon observation of the trail leading to down gradation of the account to NPA, we are of the opinion that first balance sheet of the Company as at the end of 31.03.2012 prepared by the auditor- M/s D.N. Gupta & Associates played a major role to allow the Company to avail the facilities from the banks. Subsequently, the same auditors prepared another Balance Sheet for the year ending 31.03.2012, drastically changing the financials of the Company. We are of the opinion that the auditors compromised with the ethics of their desired principles and did not present the Company’s affairs in a fair, transparent and unbiased manner. Further, when the second & final Balance Sheet has been finalised by the auditors on 05.09.2013, we feel, it was duty of the auditors to inform the lenders appearing in the Balance Sheet of the Company about the changes immediately to avoid any untoward incidences that may arise out of the first Balance Sheet. The Company had also withheld the Balance Sheet from the reach of the lenders with an ulterior motive to avail the funds from the lenders with misrepresentation of facts. Thus, the auditors had not applied their diligence, thus acting as a facilitator to the Company to embezzle the funds”.

(ix) Accordingly, the Committee is of the considered opinion that in the instant case, neither the Company nor the Respondent has taken any steps to inform various stakeholders about the fact of issuance of revised audit report. Thus, since the Respondent has failed in complying the relevant provisions of Standard on

Auditing issued by ICAI and failed to take adequate steps to prevent reliance on his audit report, he has acted negligently while issuing the revised audit report to the Company.

Conclusion

10. Thus in the considered opinion of the Committee, the Respondent is **GUILTY** of professional misconduct falling within the meaning Clause (7) of Part I of the Second Schedule to the Chartered Accountants Act, 1949.

**Sd/-
(CA. NAVEEN ND GUPTA)
PRESIDING OFFICER**

**Sd/-
(SHRI AMIT CHATTERJEE)
GOVERNMENT NOMINEE**

**Sd/-
(CA. SANJAY KUMAR AGARWAL)
MEMBER**

**Sd/-
(CA. MANU AGARWAL)
MEMBER**

**DATE : 08th February, 2018
PLACE : New Delhi**

DISCIPLINARY COMMITTEE [BENCH – I (2019-2020)]
[Constituted under Section 21B of the Chartered Accountants Act, 1949]

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.

In the matter of:

Shri Ajit Singh, Chief Manager, Allahabad Bank, Industrial Finance Branch, Kolkata

-Vs-

CA. Devki Nandan Gupta (M.No.052634), Kolkata

[PR-61/2014-DD/99/2014/DC/635/2017]

MEMBERS PRESENT:

Shri Jugal Kishore Mohapatra, I.A.S.(Retd.), Government Nominee & Presiding Officer

Ms. Rashmi Verma, I.A.S. (Retd.), Government Nominee,

CA. Babu Abraham Kallivayalil, Member

CA. Dayaniwas Sharma, Member

1. That vide report dated 08.02.2018, the Disciplinary Committee was of the opinion inter-alia that **CA. Devki Nandan Gupta (M.No.052634)** (hereinafter referred to as 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.

2. That pursuant to the said report, an action under Section 21B (3) of the Chartered Accountants (Amendment) Act, 2006 was contemplated against the Respondent and a communication dated 24th October, 2019 was addressed to him thereby granting an opportunity of being heard in person and/or to make a written representation before the Committee on 7th November, 2019 at Kolkata.

3. The Committee noted that the Respondent was present and he made his oral submissions on the findings of the Disciplinary Committee. The Committee also noted that the Respondent vide his letter dated 21st May, 2018 made his written representations on the findings of the Disciplinary Committee.

4. The Committee noted that the Respondent through his oral and written representation made the following submissions:-

4.1 The Committee expressly stated that the Respondent has been found to be guilty because he has acted ‘negligently’. The Respondent further stated that negligence per se would not amount to gross

negligence. The Respondent has been held guilty under clause (7) of Part I of Second Schedule which only deals with gross negligence. The Respondent quoted the judgment of Division Bench (Calcutta High Court) in the case of S. Ganesan Vs. A.K. Joselyne wherein it was held that *“Even if there is any negligence in performance of duties or errors of judgment in discharging of such duties, the same cannot constitute misconduct unless ill-motive in the aforesaid are established”*. It was further held that *“it is difficult to hold that lack of efficiency or attainment of expected standards while discharging professional duty would automatically constitute misconduct”*

4.2 The Respondent claimed that there is no element of proven ill motive with respect to him in this case.

4.3 The Respondent stated that the charge does not relate in any manner to any deficiency in the audit report of the Respondent or any misstatement in the financial statements of the Company. The charge relates to procedural issues as to whether the Respondent has taken appropriate steps to ensure compliance with SA 560 which deals with subsequent events.

4.4 He further stated that the Company had not held any AGM after the date of the first audit report and before the revision of the financial statements (by the management) / issuance of second audit report (by the management). The revised financial statements were the only financial statements which were approved by the shareholders.

4.5 He claimed that the revised financial statements were the only financial statements to be filed with the ROC. The bank has revised the limits in 2013 following the filing / uploading of the financial statements of the Company for the year 2011-12 with the ROC.

4.6 He stated that an auditor can never step into the shoes of the management for actual execution of the management’s role. The Respondent could not have personally sent out the revised financial statements to the users of the same.

4.7 He had obtained the undertaking from the Company that they would circulate only the revised financial statements, and the financial statements attested on 30th April, 2012 had not been circulated to any of the stakeholders or shareholders.

5. The Committee considered the reasoning (s) as contained in paras no.1 to 10 of the Disciplinary Committee report, holding the Respondent 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. The Committee considered the findings as contained in the Report along with oral and written representations of the Respondent.

7. Keeping in view the facts and circumstances of the case, material on record and the oral and written representations of the Respondent made/submitted before it, the Committee ordered that **the name of the Respondent i.e. CA. Devki Nandan Gupta (M.No.052634) be**

removed from the register of members for a period of 2 (Two) Years and a fine of Rs.50,000/- (Rupee Fifty Thousand only) (excluding taxes, if any) be imposed upon the Respondent i.e. CA. Devki Nandan Gupta (M.No.052634) to be paid within 30 days of receipt of this order.

Sd/-
(SHRI JUGAL KISHORE MOHAPATRA, I.A.S.(RETD.))
GOVERNMENT NOMINEE & PRESIDING OFFICER

Sd/-
(MS. RASHMI VERMA, I.A.S. (RETD.))
GOVERNMENT NOMINEE

Sd/-
(CA. BABU ABRAHAM KALLIVAYALIL)
MEMBER

Sd/-
(CA. DAYANIWAS SHARMA)
MEMBER

DATE : 07th November, 2019

PLACE : Kolkata