

CONFIDENTIAL

DISCIPLINARY COMMITTEE [BENCH – II (2018-2019)]

[Constituted under Section 21B of the Chartered Accountants (Amendment) 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.

File No. : [PPR-19/C/2013/DD/18/C/INF/13/DC/594/17]

In the matter of:

CA. Anand Raj Jain (M.No.073423)
B-17A, Vidyut Nagar,
Ajmer Road,
JAIPUR - 302005.

.....Respondent

MEMBERS PRESENT:

CA. Prafulla P. Chhajed, Presiding Officer
Shri Rajeev Kher, IAS (Retd) Government Nominee
CA. Mangesh P. Kinare, Member
CA, Sushil Kumar Goyal, Member

DATE OF FINAL HEARING : 15.01.2019

PLACE OF FINAL HEARING : ICAI Bhawan, New Delhi

PARTIES PRESENT:

Respondent : CA. Anand Raj Jain
Counsel for the Respondent : CA. P.P. Pareek

1. Charges in Brief:-

- 1.1 The Respondent was the Director of Vaishali Urban Co-op. Bank Ltd (hereinafter referred to as the Bank) from the year 2006 to 2009. Despite being a professionally qualified Chartered Accountant, the Respondent in collusion with the Chairman and concurrent Auditors namely CA Karuna Bhansali, Proprietor of M/s K. Bhansali & Associates and CA Punit Godawat, Proprietor of M/s Loonker & Co., was involved in fraud and embezzlement of funds of the bank, as reported in the Inspection Report submitted by the Reserve Bank of India and the reports submitted by the Statutory as well as Voucher Auditor.

- 1.2 It is further alleged that the Respondent, as a Director and member of the Audit Committee of the Bank, in collusion with the concurrent auditors of the Bank were found flouting laws of the Reserve Bank of India and Banks Regulations, circulars, other norms and own bye-laws as laid down by the Board of the Bank.
- 1.3 The irregularities in bank during the tenure of the Respondent based on above reports can be summarised as under:
- a) The Bank had not segregated inoperative deposit accounts from the operative accounts. Some of the inoperative account were reactivated unauthorisely and clean overdrafts were sanctioned therein without any request from the account holders on record.
 - b) Loans against NSCs in current accounts. The bank neither had copies of NSCs / IVPs on its record nor was it able to furnish details like numbers etc.
 - c) Clean overdrafts given in fictitious current accounts. Six current accounts were opened and overdrafts were allowed in these accounts. These overdrafts were sanctioned without receiving any request for OD limits.
 - d) Clean overdrafts in some new and existing current accounts without receiving any request for OD limits.
 - e) Irregularities in opening of SB account no.3772 of Bharat Jain.
 - f) Misuse of Payment order account to raise money / create money.
 - g) Overdraft opened in the name of the Bank with the Bank of Rajasthan had not brought into books of the bank.
 - h) The BOD of the Bank had authorized opening of the fixed deposits and OD accounts with Bank of Rajasthan. The BOD had authorized six people to operate the account. The account was to be operated by any two persons (jointly) authorized to do so. The person so authorized included the Chairman and a clerk of the Bank.



- i) The Bank had a fixed deposit of Rs.280.93 lakhs with Rajasthan State Co-Op Bank Ltd against which it enjoyed a CC limit of Rs.200 lakh. A fresh overdraft of Rs.63 lakhs was sanctioned against the residual value of fixed deposit. Amount received against overdraft was used to repay the outstanding overdrafts in the books of the Bank in the name of members of Pacific DC & Hospital, Udaipur. This loan was not brought into books of the Bank.
- j) The Bank had availed overdraft facility of Rs.315 lakh against its fixed deposits of Rs.450 lakh with Jaipur Central Co-op Bank Ltd (JCCB Ltd). in the month of June, 2006. It was observed that with effect from 20th June, 2006 there were many transactions which appeared in the bank's account in the books of JCCB Ltd but the same were not reflected in the books of the bank.
- k) As per the bank's statement of account received from Centurain Bank of Punjab on 30th June, 2007 Rs.200 lakh were deposited in cash in the said account. This transaction was not shown in the books of the Bank.
- l) The Bank had availed overdraft facility against its fixed deposit of Rs.45 lakh in its CC account number 0016-576960-050 with IndusInd Bank Ltd., during the period from 18th July, 2006 to 26th September, 2007. The amounts were withdrawn in the name of individuals. The transactions with IndusInd Bank Ltd. were also not shown in the books of the Bank.

