

CONFIDENTIAL

BOARD OF DISCIPLINE
Constituted under Section 21A of the Chartered Accountants Act 1949

Findings under Rule 14(9) of the Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007

File No. : [PPR/243/16/DD/141/INF/18/BOD/527/19]

CORAM:

CA. Prasanna Kumar D., Presiding Officer

(physically at ICAI Bhawan, Vishwas Nagar, New Delhi)

Mrs. Rani Nair (IRS, Retd.), Government Nominee

(attended through video conferencing)

CA. Durgesh Kumar Kabra, Member

(physically at ICAI Bhawan, Vishwas Nagar, New Delhi)

In the matter of:

**CA. Anil Kumar Thakur (M. No. 88722) in Re:
221-223, Deen Dayal Marg,
New Delhi-110002.**

....Respondent

DATE OF FINAL HEARING

: 19th January, 2021

PLACE OF HEARING

: Physically/through video conferencing

PARTIES PRESENT

Respondent

: CA. Anil Kumar Thakur (M.No. 88722)

FINDINGS:

1. The Board noted the charge against the Respondent that the Respondent availed housing loans from the Informant Bank representing himself to be financially sound and relying upon the correctness of the information furnished, representations made and assurance given in the course of scrutiny of loan application, Informant Bank sanctioned and disbursed seven loans on the terms and conditions contained in the loan agreements executed between Respondent and the Informant Bank which the Respondent failed to repay as cheques issued by the Respondent for repayment were dishonoured on presentation. The Respondent was served with Legal notice under Section 138 of Negotiable Instruments Act 1881 but in spite of the demand notice from Bank, the Respondent failed to make any payment.

The Board while considering the prima facie opinion of the Director(Discipline) noted that the Respondent did not submit his written statement despite the due service of the letter seeking his written statement which prima facie amounts to admission of the guilt on the part of the Respondent and thus, did not agree with the prima facie opinion of the Director that the Respondent is not guilty of 'Other Misconduct' falling within the meaning of Clause (2) of Part IV of the First Schedule read with Section 22 of the Chartered Accountants Act, 1949 and accordingly, the case was referred for enquiry under Chapter

X

IV of the Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007.

2. The Board heard the submissions of the Respondent who was present before it physically and duly considered the documents available on record.
3. The Board noted that the Respondent, in his defence, inter-alia, submitted as under:
 - (a) He met with an accident in 2016 in which his both shoulders were fractured. In 2017, he met with a second accident. He suffered a major health setback on 15th February, 2020 and had been undergoing treatment for bleeding in the intestine and severe infection in the liver and other organs, so he could not send his reply to the letter of Disciplinary Directorate.
 - (b) He also submitted the summary of the Loans taken, EMI paid and other amounts received by / payments made to HDFC Bank as tabulated hereunder:

Name of the property	Loan taken (2009-2024)	EMI paid (Rs.) (2009 -2015)	Outstanding EMI(in Rs.)
B-21 Soami Nagar	9,02,34,622	5,48,48,428	1,09,77,485
Sarvpriya Vihar	1,44,00,000	80,38,223	17,17,807
Nehru Apartment	1,50,00,000	75,34,497	18,97,867
Total	11,96,34,622	7,04,21,148	1,45,93,159

Cheque Date	Particulars	Cheque no.	Amount(in Rs.)
03.12.16	HDFC LTD.	373877	15,00,000
25.12.16	HDFC LTD. (PDC)	373884	2,00,000
31.12.16	HDFC LTD.	878154	30,00,000
18.01.17	HDFC LTD.	662342	10,00,000
25.01.17	HDFC LTD.	373885	2,00,000
20.02.17	HDFC LTD.	662360	28,00,000
25.02.17	HDFC LTD.	373886	2,00,000
25.03.17	HDFC LTD. (PDC)	373887	2,00,000
31.03.17	HDFC LTD.	372363	25,00,000
25.04.17	HDFC LTD. (PDC)	373888	2,00,000
25.05.17	HDFC LTD. (PDC)	373889	2,00,000
		Total	1,20,00,000

A) EMI paid from (2009 to 2015)	-	Rs. 7,04,21,148
B) Amount paid after SARFAESI Notice	-	Rs. 1,20,00,000
C) Sale proceeds Nehru Apartment	-	Rs. 1,88,00,000
D) Sale proceeds Sarvapriya Vihar	-	Rs. 2,00,00,000
E) Sale proceeds Soami Nagar	-	Rs. 5,41,60,000
Total	-	Rs. 9,29,60,000

Total	Amount	Paid	(A+B+C+D+E)	=	
(7,04,21,148	+1,20,00,000	+1,88,00,000	+2,00,00,000	+5,41,60,000)	= Rs. 17,53,81,148

- (c) The issue in the present matter is sub-judice before the appropriate forum and propriety demands that the same issue may not be agitated before the Disciplinary Committee.
4. The Board noted that the Respondent took housing loan of INR 11,96,34,622 for a tenure of 15 years (2009 to 2024) to purchase three residential properties. He repaid EMI of loan amounting to INR 7,04,21,148 from 2009 to 2015. After SARFAESI Notice, he paid INR 1,20,00,000 to the Informant Bank. After that, he met with an accident due to which he was unable to repay loan money to the Informant Bank and the Informant Bank auctioned all the three properties. The Board further noted that the Respondent in total paid INR 17,53,81,148 to the Informant Bank.
5. The Board also perused the copy of the Order dated 17th May, 2017 passed by the Honorable Patiala High Court in CC no. 47330/16, 47331/16, 47312/16, 47313/16, 47314/16, 47315/16, 47307/16 and 47309/16 wherein it was provided as hereunder:
*"Counsel for the Complainant on instructions, submits that the Complainant (Informant bank herein) wishes to withdraw the present matter as the present case has been settled with the accused (Respondent herein) and full & final payment qua cheques in question has been received by the Complainant from the accused. He further states, on instructions, that nothing remains payable by the accused to the Complainant in the present matter. Let statement of the AR of the Complainant be recorded in view of settlement reached between the parties.....
In view of the statement given by the AR of the Complainant, the present matter is allowed to be withdrawn."*
6. The Board also noted that the Respondent made a counter claim in Delhi High Court against Informant Bank for recovery of INR 3,67,86,879.
7. The Board noted that the matter related to non-payment of housing loan availed by the Respondent from the Informant bank which had been subsequently repaid by him as evident from the documentary evidences brought on record by the Respondent, there are other appropriate Forums to deal with any disputes arising out of non-repayment of the loans availed by the Respondent and there were genuine health concerns of the Respondent as evident from the copy of the medical records brought on record by him due to which he could not submit his written statement at prima facie stage. Thus, the Board was of the view that no cause of action lies against the Respondent in the instant case and accordingly, decided to hold the Respondent not guilty in respect of the charge alleged against him.

CONCLUSION

8. Thus, the Board of Discipline, in view of the above, is of the considered opinion that the Respondent is **Not Guilty** of Other Misconduct falling within the meaning of Item (2) of Part IV of First Schedule to the Chartered Accountants Act 1949 read with section 22 of the said Act. Accordingly, the Board passed Order for closure of the case in terms of the provisions of Rule 15(2) of the Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007.

Sd/-

**CA. PRASANNA KUMAR D.
(PRESIDING OFFICER)**

DATE: 11th February, 2021

Certified to be true copy



**Mukesh Kumar Mittal
Assistant Secretary,
Disciplinary Directorate**

**The Institute of Chartered Accountants of India,
ICAI Bhawan, Vishwas Nagar, Shadra, Delhi-110032**