

REPORT OF THE DISCIPLINARY COMMITTEE [BENCH-III (2018-19)]
THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA
INDRAPRASTHA MARG, NEW DELHI – 110 002

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: [PR/188/14-DD/213/14-DC/524/2017]

In the matter of :

Shri Debashish Bandopadhyay,
Registrar of Companies,
West Bengal,
Ministry of Corporate Affairs,
Nizam Palace,
2nd MSO Building,
4th Floor, 234/4, A.J.C. Bose Road,
Kolkata - 700020

-----Complainant

Vs.

CA Tarak Nath Dutta, (M.No. 056676) in Re:
Proprietor ,M/s. T.N. Dutta& Associates,
87/1-B Cossipore Road
Kolkata 700 002

----- Respondent

Members Present:

CA Naveen N. D. Gupta, Presiding Officer
Smt. Anita Kapur, Member (Govt. Nominee)
CA. ShyamLalAgarwal, Member
CA. Sanjay Kumar Agarwal, Member

Date of Final Hearing: 27th August, 2018
Place of Final Hearing: Kolkata

Parties Present:

- (i) CA TarakNathDutta-Respondent**
- (i) CA. A. P. Singh – Counsel for Respondent**

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Allegations of the Complainant, Shri Debashish Bandopadhyay, Registrar of Companies, West Bengal

1. It is stated that the Balance Sheet of M/s Sun Plant Business Ltd. (hereinafter referred to as "**Company**") as at 31.03.2009, 31.03.2010 and 31.03.2011 showed cash in hand balance of Rs.155.70 lakhs, Rs.233.20 lakhs and Rs.425.08 lakhs respectively as certified by the Management. The Complainant alleged that the Company was holding huge cash balances in hand which were not verified by the Statutory Auditors.
2. The Complainant further alleged that it was reported in the Auditor's report for the year ended 31.03.2009 that the Balance Sheet and P&L Account were drawn up in accordance with Accounting Standards but it was not reported that the Company did not follow the Accounting Standard 18. As per the Complainant, the Respondent committed dereliction of his duty laid down in the provisions of Section 227 (3)(d) of the Act.

Proceedings:

3. At the outset, the Committee noted that the Respondent was present in person along with his counsel to appear before the Committee. However, the Complainant was neither present nor any communication was received from its Office. It was noted that the notice sent to the Complainant was duly served as per the speed post track details available. The Committee, accordingly decided to proceed ahead in the matter. During the course of making his submissions, the Counsel for the Respondent raised his technical objection that in present case Rule 3(2) of Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007 was not complied with. The Committee noted in this regard that a letter dated 21st August 2018 was written to the Complainant with a copy marked to the Secretary MCA, wherein while informing the objection raised by the Complainant as well as the requirement of Rule 3(2) of the CA Rules 2007, the position of the person who had authorised the extant complaint was sought from the Complainant. On non-receipt of response from the Complainant, again

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a letter dated 5th October 2018 was written to the Secretary, MCA wherein the casual approach being adopted by the Complainant in following up with the extant matter was brought to his notice and kind intervention was sought by requesting him to consider advising/directing the Complainant department concerned to ensure submission of documents/information sought in context of compliance with Rule 3(2) of CA Rules 2007. It was noted that no response was received from the Complainant in this regard and in absence of such response, the issue of compliance of Rules 3(2) CA Rules 2007 could not be adjudicated. In the meantime, the Committee decided to proceed ahead and examine the case on merits.

4. The Counsel for the Respondent made his further submissions. The Committee thereafter examined the Respondent. The Committee on perusal of information available on records directed that a letter be written to the Complainant enclosing therewith the copy of the audited Financial Statements of the Company for the F.Y. 2008-2009 as submitted by the Respondent to verify from their records, if the Complainant Department had any other copy of the financial statement. Thereafter, based on the documents available on record and after considering the oral and written submissions made by the Respondent, the Committee concluded the hearing in the matter.

Findings of the Committee:

5. Upon perusal the documents on record, namely, the Complaint, Written Statement and Prima Facie Opinion and further written/oral submissions made by the Complainant and the Respondent, the Committee noted that the Complainant has raised two charges against the Respondent. The First Charge was that the Company had huge cash in hand as on 31.03.2009, which was not verified by the Respondent while conducting audit to express opinion on the financial statements of the Company. The Committee noted that though the allegation was raised by the Complainant with respect to three financial years i.e. 2008-2009 to 2010-2011, but the Respondent was the statutory auditor only in respect of one financial year i.e. 2008-09.

Accordingly, the finding/proceedings of the Committee were limited to that year.

6. The Committee noted that the Respondent in his defence had produced on record a document evidencing proof of conducting cash balance verification at the Head Office of the Company on 25th May, 2009 (Page 3 of Respondent's Submission dated 12th May, 2017) and a statement of certified balances as provided by the Management of the Company (Page 78 of Respondent's submission dated 03rd September, 2018).

