



THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA  
(Set up by an Act of Parliament)

[PPR/P/44/W/13/DD/37/W/INF/13-DC/555/2017]

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.

[PPR/P/44/W/13/DD/37/W/INF/13-DC/555/2017]

In the matter of:

**CA. Sunil Kumar Jaithwar (M.No.041315),**  
A-101, 1<sup>st</sup> Floor, Sai Darshan Complex,  
Road No.1, Mamlatdar Wadi,  
Malad-West  
Mumbai – 400 064

.....Respondent

MEMBERS PRESENT:

1. CA. Atul Kumar Gupta, Presiding Officer
2. CA. Amarjit Chopra, Government Nominee
3. CA. Rajendra Kumar P, Member
4. CA. Pramod Kumar Boob, Member

1. That vide findings under Rule 18 (1) of the Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007 dated 03.02.2020, the Disciplinary Committee was inter-alia of the opinion that **CA. Sunil Kumar Jaithwar (M.No. 041315)** (hereinafter referred to as the Respondent") was **GUILTY** of Professional Misconduct falling within the meaning of Clause (7) of Part 1 of the Second Schedule to the Chartered Accountant Act, 1949.

2. That an action under Section 21B (3) of the Chartered Accountants Act, 1949 was contemplated against the Respondent and a communication dated 4<sup>th</sup> March, 2020 was sent to him thereby granting an opportunity of being heard in person and/or to make oral/ written representation before the Committee on 17<sup>th</sup> March, 2020 at Delhi/Mumbai.

3. The Respondent was present before the Committee in Mumbai office of ICAI through video conferencing mode. He submits before the Committee that he has already made his submission vide letter dated 12<sup>th</sup> March, 2020 which is not considered by the Committee and he has no further submissions today to be presented before the Committee. The Committee on perusal of the said CA. Sunil Kumar Jaithwar (M.No.041315), Mumbai



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Letter noted that the question raised by the Respondent relates to charges for which findings were already given by the then Disciplinary Committee.

4. The Committee while looking into the matter and the conduct of the Respondent noted that the Respondent was barred by the RBI and the Registrar for conducting audit. Further the Respondent did not prefer any appeal on his being debarred. The Committee accordingly was of the opinion that non-availability of documents relating to the accounts which had led to almost 80% of the loans left unverified indicates that the Respondent had not only failed to assess the compliance of prudential norms laid down for such accounts but also failed to exercise the due diligence in forming the opinion on the financial statements of the bank based on limited verification/audit done by him as was expected of a chartered Accountant in prevailing circumstances. The Committee was of the opinion that ends of justice would be met by punishing the respondent.

5. Thus, the Committee ordered that the name of the Respondent i.e. CA. Sunil Kumar Jaithwar (M.No.041315) be removed from the Register of Members or a period of 3 years along with a monetary penalty of Rs 1,00,000/- (One Lakh only) be imposed upon him which shall be payable by him within 30 days of receipt of such order.

Sd/-  
(CA. ATUL KUMAR GUPTA)  
PRESIDING OFFICER

**Certified Copy**  
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**PARVESH BANSAL**  
Deputy Secretary  
Disciplinary Directorate  
The Institute of Chartered Accountants of India  
ICAI Bhawan, I.P. Marg, New Delhi-110 002

