

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. : [PR-84/15-DD/86/15/BOD/537/2019]

CORAM: (Through Video Conferencing)

**CA. Prasanna Kumar D., Presiding Officer
Mrs. Rani Nair (IRS, Retd.), Government Nominee**

In the matter of:

**Shri Vishwas Dhiman,
Chief Manager, State Bank of India,
Stressed Assets Management Branch,
6th Floor, Mohan Singh Place Building,
Baba Kharak Singh Marg,
NEW DELHI-110001**

.....Complainant

-Vs.-

**CA. Adesh Kumar Aggarwal, (M.No. 084676),
37 SCF Huda,
HUDA, Phase-I,
Sector 11& 12(Phase-I),
PANIPAT- 132103**

.....Respondent

DATE OF FINAL HEARING : 6th November, 2020

PLACE OF HEARING : Through video conferencing

PARTIES PRESENT: (Through Video Conferencing)

**Representative of the Complainant Bank : Shri Rakesh Verma, AGM
Respondent : CA. Adesh Kumar Aggarwal**



FINDINGS:**Brief background of the case:**

1.1 M/s. Satyam Industries Pvt. Ltd (hereinafter referred to as the "Company") promoted by the Respondent was sanctioned credit facility of Rs.19.50 crores on 03.08.2007 for setting up a Kraft Paper Plant of 125 tons per day capacity at Panipat, Haryana. The credit facilities turned NPA on 28.05.2012 due to default in payment of instalment/ interest in the loan as per RBI norms.

1.2 The Bank declared the Company and its directors as wilful defaulters as (i) an amount of Rs.2.64 crores was transferred from the Company's current account with the Complainant's Bank's Special Commercial branch, Panipat to the personal accounts of the promoters /family members / shareholders as advised by the Stock Auditor in his stock audit report dated 24.04.2012. The transfer of funds was made through RTGS from the Company's current account to the personal accounts of the family members maintained at Indian Overseas SCF-36, Sector 11-12 Panipat Branch on 14.03.2012 and 15.03.2012.

1.3 The detail of the funds transferred is as under:

Date	Transferred to account of	Amount / Rs.
14.03.2012	Adesh Aggarwal	14,00,000
14.03.2012	Kaushalya Aggarwal	74,68,000
15.03.2012	Ramesh Aggarwal	54,00,000
15.03.2012	Adesh Aggarwal HUF	6,00,000
15.03.2012	Namit Aggarwal	24,40,000
15.03.2012	Sumit Aggarwal	90,50,000

1.4 The Respondent and his son Shri Sumit Aggarwal are the Directors of the Company. Smt. Kaushalya Aggarwal is wife of the Respondent, while Namit Aggarwal is another son of the Respondent, Sh. Ramesh Aggarwal is a

shareholder of the Company. This was an act of diversion of current assets of the Company, hence the directors are liable for the diversion of funds.

1.5 The Company did not submit the audited Balance Sheet for the year ended 31.03.2013 onwards to the Bank, intentionally, despite the Respondent being promoter director and, an associate of the ICAI, fully knowing the statutory requirements for the same.

1.6 As per audited balance sheet dated 31.03.2012 the Company was having current assets worth Rs.7.51 crores. The current assets were found to be negligible on the Complainant's visit to the unit on 08.03.2013. Against the current assets of Rs.7.51 crores, the sales / transactions of Rs.0.12 crores only were routed through the cash credit account with the Complainant-Bank, which shows that funds to the tune of Rs.7.39 crores had been diverted elsewhere leading to financial constraints for the unit.

Charge alleged:

2. The Board noted the following charge against the Respondent:

2.1 Wilful non-payment of credit facilities availed from the Complainant bank by the Company of which the Respondent was the guarantor. Since, certain amounts were transferred from the Company's current account to personal account of the Respondent and his family members/ promoters the Complainant Bank has declared both the Company and its directors including the Respondent as wilful defaulters.

2.2 The Board while considering the Prima Facie Opinion of the Director (Discipline) noted that certain amounts were transferred from the Company's current account maintained with the Complainant's Bank to the personal accounts of the Respondent/his family members while the Respondent and his son were directors of the company and that the company and its directors including the Respondent had been declared as wilful defaulters. Thus, the Board did not agree with the prima facie opinion of the Director(Discipline) that the Respondent is Not Guilty of Other Misconduct falling within the meaning of Clause (2) of Part IV of the First Schedule to the Chartered Accountants Act, 1949 and decided to proceed under Chapter IV of the Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007.



Proceedings held:

3. During the hearing held on 6th November, 2020, the Board noted that the Representative of the Complainant Bank and the Respondent were present before it through video conferencing and made their respective detailed submissions before the Board.

Considering the submissions and documents on record, the Board decided to conclude the hearing in the case with a direction to the Respondent to submit statement of loan taken and withdrawn along with date and cheque number within 5 days with a copy of the same to the Complainant and further providing 2 days to the Complainant to submit his comments thereon, if any. Accordingly, the decision on the misconduct of the Respondent was kept reserved by the Board.

