

DISCIPLINARY COMMITTEE [BENCH – I (2021-2022)]

[Constituted under Section 21B of the Chartered Accountants 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

Ref. No. PR-93/16- DD/160/16/DC/1071/2019

In the matter of:

CA. Palash Goswami,
Director, Finance,
M/s. Hindustan Paper Corporation Ltd.,
75 C, Park Street,
Kolkata – 700 0016

.....Complainant

Versus

CA. Niraj Kumar Jhunjunwala,
Nilhat House, 11
R. N. Mukherjee Road, Ground Floor
KOLKATA – 700 001

.....Respondent

MEMBERS PRESENT: -

CA. Nihar N Jambusaria, Presiding Officer,
Shri Jugal Kishore Mohapatra, I.A.S. (Retd.) (Govt. Nominee),
Ms. Rashmi Verma, I.A.S. (Retd.) (Govt. Nominee)

DATE OF FINAL HEARING : 25.01.2022
PLACE OF FINAL HEARING : Through Video Conferencing

PARTIES PRESENT:

Respondent : CA. Niraj Kumar Jhunjunwala,
Counsel for the Respondent : CA. A.P. Singh

BRIEF OF THE DISCIPLINARY PROCEEDINGS:-

1. The Committee noted that on the day of hearing held on 25th January, 2022, the Complainant was not present. The Respondent along with his Counsel was present. The Committee also noted that the Complainant requested to consider his letters and submissions on record. In view of the fact that the Complainant did not appear before the Committee without any valid reasons, the Committee decided to proceed with the hearing ex-parte the Complainant. Thereafter, the Counsel for the Respondent made his submissions on the allegations. With the permissions of the Committee, the Respondent also made his brief submissions in the matter. After hearing the final submissions in the matter, the Committee decided to conclude the hearing in the above matter.

1.1 In respect of hearing held on 21st December 2021, the Committee noted that the Respondent along with his Counsel was present. The Complainant was not present. The Counsel for the Respondent made his submissions on the charges. The Committee also posed questions to the Respondent. After hearing the submissions, the Committee decided to adjourn the hearing in order to provide last opportunity to the Complainant.

1.2 The Committee noted that the hearing fixed on 9th July 2021 was adjourned in order to provide an opportunity to the Complainant.

1.3 In respect of meeting held on 24th June 2021 the Committee noted that the Complainant was not present. The Respondent along with his Counsel was present. The Respondent was put on oath. On being enquired about the prima facie opinion, the Respondent pleaded not guilty to the charges. The Counsel for the Respondent made his submissions on the charges and stated that charges made against the Respondent are not specific and general in nature. The Counsel for the Respondent also stated that the Complainant did not provide documents / evidence in support of the charges. After hearing the submissions, the Committee directed the office to call all the documents as requested by the Respondent in his written submissions. Thereafter, the Committee decided to adjourn the hearing in the above matter.

CHARGES IN BRIEF AND FINDINGS OF THE DISCIPLINARY COMMITTEE: -

2. As regard the background of the matter, it is noted that the Complainant joined the Hindustan Paper Corporation Limited, Kolkata (hereinafter referred to as the “Company”) as

Director Finance on 05.11.2014 and during the finalization of accounts for the year 2014-15, he observed that loss of the Company was understated during the previous years. The Respondent was statutory auditor of the Company appointed by C&AG during the period from 2011-12 to 2014-15. The following charges were alleged against the Respondent as under:-

- i) The first charge against the Respondent is of certification of overstated Inventory and suppression of actual inventory position determined through Physical verification due to which a sum of Rs. 118.19 crores was detected and charged off in the accounts of 2014-15.
- ii) The second charge against the Respondent is of understatement of expenses due to which a sum of Rs 68.16 crores was detected and charged to the accounts of 2014-15.
- iii) The third charge of the Complainant is that a sum of Rs. 20 crores withdrawn from Gratuity Trust and said amount was found received in IDBI collection accounts of the Company instead of Gratuity bank account. Due to this, a sum of Rs.20 crores was detected and was provided for in the accounts of 2014-15.

3. In respect of first and second charges, the Respondent made the following submissions which are as under:-

3.1 The Respondent stated that preparation of accounts and physical verification of inventory is the responsibility of the management and not of the auditor. Auditor's responsibility is to ensure that physical verification has been conducted properly and irregularity, if any, detected in physical verification has been adjusted in accounts. Auditor is not expected to conduct physical verification. Further, CARO 2003 also states that physical verification is the responsibility of the Management.