Sd/-  
(CA. AMARJIT CHOPRA)  
GOVERNMENT NOMINEE

Sd/-  
(CA. RAJENDRA KUMAR P.)  
MEMBER

Sd/-  
(CA. PRAMOD KUMAR BOOB)  
MEMBER

DATE : 17/03/2020

PLACE : Delhi

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

**(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**

**File No. PPR/P/44/W/13/DD/37/W/INF/13-DC/555/2017**

**In the matter of:**

**CA. Sunil Kumar Jaithwar (M. No. 041315)**

A-101, 1<sup>st</sup> Floor, Sai Darshan Complex,

Road No. 1, Mamlatdar Wadi,

Malad-West,

**Mumbai – 400064**

**....Respondent**

**Members Present:**

**CA. Prafulla Preme Sukh Chhajed, Presiding Officer**

**Shri Ajay Mittal, Member (Govt. Nominee)**

**CA. Debashis Mitra, Member**

**CA. Manu Agrawal, Member**

**Date of Final Hearing: 25<sup>th</sup> November, 2019 (decided on 15<sup>th</sup> January 2020)**

**Place of Final Hearing: New Delhi**

**Parties Present:**

**(i) CA. Sunil Kumar Jaithwar - Respondent**

**(ii) Shri Debashis Jagirdar – Counsel for Respondent**

**Allegations of Deputy General Manager, RBI:**

**1. M/s S. D. Jaithwar & Co., Chartered Accountants (hereinafter referred to as the  
“Respondent firm”) has carried out the Statutory Audit of M/s Pen Co-operative  
Urban Bank Ltd., Raigad (hereinafter referred to as the “Bank”) for the financial**

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years ended March 2008 and March 2009. It was alleged that there were divergences in the financial parameters of the Bank as assessed by the Respondent Firm and the Inspecting Officer of RBI during the year 2007-08 and special auditors, M/s Kirtane & Pandit for the year 2008-09. The RBI brought on record a statement showing divergence in financial parameters in which divergence has been reported in the figures of Gross NPA, Net NPA, Loan Loss provisions required and the Profit.

### **Proceedings:**

2. At the time of hearing on 25<sup>th</sup> November, 2019 the Committee noted that the Respondent along with his Counsel was present at the time of hearing. The Counsel of the Respondent requested to adjourn the proceedings in view of the fact that there were multiple proceedings filed in the case, which as per him not yet concluded and had direct effect on extant case. The Committee viewed that Disciplinary proceedings and proceedings before the Court of Law are independent of each other and thus might take place simultaneously. Accordingly, the Committee asked the Counsel for Respondent to proceed further and submit his defense in the matter. The Counsel for the Respondent, thereafter, made his oral submission before the Committee. Thereafter, the Committee examined the Respondent on the submissions made by him. Based on the documents available on record and after considering both the written as well as the oral submissions made by the Respondent, the Committee concluded hearing in the matter besides providing 10 days to the Respondent to file his further submissions, if any, in the matter. Accordingly, the judgment of the Committee was reserved in the matter.

3 On 15<sup>th</sup> January, 2020, the Committee noted that the Respondent vide his letter dated 18<sup>th</sup> December 2019 had submitted his written submissions in the matter. The Committee, thereafter, considered the same alongwith the documents already on record and decided the matter on merits.

### **Findings of the Committee:**

4. The Committee noted that the allegations in the instant case were related to divergence in the financial parameters of the Bank as assessed by the Respondent who



was the Statutory Auditor of the Bank and that done by the Inspecting Officer of RBI during the year 2007-08 as well as by the Special auditors, M/s Kirtane & Pandit for the year 2008-09. In this regard, RBI brought on record a statement showing divergence in financial parameters (A-5) in which divergence alleged were reported in the figures of Gross NPA, Net NPA, Loan Loss provisions required and the Profit.

