



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

DISCIPLINARY COMMITTEE [BENCH-I (2020-2021)]
[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 Laltu Pore, AGM, SEBI, Kolkata

-Vs-

CA. Tapan Kumar Ghosh (M.No.053435) M/s T K G & Associates, Kolkata
[PR-301/14-DD/03/16-DC/711/17]

MEMBERS PRESENT (Through Video Conferencing):

- 1. CA. Nihar N Jambusaria, Presiding Officer**
- 2. Shri Jugal Kishore Mohapatra, I.A.S. (Retd.) (Government Nominee)**
- 3. Ms. Rashmi Verma, I.A.S. (Retd.) (Government Nominee)**
- 4. CA. G. Sekar, Member**
- 5. CA. Pramod Jain, Member**

1. That vide findings dated 15.10.2019 under Rule 18 (17) of the Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007, the Disciplinary Committee was inter-alia of the opinion that **CA. Tapan Kumar Ghosh, (M. No. 053435)** (hereinafter referred to as the **Respondent**) was **GUILTY** of professional misconduct falling within the meaning of Clauses (6), (7) and (8) of Part I of Second Schedule to the Chartered Accountant Act, 1949.

2. That pursuant to the said findings, an action under Section 21B (3) of the Chartered Accountants (Amendment) Act, 2006 was contemplated against the Respondent and communications dated 16th July, 2020 and 15th August, 2020 were addressed to him thereby granting an opportunity of being heard in person and/or to make a written representation before the Committee on 30th July, 2020 and 26th August, 2020 respectively.



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3. The Committee noted that on 26th August, 2020, the Respondent was present through Video Conferencing mode and made his verbal representations on the said findings. The Committee also noted that the Respondent vide e-mail dated 22nd July, 2020 made his written representation on the said findings.

4. The Committee observed that the written and verbal representations as made by the Respondent before the Disciplinary Committee can be summarized as under:-

i) The Respondent stated that when money was raised during the financial year 2009-10, he was not statutory auditor of the Company and the amount of Rs.30 lac was shown in the Balance Sheet of 31.03.2010 under share application money pending allotment. This amount was allotted to 196 shares holders during 2012-13.

ii) The Respondent stated that it is well established fact that 'Debenture holders' list and Debenture Allottees' list are two entirely separate and different set of documents and there is no valid reason to mix the both the lists. The Respondent stated that the very fact that "The total number of total allottees was 48 to whom Rs.10 crore worth of Debenture were allotted in 2011-12 and 2012-13, was mentioned in submissions and hence, there cannot be a question that debenture allottees list was not made available. List of Original allottees was available and submitted to the then Disciplinary Committee.

5. The Committee has considered the reasoning as contained in findings dated 15th October, 2019 holding the Respondent Guilty of professional misconduct vis-à-vis written and verbal representations of the Respondent on the findings of the Disciplinary Committee.

6. Keeping in view the facts and circumstances of the case, material on record and written representations of the Respondent made before it, the Committee is of the view that the professional misconduct on the part of the Respondent is established and however, keeping in view the submissions as brought on record by the Respondent, the said misconduct does not qualify for a severe sentence. Accordingly, the Committee orders that a fine of Rs.25,000/- (Rupees Twenty Five Thousand Only) be imposed



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upon the Respondent, CA. Tapan Kumar Ghosh (M. No. 053435), to be payable by him within 30 days from receipt of the Order.


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(CA. NIHAR N JAMBUSARIA)
PRESIDING OFFICER

(approved and confirmed through e-mail)
(SHRI JUGAL KISHORE MOHAPATRA, I.A.S. (RETD.))
GOVERNMENT NOMINEE

(approved and confirmed through e-mail)
(MS. RASHMI VERMA, I.A.S. (RETD.))
GOVERNMENT NOMINEE

sdl-
(CA. G. SEKAR)
MEMBER

sdl-
(CA. PRAMOD JAIN)
MEMBER

Certified to be true copy

Anurag Sharma
Assistant Secretary,
Disciplinary Directorate
The Institute of Chartered Accountants of India,
ICAI Bhawan, Vishwas Nagar, Shahrda, Delhi-110032

CONFIDENTIAL

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. : PR/301/14-DD/03/16-DC/711/2017

In the matter of:

Shri Laltu Pore

Asstt. General Manager,
Securities and Exchange Board of India
Eastern Regional Office
16, Camac Street,
L & T Chambers, 3rd Floor,
Kolkata-700017