3.2 Physical verification in the instant matter was conducted by the management at regular interval and shortage / excess were duly adjusted in the accounts. In this regard, the Respondent pointed out notes given by the management in the financial statements regarding physical verification of inventory for F.Y 2011-12 to 2013-14.

3.3 The Respondent stated that working sheet presented to his team was verified and nowhere it was stated in working sheet that shortage of goods has been detected during physical verification and that it was abnormal which requires separate disclosure. As auditor,

he verified the physical verification procedures, working sheets of the physical verification and summary sheet with reconciliation for finalization of shortage and/or excess and value of inventory for respective years.

3.4 The Respondent stated that the Complainant failed to mention that in which year shortage to the magnitude of Rs.118.19 cr had taken place and whether it pertain to the period of audit performed by the Respondent or pertained to prior period. The Respondent also stated that he failed to understand, if discrepancy of such magnitude was there as to why the management had not reported the same in the relevant financial years. Further, in stock audit report of M/s. Jain Gopal & Co. dated 13th September, 2011 in respect of closing stock as on 30th June, 2011, no material shortage has been detected by the stock auditors.

3.5 The Respondent pointed out disclosure given in the draft accounts in respect of inventory for the financial year 2014-15. In the said draft note, it was mentioned that there was a mismatch between the physical verified quantity and book quantity pertaining to earlier years but it was not mentioned in which year such mismatch has taken place and why the same was not adjusted in that years. It is mentioned in minutes of audit committee that physical verification difference of Rs.81.35 crore is mainly attributable to manual intervention in the computerized inventory system which led to the error.

3.6 The Respondent also stated that the management of the Company did not want to show the difference as loss but on the insistence of the Respondent, they had given the effect of difference in the accounts. The Respondent pointed out note no.25 and 25.1, Note 17, 17.1, 17.2, 17.3 of the financial statements of the Company for the financial year ending 31st March, 2015. The Respondent stated that from the above disclosure given in the above notes, it is clear that the Director (Finance) has disclosed the fact that consumption pertaining to previous years has been charged off in current year. Nowhere, he disclosed that inventory was overstated because of fault in physical verification process of a particular year.

3.7 The Respondent stated that the Director (Finance) did not produce before him any satisfactory explanation by showing the original working papers from where he got such shortage in the inventory. Hence, he has qualified his report in Paragraph 8.6(ii) of his report dated 07.04.2016 wherein he mentioned that satisfactory explanation for adjustment of such

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shortage along with necessary supporting documents was not made to him. Hence, the same could not be vouched safe and they are unable to express his opinion in this regard.

3.8 As regard the effectiveness of the ERP system of the Company, the Respondent stated that no satisfactory explanations were provided to him. He mentioned in CARO reporting that internal audit system of the Company needs to be strengthened in the area of ERP integration with financial statements and cost records. He also mentioned in about weakness in ERP system in earlier year audit report for year 2013-14.

3.9 As regard the obtaining reasonable assurance about the existence and condition of inventories, the Respondent stated that he had examined the methods and the system and methodology of such verification including the cut-off procedures determined by the Management and found the same to be adequate. On test check basis, they have verified the receipts and issues taken place between the cut-off date and the actual date of verification and proper adjustment made to ascertain physical quantify as on date but neither they came across any discrepancy nor management explained to them about the same.

3.10 The Respondent stated that the Quality reviewer who has reviewed the audit file of the Company for the financial year 2013-14, did not come across any shortcoming in his audit report. Also the files of the Company for the years 2013 and 2014 were reviewed by Peer Reviewer and based on his unqualified report, the ICAI has issued the peer review certificate to his firm.

3.11 The Respondent stated that the Company is a public sector entity where in addition to statutory audit, transaction audit and supplementary audit is conducted by C&AG. Further, C&AG has not provided any comment on the matter in their supplement to his report during the years 2011-12 and 2013-14. The Respondent enclosed management replies to the queries with respect to supplementary audit done by the office of C&AG for the year 2011-12 and 2013-14 and 2014-15 along with his statement. During the year 2014-15, when the Complainant was in-charge of the accounts, the office of the C&AG has given the following comments which had been noted in the Audit Committee meeting dated 30.12.2015:-

"It is observed that the management has not taken proper care in the proper maintenance of the accounting records in line with the established procedure and with a standard accounting

which has led to the situation of hiatus between standard and practice in some important items, leading to variation in the figures of profitability and performance..."