2. Brief facts of the Proceedings:

- 2.1 The Committee noted that the Respondent alongwith his Counsel was present and appeared before it and was put on oath. As this was an Information case, hence, the Office read out the charges.
- 2.2 On being asked by the Committee, the Respondent pleaded not Guilty and wished to defend the charges.
- 2.3 The Respondent/Counsel submitted that he was an Independent Director on the Board of the Bank and except this he does not have any relation /dealings with the Bank. Further, he submitted that as an Independent Director, he had no role in day to day functioning of the bank as his role was limited only to use his expertise in supervising/advising on steps to be taken to tackle the issues kept

before the Board of Directors' Meeting. The Respondent pointed out that, no case has been filed against him by any other authority as regards his role in irregularities in the Bank. Moreover, ICAI has also not fixed any charges against him as regards taking active part in above irregularities or using bank funds for personal benefit. The Respondent also submitted certain papers to defend the charges at the time of hearing.

2.4 After recording the submissions of the Counsel for the Respondent, the Committee concluded the hearing in the captioned case.

FINDINGS OF THE COMMITTEE :

3. The Committee noted that –

3.1 The allegations against the Respondent are based on the RBI scrutiny report and enquiry results and Direction dated 13.1.2012 under section 55 (5) (6) of Rajasthan Co-operative Societies Act, 2001 .

3.2 The Respondent was elected as Independent Director of the Bank for the period from year 2006 to 2009.

3.3 The Respondent submitted before the Committee that :-

3.3.1 The Respondent was an elected member on the Board of the Bank He was independent director of the bank under the category of professionally qualified Chartered Accountants. This was an honorary post without any financial gains.

3.3.2 Normally, 10 to 12 meetings of the Board of Directors of the Bank were held in a year, which he used to attend. Besides this, he attended 3 to 4 meetings of the Audit Committee.

3.3.3 His role was limited to formulation of the policies and overall supervision of the bank. He was not signatory to any transaction and/or the financial statements of the bank. The Chief Executive Officer (CEO) of the bank was entrusted with the supervision of day to day functioning of the bank.

3.3.4 The irregularities/shortcoming as pointed out by the RBI inspection report relates to the operational issues of the bank and were not related to the


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policy matters of the bank. These irregularities have been perpetrated by the Chairman of the Bank. The report of RBI has not mentioned/ pointed out the name of the Respondent in their report as regards misutilisation of Banks' funds for personal purpose.

- 3.3.5 The enquiries conducted by the officers of the Registrar of Cooperative Societies, Rajasthan have not indicted him in any irregularities.
- 3.3.6 In the opinion of the Enquiry officer, the loss caused to the Bank was not on account of the policy decision of the Board but were related to operational issue of the Bank.
- 3.3.7 The Respondent in his capacity as Chartered Accountant has never conducted any audit or internal audit of the Bank.
- 3.3.8 The decisions on overall functioning of the bank was taken by the Board on the basis of the information, facts and papers submitted by the Executives of the Bank more particularly by CEO.
- 3.3.9 He or his relatives were not involved directly or indirectly in any of the concerns/customers dealing with the bank.
- 3.3.10 In the audit committee meetings, the transactions which were placed for their approval were the transaction duly supported by the documents. The CEO of the bank has reported on many occasion that no cases of fraud/forgery/robbery/misappropriation of the funds of the bank have been detected during the financial year.
- 3.4 On a specific query raised by the Committee whether the irregularities, if any, as pointed out, were brought to the knowledge of the audit Committee, the Respondent replied that nothing had been brought to the knowledge of the Committee during his tenure.
4. The Committee observed that RBI inspection report has pointed out that there were large scale flouting of rules related to sanctioning of overdrafts, , issue of payment orders, loan taken against FDs, the funds introduced in the Bank at the whims and fancy of the Chairman of the Bank without following the due

procedures or approval of the Board of Directors. There were large scale of sanctioning of overdraft and loans to the concerns in which the Chairman or his relatives had direct or indirect interest.