.....Complainant

Versus

**CA. Tapan Kumar Ghosh (M. No.053435)
M/s T K G & Associates (FRN: 326565E)
Chartered Accountants,
BF 129, Salt Lake
Kolkata-700 064**

.....Respondent

Members Present:

**CA. Prafulla Preme Sukh Chhajed, President
Smt. Anita Kapur, Member (Govt. Nominee)
Shri Ajay Mittal, IAS (Retd.), Member (Govt. Nominee)
CA. Debashis Mitra, Member
CA. Manu Agrawal, Member**

Date of Final Hearing: 15th July, 2019 (decided on 23rd September, 2019)

Place of Final Hearing: Kolkata

Parties Present:-

- (i) CA. Tapan Kumar Ghosh – Respondent
- (ii) CA. A. P. Singh – Counsel for Respondent

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Allegations of SFIO, the Complainant:

1. **Shri Laltu Pore, Assistant General Manager, SEBI, ERO, Kolkata** (hereinafter referred to as the "**Complainant**") has filed complaint in Form 'I' dated 28th December, 2015 (C-1 to C-29) against **CA. Tapan Kumar Ghosh (M. No. 053435), M/s T K G & Associates, Chartered Accountants, Kolkata** (hereinafter referred to as the "**Respondent**" and "**Respondent Firm**"). The Complainant in his complaint has alleged as under:-

1.1 In E-Form 23AC filed with ROC for the year ended 31.3.2013 which was certified by the Respondent, it was stated that the provisions of CARO, 2003 were not applicable on the Company (C-28). Thus, the Respondent had refrained from submitting details with respect to Auditor's comment on the items specified under the CARO, 2003 in the respective columns of E-Form 23AC.

1.2 The Company had made public issue of equity shares during the Financial Year 2012-13 but under CARO report of the said period the Respondent had simply stated that the Company had made preferential allotment of 3,00,000 equity shares to 196 equity shareholders but he was unable to express an opinion as to whether such allotment was a violation of provisions of Section 67(3) of the Companies Act, 1956 (C-11). Further, the Respondent under CARO Report also stated that the Company had not raised any money through a public issue during the year which was not correct (C-12).

1.3 The Respondent reported that the company had issued and allotted secured fully redeemable Non-Convertible Debentures to 31 persons and bodies during the year aggregating to a total issue of Rs. 10 crores but it could not produce debenture holders list to him.

In view of above, it was alleged that the Respondent had still given an unqualified Audit Report (C-9).

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Proceedings:

2. The Committee noted that the Respondent, along with his Counsel, was present during the hearing held on 15th July, 2019. It was also noted that the Complainant vide its letter dated 8th July, 2019 had informed that it had already submitted all the relevant documents/details vide its letter dated 28th December, 2015 and 3rd May, 2018. It was, accordingly, viewed that based on facts available, the Committee may proceed with the matter on merits. The Committee, further, noted that during the previous hearing held on 26th July, 2018, the Counsel for the Respondent had, inter alia, raised his preliminary objections on the authorization of the extant complaint which as per him was not in consonance with the provisions of Rule 3(3) of the said CA Rules 2007. Accordingly, the then Committee gave the directions to seek necessary information from the Complainant which was duly received vide Complainant's letter dated 12th Sept, 2018 and forwarded to the Respondent vide mail dated 20th Nov, 2018 on which the Respondents had given his submissions.

In view of the above the Committee proceeded ahead in the matter and the Counsel for Respondent made his defense in the matter. The Committee thereafter examined the Respondent in the matter. The Counsel for the Respondent thereafter made his final submissions in the matter. After hearing from the Respondent, the Committee directed *the Respondent as well as the office* to independently produce before it the following documents within 14 days of the hearing:

- i. Copy of Form 2
- ii. Proof of Uploading CARO Report and date of uploading thereof.
- iii. List of 31 Debenture holders.
- iv. Evidence that shares were originally allotted to two entities which were further allotted to other persons. (as contended by the Counsel during the hearing)

Accordingly, the matter was concluded.

3. On 23rd September, 2019, the Committee noted that the Respondent had provided certain documents sought from him. Accordingly, based on written and oral submissions and the documents available on record, the Committee decided to take its decision in the matter.