In compliance of above directions, the Respondent submitted additional written submissions vide his email dated 6th November, 2020. Thereafter at its meeting held on 11th February, 2021, the Board on consideration of the further submissions received together with the documents already on record, took a decision on the misconduct of the Respondent.

Brief of submissions:

4. The Respondent vide letter dated 30th October, 2020, inter-alia, submitted as under:-
 - a. The withdrawal of funds from the Company to the account of the family members is not an act which brings disrepute to the profession or is in contravention of any law. The Respondent relied upon the terms and conditions of sanction letter of loan granted by Complainant bank and as per same the amount contributed as a margin was much higher as was required. Further, there was no prohibition of making any withdrawal relating to unsecured loans.
 - b. The Complainant Bank overlooked the deposits made by family members and highlighted only the withdrawn amount just for the sake of levelling an allegation.



- c. The Complainant Bank has flouted the guidelines of RBI while declaring the Respondent as wilful defaulter. The Complainant Bank never informed the Respondent about any such declaration for which remedy lies with the Respondent to address his grievance with the higher Committee of the Bank.
- d. The Complainant Bank relied on the evidence furnished by the stock auditor wherein at point 9, the Stock Auditor has also not made any specific and adverse comment relating to observation of any diversion.
- e. The loan amount has been squared off with the bank and no dues letter 12/04/2018 was also issued by the Complainant bank .
5. The Respondent vide letter dated 6th November, 2020, inter-alia, submitted as under:-
- a. The account of the borrower Company turned NPA in May 2012 and subsequently the Complainant Bank took physical possession of the premises of the borrower, where the records of the Company were also stored. Since then there was no working of the borrower Company and records being very old and dilapidated, the Respondent had gone through the records of the borrower Company uploaded with Ministry of Corporate Affairs. As per the Audited Financial Statements, it is clear that in the Assets side of the Balance Sheet no loan or outstanding is standing in the name of any family member much less in the name of any person. Thus, the repayment of loans had only been made to the persons whose loan was taken by the Company.
- b. The details of loan taken during the last quarter of Financial Year 2011-12, as per statement of account maintained with Complainant Bank in which name of family member who deposited the loan during this period is duly reflected in narration as per following details:-

S. No.	Date	Description	Amount
1.	16/02/2012	Sumit Aggarwal	10,00,000/-
2.	22/02/2012	Sumit Aggarwal	15,00,000/-
3.	24/02/2012	Sumit Aggarwal	10,00,000/-
4.	25/02/2012	Adesh Aggarwal	10,00,000/-

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5.	28/02/2012	Adesh Aggarwal	10,00,000/-
6.	03/03/2012	Adesh Aggarwal	25,00,000/-
7.	05/03/2012	Adesh Aggarwal	10,00,000/-
8.	09/03/2012	Adesh Aggarwal	10,00,000/-
9.	14/03/2012	Adesh Aggarwal	10,00,000/-
10.	16/03/2012	Adesh Aggarwal	20,00,000/-
11.	16/03/2012	Adesh Aggarwal	10,00,000/-
12.	16/03/2012	Adesh Aggarwal	8,00,000/-
13.	16/03/2012	Kaushalya Aggarwal	6,00,000/-
14.	16/03/2012	Sumit Aggarwal	6,00,000/-
15.	21/03/2012	Sumit Aggarwal	10,00,000/-
16.	22/03/2012	Adesh Aggarwal	10,00,000/-
17.	24/03/2012	Adesh Aggarwal	15,00,000/-
18.	26/03/2012	Sumit Aggarwal	10,00,000/-
19.	26/03/2012	Sumit Aggarwal	15,00,000/-
20.	27/03/2012	Adesh Aggarwal	10,00,000/-
Total			2,30,00,000/-

- c. The Stock Auditor's report further stated that no diversion has been reported and the Complainant Bank has not substantiated its allegations.

Observations and Findings of the Board:

6. The Board noted that the Complainant bank in its complaint dated 28/03/2015 submitted that M/s. Satyam Industries Pvt. Ltd. promoted by Respondent was sanctioned credit facilities of Rs. 19.50 crores on 03/08/2007 for setting up a Kraft Paper Plant of 125 tons per day capacity at Panipat, Haryana and the said credit facilities turned NPA on 28/05/2012 due to default in payment of instalment/ interest in the loan as per RBI norms. The Board, in this regard, observed that the role of the Respondent was limited in the extant matter. He was the promoter director in the company and did not avail the credit facilities from the Complainant Bank in his individual capacity as a member of the Institute.
6. The Board viewed that the Complainant Bank had extended credit facilities to the Company being separate legal entity and not to the Respondent in his individual capacity. The Representative of the Complainant Bank also appeared before the Board

and accepted that the Company has subsequently made good the default and settled its dues and no dues certificate was accordingly issued. Further, in the Order sheet of Debts Recovery Tribunal, the case in between the Complainant bank and the Company. The Board further viewed that the Respondent has not availed the credit facilities in his personal capacity and the Respondent has not represented the Complainant Bank being member of the Institute and further, it is not the case of the Complainant Bank too.