5. The Committee perused the various norms of RBI master circular in order to arrive at a fair conclusion regarding the conduct of the Respondent and to assess whether the responsibility imposed on him as professionally qualified Chartered Accountants acting as Director were fulfilled as per the norms issued by the RBI through master circular.
6. On perusal of the various norms of master circular, the Committee noted that under the broad heading titled Constitution of Board of Directors, it is mentioned as under:-

Para 1.3 that the Board of Directors primarily concerned with the formulation of policies keeping in view the guidelines issued by RBI and state/Central Government. The Board should also exercise overall supervision and control over the functioning of the Bank leaving day to day administration of the bank to the Chief Executive Assistant.

Para 1.5 the Directors of primary (Urban) co-operative banks must be knowledgeable and person of high integrity. They must function in a cohesive manner and provide proper leadership for the smooth and efficient management of the affairs of the bank. This calls for certain degree of professionalism in the BODs.

Para 3.1 in order to ensure and enhance the effectiveness of internal audit/ inspection as the management rule, an Apex Audit Committee should be set up at board level for overseeing and providing directions to the internal audit/inspection machinery and other executives of the banks. The Committee may consist of the chairman and three/four directors, one or more of such directors being chartered accountant or having experience in management, finance accountancy and audit systems, etc.

- 6.1 Further, the master circular has also mentioned under the heading DOs and Don'ts for the Board of Directors, some of these are highlighted below:



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(a) *Non-Inteference : The directors should not:*

(i) *interfere the day-to-day functioning of the bank*

(ii) *involve themselves in the routine or everyday business and in the management functions*

(iii) *send instructions/directions to any individual officer/employee of the bank in any manner.*

7. From the above referred para in the master circular, it is noted that circular gives clear directions to the Respondent as Independent Director of the Bank that their main function is policy formation and overall supervision. Thus from the above, it can be inferred that the Respondent was not supposed to interfere/involve in day to day functioning of the bank. The various irregularities which have been pointed out by the RBI inspection report regarding sanctioning of overdraft without proper documentation, misuse of payment order account, taking loan against bank FDs wherein the money is not routed through the books of the bank are mainly related to day to day functioning of the bank.

8. Therefore, the Committee was of the view that –

8.1 Having limited role as Independent Director on the Board, the Respondent was not having any role in the irregularities being pointed out by the reports. This also stands corroborated with the fact that no proceeding of any kind have been initiated by the bank in the aforesaid matter against the Respondent.

8.2 When the fraud or irregularities are systematically committed by the Chairman of the Bank or at his behest and these facts are not brought before the Board of Directors; it is not possible for the individual director to have knowledge of the same.

9. Therefore, in the considered opinion of the Committee the Respondent is **NOT GUILTY** of professional misconduct falling within the meaning Clause (7) of Part I to the Second Schedule of the Chartered Accountants Act, 1949.



Conclusion

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

11. 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.



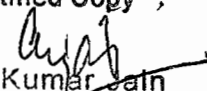
Sd/-
(CA. PRAFULLA P. CHHAJED)
PRESIDING OFFICER

Sd/-
(RAJEEV KHER, I.A.S. (Retd.)
GOVERNMENT NOMINEE

Sd/-
(CA. MANGESH P. KINARE)
MEMBER

Sd/-
(CA. SUSHIL KUMAR GOYAL)
(MEMBER)

DATE : 05th February, 2019
PLACE : New Delhi

Certified Copy

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Deputy Secretary
Disciplinary Directorate
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