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4. The Committee noted that the Respondent vide letter dated 24th July 2018, made his submission wherein he pointed out that the manner in which the complaint was filed was not as per the requirement of Rule 3(3) of the (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007 i.e., the complaint had not been authorized by an individual holding an office equivalent to that of a Joint Secretary nor had been signed by an individual holding an office equivalent to that of an Under Secretary of Central and/or State Government. It was stated that two complaints were filed in the matter by Smt. Nikki Agarwal and Shri Laltu Pore the Complainant but none of them were authorized as per the requirement of Rule 3(3) of the CA Rules, 2007.

5. The Committee noted that the issues raised by the Respondent regarding the issue of authorization was referred to the SEBI which vide its letter dated 12th September 2018 stated as follows:

- SEBI is a statutory body established by the Act of Parliament for the purpose of protecting the interest of investors in securities and to promote the development of and to regulate the securities market and for matters connected there with or incidental there to and in order to achieve the said objectives, SEBI recruits officers at various grades.
- The officers so recruited by SEBI are governed under SEBI (Employees Service) Regulation 2001. Whereas the recruitment, functions and duties of officers in Central government are governed under Central Civil Services (Conduct) Rules, 1964. As both of these rules and regulations were framed for different purposes, the designations, functions and duties of these officers cannot be analogous to each other. Further, it was stated that there are no norms in SEBI that established a strict/ direct one-to-one equivalence between the designations of its officers and those of Government of India.
- As regards the complaint lodged by SEBI with ICAI, it was stated that the Complaint was lodged after due approval of the Competent Authority. The extant matter was duly approved by Shri Ananta Barua, the then Executive Director, who had authorized the Complainant to lodge the complaint with ICAI.

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6. It was noted by the Committee that in the instant matter the approval for filing of complaint was given by the Executive Director (ED) which was the highest cadre Post in the SEBI and beyond ED there were the posts of Whole Time Member and Chairman who were appointed by the Cabinet Committee on Appointments by the Government of India. Therefore, ED of SEBI was undoubtedly competent to authorize to file the complaint in terms of Rule 3 and thus could be considered as equivalent in authority to that of Joint Secretary in Central/ State Government. It was viewed that such authority across organization being governed by different set of rules could be compared only in terms of hierarchy followed in respective organizations rather than following any absolute rules of comparison.

7. As regard two complaints filed by the same Complainant-Department i.e. SEBI by Nikki Agarwal on 13th October, 2014 and by the Complainant of instant matter on 28th December, 2015, it was noted that on receipt of original complaint on 13th October, 2014, Director (Discipline) had vide its letters dated 14th May, 2015 and 30th September, 2015, requested SEBI to provide requested documents/rectify defects to comply with requirements of Rule 3(3) of Rules 2007, in view of which due approvals were taken by SEBI as informed that ED had approved/authorised the matter on 17th May, 2015 and consequently rectified complaint was filed by Shri Laltu Pore as confirmed by SEBI in its letters dated 28th December, 2015 and 12th September, 2018. In other words, the instant complaint was filed after seeking due approvals for filing complaint which was in compliance of Rule 3 of CA Rules, 2007 and that the Director (Discipline) had taken due cognizance of the matter only when due authorization and approval were in place and everything was on record duly complied. It was also noted that Rule 5 lays down the procedure to register the complaint wherein Rule 5(5) prescribes the procedure to rectify the defective complaint when it stated as follows:

“5. Registration of complaint

(5) If, the complaint, on scrutiny, is found to be defective, including the defects of technical nature, the Director may allow the complainant to rectify the same in his presence or may return the complaint for rectification and resubmission within such time as he may determine.”

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Thus, the Committee was of the opinion that it was well within the authority of the Director (Discipline) to have the complaint rectified for any procedural defect/lapse if on scrutiny he noticed any defect in the complaint so filed. Hence, objection of the Respondent with respect to Rule 3 was ruled out by the Committee as non-maintainable. The Committee accordingly decided the case on merits.

Findings of the Committee:

8. The Committee noted that as regard the first allegation, the Complainant had alleged that the Respondent had certified in E-Form 23AC for the year ended 31.3.2013 that the provisions of CARO, 2003 were not applicable on the Company and thus he had refrained from submitting his comment on the items specified under the CARO, 2003 in the respective columns of E-Form 23AC.