7. On perusal of papers on record, it was noted that the Respondent had also produced an affidavit sworn by the then director of the Company Shri Girija Shankar which, inter-alia, stated that before signing of the financial statements and the Audit Report by the Respondent as statutory auditors, the Management of the Company had given to him a representation signed by the then directors of the Company, wherein the figure of the cash balance was verified. The copy of the said representation was also made available on record by the Respondent. It further noted that in the financial statements also as certified, it was stated in the Schedule 4: "Cash and Bank Balance" (C-11) that the "cash in hand" had been certified by the management, thereby giving his disclaimer to that effect. In view of the above, the Committee is of the view that since it had been categorically mentioned that "cash in hand" was certified by the management, therefore the question of verification of the same by the Respondent did not arise as he had relied on the representation made by the management of the company in this regard, particularly since cash verification at Head Office had not revealed any discrepancy. The Committee is thus of the considered view that 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 with respect to this charge.




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8. The second charge alleged by the ROC against the Respondent is about non-reporting in his audit report that the Accounting Standard-18 i.e., Related Party Transactions was not followed. In respect of this charge, it was noted that the Respondent had submitted that information about related parties was made in Note 9 of Annexure 11 containing Significant Accounting Policies and Notes on Accounts for the year ended 31st March, 2009.

9. The Respondent further submitted that the Complainant had intentionally refrained itself from annexing complete set of financials for the year ended 31st March, 2009 wherein such disclosure was made. The Committee directed that the Complainant be asked to check from their office records as to whether the copy of the financial statements as made available by the Respondent alongwith his written Statement was same or otherwise. In case of different set, the same may be made available to the Committee. The Complainant vide e-mail dated 22nd October 2018, in response stated that the copy of the Balance Sheet for the Financial Year 2008-2009 of M/s. Sun-Plant Business Limited available with them appears to be same except *Significant Accounting Policies and Notes on Account i.e. Annexure-11* were not found with the Balance Sheet and Profit and Loss Account of the period in the MCA System. The Committee also noted that in the copy of Balance Sheet produced by the Complainant (C-10) under the said Balance Sheet, it is clearly mentioned that "NOTES" to the account in Annexure '11' are annexed. It is, accordingly, viewed that said Annexure was a part of financial statements though may not have been uploaded, but an auditor cannot be held responsible for the same.

10. Further, on perusal of Annexure 11, the Committee noted that Note 9 (W-18) of the financial statements for the year ended 31st March, 2009, states that "*Apart from Sun-Plant Construction Ltd. and Sun-Plant Agro Ltd. no other party are Related to the business for the year under Audit as informed to us.*" Thus, the names of the related parties were duly

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disclosed in the notes to accounts and the nature of transactions and the amount involved had been disclosed as appearing against two specifically named entities in schedule 5 and schedule 6 of the financial statements of the Company for the F.Y. 2008-2009 (**W-13**). Accordingly it is viewed that due disclosures were made.

11. With respect to argument relating to the font size and the stamp on Annexure 11 to be apparently different from that used in audit report and the related schedules, it is noted that, the Respondent has brought on record, Audit Reports of M/s. Reliance Storage Energy & Systems Pvt. Ltd. and M/s. Flexo Merchants Pvt. Ltd. for year ended on 31.03.2009 certified by him on 02/09/2009 and 28/08/2009 respectively and filed with Registrar of Companies using seal of his firm which was used in certification of alleged Annexure 11. The Committee perused the said documents also and noted that the seal used in certification of above financial statements, was the same in size and style to the one which was used in certification of the said annexure 11 which is the focal point of this allegation. However, the Committee was also of the view that the Respondent has failed to adopt the best practice whereby same size stamp should have been used on all pages across a set of financial statements of a Company.

12. Considering the response from the Complainant Department, and the plea of the Respondent that annexure 11 brought on record alongwith his written statement dated 02/09/2014 was part of his audit report and cannot be construed as an afterthought, the Committee viewed that the said annexure was carrying the details of the related parties transactions as per the requirements of Accounting Standard 18. Hence, in considered view of the Committee, the Respondent was Not Guilty in respect of this Second charge of the Complainant.



Conclusion:

13. Thus, in conclusion, in the opinion of the Committee, the Respondent was NOT GUILTY of Professional Misconduct falling within the meaning of Clauses (7) & (8) of Part I of the Second Schedule to the Chartered Accountants Act, 1949. Since the charges against the Respondent, do not survive, the Committee decided not to pursue the issue of technical objection with MCA.

14. The Committee accordingly passes order for closure of this case against the Respondent.

Sd/-
[CA. Naveen N. D. Gupta]
(Presiding Officer)

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

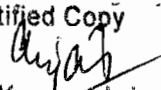
Sd/-
(CA. ShyamLal Agarwal)
Member

Sd/-
(CA. Sanjay Kumar Agarwal)
Member

Date : 29th January, 2019

Place : New Delhi

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Certified Copy

Ajay Kumar Jain
Deputy Secretary
Disciplinary Directorate
The Institute of Chartered Accountants of India
ICAI Bhawan, I.P. Marg, New Delhi-110 002