7. The Board further observed that Complainant Bank followed the requisite bank procedure/ formalities with respect to physical inspection of stocks, audit reports of the Company, other books, documents and reports and assumed the risk of extending loan/ credit facilities to the Company which was duly honoured by the company during considerable period of time i.e. from the date of sanction i.e. 03/08/2007 till March 2012.
8. As regard the diversion of funds availed by the Company into account of family members of the Respondent, the Board perused the Stock Auditor's Report of the company issued by M/s Ramesh Kumar & Associates on 25th April, 2012 wherein it is mentioned as under:-

"9. Comments on account with any other banks/ any diversion of funds (if no diversion is observed, specific comment should be made)

Company was maintaining current account with IOB. As per books of accounts and other document produced before us, the company had closed the account with IOB during Jan 2012."

Considering the said Stock Audit Report produced by the Complainant Bank, the Board observed that the Complainant Bank has itself relied upon the said report and as per said report there is no diversion of funds from the account of the Company.

9. The Board also noted that in the stock Audit report dated 25th April 2012, it was, inter-alia, mentioned as under:



"Total book debts understated by the company by Rs.268.00 lacs. Company has made entries in the books of accounts for Rs.268.00 lacs as receipts from debtors Fortune Kraft Pvt Ltd and deposited in the current account maintained with SBI Panipat, but that amount was not realized in the bank account. During the period 14th to 15th March 2012, 6 RTGS received by the company for Rs.268.00 lacs from Fortune Kraft Pvt Ltd, which was duly credited in SBI current account and all the amount was transferred in the following accounts:-

	Date of transfer	Amount (Rs. In lacs)
1. Adesh Aggarwal	14.03.2012	14.00
2. Kaushalaya Aggarwal,	14.03.2012	74.68
3. Ramesh Aggarwal,	15.03.2012	54.00
4. Namit Aggarwal,	15.03.2012	24.40
5. Adesh Aggarwal (HUF)	15.03.2012	6.00
6. Sumit Aggarwal.	15.03.2012	90.50

		263.58
		-----"

10. The Board also perused the statement of account maintained with the Complainant Bank in which name of family member who deposited the loan during this period is also reflected in narration as per following details:-

S. No.	Date	Description	Amount
1.	16/02/2012	Sumit Aggarwal	10,00,000/-
2.	22/02/2012	Sumit Aggarwal	15,00,000/-
3.	24/02/2012	Sumit Aggarwal	10,00,000/-
4.	25/02/2012	Adesh Aggarwal	10,00,000/-
5.	28/02/2012	Adesh Aggarwal	10,00,000/-
6.	03/03/2012	Adesh Aggarwal	25,00,000/-
7.	05/03/2012	Adesh Aggarwal	10,00,000/-
8.	09/03/2012	Adesh Aggarwal	10,00,000/-
9.	14/03/2012	Adesh Aggarwal	10,00,000/-
10.	16/03/2012	Adesh Aggarwal	20,00,000/-
11.	16/03/2012	Adesh Aggarwal	10,00,000/-
12.	16/03/2012	Adesh Aggarwal	8,00,000/-
13.	16/03/2012	Kaushalya Aggarwal	6,00,000/-
14.	16/03/2012	Sumit Aggarwal	6,00,000/-
15.	21/03/2012	Sumit Aggarwal	10,00,000/-
16.	22/03/2012	Adesh Aggarwal	10,00,000/-

17.	24/03/2012	Adesh Aggarwal	15,00,000/-
18.	26/03/2012	Sumit Aggarwal	10,00,000/-
19.	26/03/2012	Sumit Aggarwal	15,00,000/-
20.	27/03/2012	Adesh Aggarwal	10,00,000/-
Total			2,30,00,000/-

Thus, the Board was of the view that there had been debits as well as credits from the account of the Respondent as well as his other family members in the account maintained with the Complainant bank.

11. Thus, the Board was of the view that the Complainant bank has not been able to substantiate that the default in the repayment of the loan was malafide and the same was relatable to the Respondent. Further, the Respondent cannot be held liable for any misconduct merely on the ground of transfer of funds from the account of the Company maintained with Complainant Bank especially when there were corresponding credit entries also in the said account. Accordingly, the Board held the Respondent not guilty in respect of the said charge.

12. As regards the charge of non-submission of financial statement by the Company, the Board was of the view that since the credit facilities had been availed by the company and not by the Respondent in his individual capacity, he cannot be held personally liable for any non-compliance with the operative requirements of the credit facilities availed by the company unless there is any corroborative evidence to show any malafide intent on the part of the Respondent in non-furnishing the same which in the instant case is not there. Accordingly, the Board held the Respondent not guilty in respect of the said charge.

CONCLUSION:

13. Thus, in the considered opinion of the Board, 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.



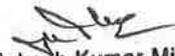
14. Accordingly, the Board passed Order for closure of the case in terms of the provisions of Rule 15(2) of the Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007.

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, Shahdra, Delhi-110032**