9. The Committee noted that the Respondent had submitted that the CARO 2003 was a part and parcel of the Auditor's Report and was duly attached to E-Form 23AC while filing was done with ROC, and thus continued to be a public document which could be procured from the MCA 21. It was noted that the Respondent had submitted that due to clerical unintentional error, while uploading E-Form 23AC, the wrong option which indicated that CARO was "not applicable" was selected otherwise the same comments that were included in the Report on CARO 2003 would have been reproduced in toto in the respective columns which remained blank due to wrong selection of the option. The Respondent further submitted that the same was a technical lapse which had caused no adverse impact on the document or to stakeholder in particular financially or otherwise. It was noted that the said Form was uploaded on 11th February 2014 by the Respondent and the document attached containing financial statements also contained the CARO report as independently verified by the office.

10. The Committee further noted from the copy of audit report of the Company attached to Form 23AC for the F.Y. 2012-13 that the Respondent had duly

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reported that the provisions of the Companies (Auditor's Report) Order, 2003 were applicable to the Company and has also attached the statement/report in this regard. Thus, in light of the same, the Committee was of the considered view that there was no misconduct on the part of Respondent and only due to an unintentional error of selecting a wrong option, in the respective columns of CARO reporting was wrongly done only on Form 23AC. Thus in view of the above, the Committee was of the considered opinion that the Respondent is not guilty of professional misconduct falling within the meaning of Clause (7) of Part I of the Second Schedule to the Chartered Accountants Act, 1949 in respect of this charge.

11. As regard the second allegation raised by the Complainant, the Committee noted that in respect of clause 4(xviii) and clause 4(xx) to CARO, 2003, an auditor is required to report on the following:

Clause 4(xviii):

"Whether the company has made any preferential allotment of shares to parties and companies covered in the Register maintained under Section 301 of the Act, and if so whether the price at which shares have been issued is prejudicial to the interest of the Company.

Clause 4(xx) :

"Whether the management has disclosed on the end use of money raised by public issues and the same has been verified.

It was noted that with respect to clause 4(xviii), the Respondent had simply stated that 3,00,000 equity shares were allotted to 196 equity shareholders and that he was unable to express an opinion as to whether such allotment was in violation of provisions of Section 67(3) of Companies Act, 1956. As regards clause 4(xx) to CARO, 2003, he had stated that the Company had not raised any money through public issue during the year.

12. The Committee noted that the Respondent had submitted that during the year under question, no offer was made and there were neither any funds raised nor any funds were utilised during the year. Further, it was submitted that he had verified the multiple returns of allotment filed with RoC and when he discovered

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that the number of allottees was 196 he stated the fact in CARO Report in response to Clause 4(xviii) as a matter of caution. As regard to reporting under Clause 4(xx) the Respondent stated that the offer was made prior to 2012-13 and provision of Section 67(3) was required to be applied at the time of offer was made, hence there was no question of it reporting in the year 2012-13.

13. The Committee noted that the Respondent was the statutory auditor of both financial years 2011-12 and 2012-13. The offer was made in 2011-12 but allotment was made in 2012-13. The Respondent had himself submitted that he had examined the Returns of allotments whereby he had noted that the said allotment was made to 196 equity shareholders and thus his observation in clause 4(xviii) of CARO that he was unable to ascertain whether the provisions of Section 67(3) were violated, was in view of the Committee, not tenable. It was viewed that being a professional, the Respondent was expected to interpret the given provisions of the law. The mere fact that offer was made in one period and allotment made in other period, neither changed the provisions of law nor his obligation to apply the same in given case. Once the allotment has been made to 196 allottees, the offer too was undoubtedly made to more than fifty persons and the first proviso to section 67(3) of the Companies Act, 1956 was applicable on it which states as follows:

"67. CONSTRUCTION OF REFERENCES TO OFFERING SHARES OR DEBENTURES TO THE PUBLIC, ETC

(3) No offer or invitation shall be treated as made to the public by virtue of sub-section (1) or sub-section (2), as the case may be, if the offer or invitation can properly be regarded, in all the circumstances –

(a) as not being calculated to result, directly or indirectly, in the shares or debentures becoming available for subscription or purchase by persons other than those receiving the offer or invitation ; or

(b) otherwise as being a domestic concern of the persons making and receiving the offer or invitation :

[Provided that nothing contained in this sub-section shall apply in a case where the offer or invitation to subscribe for shares or debentures is made to fifty persons or more]

Hence his reporting under Clause 4(xviii) that he was not able to express the opinion was not acceptable especially when the Respondent failed to submit the