5. The Committee in this regard noted the submissions made by the Respondent that in the Statutory Audit Report for F.Y. 2008-09, he had clearly mentioned in the Audit Report that 56 Loans account having aggregate outstanding of Rs 326.89 crores were closed as the files were not made available to the Respondent whereas the Special Auditor in his report had considered these Loan account as Loss account and NPA. The Special Auditor had, accordingly, reversed Interest Income of Rs 75 Crores on those Loan accounts and thus the Profit of Rs 6.82 crores was converted to Loss of Rs 403.18 Crores. He further stated that RBI has not specified or clarified the treatment to be given to Loan accounts in case of Loan accounts where the specified Loan Documents were not available. The treatment for these loan accounts had to be assessed on the basis of individuals judgment and the position of the Loan account. He also submitted that the Audit was conducted and completed on the basis of Books of Accounts & other subsidiary books & registers generated through computer system and other relevant documents and records maintained by the bank and produced before him for verification. He had conducted the audit on the basis of going concern assumption, whereas the special auditors had commenced Audit only after the operation of the Banks were stopped by RBI. Out of the Loans which were written off as NPA ( Sub Standard/ Loss Assets) by the Special auditors, maximum number of accounts were closed/ settled by the Bank before 24<sup>th</sup> February 2010 (the period up to which date the Respondent completed the Audit of Branches as mentioned in our Audit report) and thus under such circumstances, it was difficult for him to understand how these Loans were classified as NPA and Interest Income was reversed thereby increasing the Loss to Rs 403.18 crores from a profit of Rs 6.82 crores .

6. The Committee in this regard noted the submissions of the Respondent wherein he had mentioned that one of the reasons of divergence in financial parameters was that he had conducted the audit on the assumption of going concern while when the Special auditor conducted the same, the operation of Bank was already stopped by RBI. Out of the loan accounts written off as NPA by the Special auditor, maximum number of





accounts were closed/ settled by the Bank. The Respondent submitted that the Special auditors had conducted the audit on the basis of their belief that since no documents were available for the squared up loans, such loans were considered as bad by them and hence classified as NPA. In this regard, the Committee notes as that for the creation of provision of Rs.2250 lakhs against the requirement, the Respondent has explained that the classification of standard assets was changed to sub-standard assets on the basis of ledger entries in respective loan accounts and provision was made when the documents were not made available to him or were incomplete/ inappropriate. As against it, the Respondent in another written submissions dated 16th July 2018, it was stated that all the files pertaining to Loans closed were returned back to the borrowers and since the Respondent was unable to check many Loan files for want of information, Blank Documents, Incomplete files, Files returned etc. Thus, the Committee was of the opinion that non-availability of documents relating to the accounts which had led to almost 80% of the loans left unverified indicates that the Respondent had not only failed to assess the compliance of prudential norms laid down for such accounts but also failed to exercise the due diligence in forming the opinion on the financial statements of the bank based on limited verification/audit done by him as was expected of a chartered Accountant in prevailing circumstances. Further, the fact he had revised the provision subsequent to his explanation being called for, also goes to strengthen such a view of the Committee. On being asked by the Committee as regard the actual portion of the closed accounts, the Respondent also submitted that there were bogus entries from some other accounts and if that was the case, the Committee also opined that not only the true and fair view of the accounts was vitiated but despite such apparent and grave discrepancies which were well within the knowledge of the Respondent, he being the statutory auditor went ahead and gave "A" class rating to the Society. The Committee further noted that the Respondent was barred not only by the RBI from conducting the audit but even by the Registrar of Co-operative audit and he had not preferred to file any appeal against such orders. Accordingly, the Committee was of the view that since the Respondent failed to exercise due diligence as expected of a chartered accountant in prevailing circumstances in the Bank, he is therefore Guilty of Professional Misconduct falling within the meaning of Clause (7) of Part I of the Second Schedule to the Chartered Accountants Act, 1949.

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Conclusion:

7. Thus, in conclusion, in the considered opinion of the Committee, the Respondent was held Guilty of Professional Misconduct falling within the meaning of Clause (7) of Part I of the Second Schedule to the Chartered Accountants Act, 1949.

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**Sd/-**  
**(CA. Prafulla Preme Sukh Chhajed)**  
**Presiding Officer**

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

**Sd/-**  
**(CA. Debashis Mitra)**  
**Member**

**Sd/-**  
**(CA. Manu Agrawal)**  
**Member**

**Date : 3<sup>rd</sup> February, 2020**

**Place : New Delhi**

Certified to be True Copy  
*Mohita Khanna*  
(Mohita Khanna)  
Assistant Secretary  
Disciplinary Directorate  
The Institute of Chartered Accountants of India