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circumstances due to which he was unable to ascertain such violation. As regard, reporting under Clause 4(xx) it was noted that despite fact known to him that allotment was made to more than 50 persons, he had stated that no public issue was made during the year. The plea of the Respondent that money was neither raised nor utilized during the year it was noted that the said clause requires to report on utilization of proceeds raised from public issue. In extant case, money from offer of equity shares was collected during the Financial Year 2011-12 and an auditor is required to report on utilization of proceeds from the issue. It was viewed that until or unless shares are issued it cannot be considered as an issue. In the extant case, the shares were allotted in Financial Year 2012-13 as reflected in schedule of Share Capital. Hence the contention of the Respondent was baseless and could not be accepted.

14. The Committee was thus of the opinion that the Respondent had not exercised due diligence while reporting on CARO 2003 and also failed to assess the possible implication of misstatements in the said financial statements viz information about utilization of proceeds from the public issue. The Committee also noted that the Respondent had not indicated any limitation in the scope of his audit in the audit report which has led to omission of material information from the financial statements of the Company and indicated gross negligence on part of the Respondent to report appropriately. Thus, in light of the same, the Committee was of the considered view that he not only failed to exercise due diligence in carrying out the audit but also failed to obtain sufficient information for expressing an opinion, accordingly, he is held guilty of professional misconduct falling within the meaning of Clauses (6), (7) and (8) of Part I of the Second Schedule to the Chartered Accountants Act, 1949.

15. The Committee noted that as regard the third charge, the Complainant had alleged that the Respondent had in response to Clause 4(xx) reported the fact that the Company had issued and allotted secured fully redeemable non-convertible debentures to 31 persons during the year aggregating to a total issue of Rs. 10 crores but it could not produce debenture holders list to him. Despite

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such limitation in audit, the Respondent had given unqualified opinion. The Committee noted that Director (Discipline) while forming his prima facie opinion under Rule (9) of the CA Rules 2007 had held the Respondent prima facie not guilty w.r.t this charge. The Committee on consideration of the same, at prima facie stage, did not concur with the said opinion of the Director (Discipline) at its meeting held on 16th October, 2017. The Committee was of the view that such limitation should have been stated on the face of main audit report or should have qualified his report. Mere reporting to that effect by the Respondent in CARO was not due diligence of his duties as statutory auditor. The Committee, accordingly, decided to proceed further under chapter V of the CA Rules 2007 and thus in terms of Rule 18(4) of the said Rules, the Respondent was asked to provide list of 31 debenture holders as provided to it in context of which it was so reported under CARO.

16. The Committee noted that the Respondent in his Written Statement had submitted that out of the said amount of Rs.10 crores debentures worth Rs.1,71,14,000.00/- were issued during 2011-12 and Rs.8,28,86,000.00/- during the year 2012-13 and he was fully aware of his responsibilities and obligations as a statutory auditor and required the management to produce a list of the allottees. Since the list was not provided, the Respondent included the comment as appearing in para 4(xix) of the report relating to CARO 2003. It was further submitted that although the Respondent did not get the list of allottees from the management, but found that the amounts had been properly reflected in the financial statements, he did not modify his report but raised the concern by expressing the actual state of affairs and the limitations placed on him by denying him the list of allottees of debentures, in the appropriate para of his report under CARO 2003.

17. The Committee noted that the debenture issue amounted in aggregate of Rs.10 crores which constituted approximately 23% of the balance sheet size. In case if the Respondent was not able to verify with respect to same, it was a material limitation imposed in the scope of audit. It was viewed that omission of

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such information for verification imposed considerable limitation on scope of audit. The Respondent had failed to gather sufficient information so as to express an opinion still he expressed an unqualified opinion which is clear evidence of the fact that the Respondent had failed to exercise due diligence in performing his professional duties. In light of the same, the Committee was of the considered opinion that the Respondent is 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.

Conclusion:

18. Thus, in conclusion, in the opinion of the Committee, the Respondent is held **GUILTY** of professional misconduct falling within the meaning of Clauses (6), (7) and (8) of Part I of the Second Schedule to the Chartered Accountants Act, 1949.
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Sd/-
CA. Prafulla Preamsukh Chhajed
Presiding Officer

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

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

Sd/-
CA. Debashis Mitra
Member

Sd/-
CA. Manu Agrawal
Member

Date: 15th October, 2019
Place: New Delhi

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