4. The Complainant through his written submissions on prima facie opinion stated that his date of joining to Hindustan Paper Corporation Ltd. was 05.11.2014. He was suspended from the Post of Director (Finance) of Hindustan Paper Corporation Ltd w.e.f. 01.08.2017 on the basis of false and fabricated charges. He had no access to any new documents of HPC Ltd since 01.08.2017. The Company is under liquidation. The Company and NPPCL and other subsidiary is defunct PSUs now due to various diversion of Government funds and corruptions.

5. In respect of first and second charges related to overstated inventory and suppression of actual inventory position and understatement of expenses, the Respondent stated that the Complainant did not provide details of financial year to which shortage of inventory and understatement of expenses pertained to, whether it pertain to the period of audit by the Respondent or pertained to prior period. The Respondent also stated that preparation of accounts and physical verification of inventory is the responsibility of management and auditor is not expected to conduct physical verification. The Respondent also stated that there was no reporting by the management in the financial statement of earlier years about the shortage of inventory. The Respondent stated that when he came across the discrepancies related to inventory, he has qualified his report in paragraph 8.6(ii) of his report wherein it was clearly mentioned that satisfactory explanation for adjustment of such shortage along with necessary supporting documents was not made available to him.

5.1 The Committee also noted that the Complainant was asked to provide copy of the certain documents such as stock ledger copy and other relevant records of receipt, issue, invoices etc. as well as physical verification sheet, original physical verification report and reconciliation sheet, stock ledger of the relevant period and explanation as to why such shortage was not disclosed in the annual accounts but the Complainant failed to provide the aforesaid documents / submissions. It is also noted that rather making submissions on merits of the case, the Complainant raised the issue of non-responsiveness of the Institute in deciding the matter. In this regard, the Committee noted that the aforesaid contention of the Complainant is not tenable as the Committee has fixed number of the hearing in the aforesaid

matter but the Complainant chose not to appear before the Committee to make his oral submissions on merits.

5.2 It is further observed that the Respondent brought on record copy of reply of the management on auditor queries wherein the management stated that the shortage / difference was pertaining to the earlier years. Further, the Respondent brought on record copy of note signed by the Complainant wherein it was mentioned that in respect of mismatch / difference, the Company agreed to pass adjustment entry as per statutory auditor and the same indicate that the Company was satisfied with the advice of the auditor. The Respondent also brought on record a copy of note signed by the Chairman of the Company wherein it was mentioned that the management of the Company has not taken proper care in the proper maintenance of the accounting entries in line with established procedures. In view of the Respondent submissions with regard to the verification of record of the inventory, responsibility of the management with regard to the physical verification, maintenance of record and reporting of any discrepancies in the accounts and non-availability of the documents from the Complainant, the Committee was satisfied with the respondent's submissions that the steps taken by the Respondent for verification of inventory and related expenses appears to be reasonable. Accordingly, it decided to hold the Respondent not guilty with respect to charges related to inventory and expenses.

5.3 In respect of next charge related to amount of gratuity shown in the accounts of the Company instead of Gratuity bank account, the Respondent stated that he was not the auditor of the Gratuity Trust. Further, the accounts of the said trust were not subject to his audit, he was not having any access and control on the accounts of such trust. Therefore, any withdrawal from said trust account was not in knowledge. Moreover, the office bearer of Gratuity trust was also not aware of the said fact as established from the enclosure of clause 5 of complaint form submitted by the Complainant. The Respondent also submitted that at the time of finalization of the accounts for year 2014-15, there was shortfall of Rs.20 crores in gratuity fund. However, any documentary support, actuarial valuation report was no made available to us. Since this was a known liability admitted by the management, he had insisted to make necessary provisions despite not having any documentary evidence. The Respondent also stated that initially, the Director (Finance) was reluctant to make such

provisions in the accounts because in such situation loss of the year 2014-15 would have been increased. The matter was then (amongst others) discussed with the office of C&AG who endorsed his views and advised the Director (Finance) to pass the necessary entries in the accounts of the year 2014-15. Then only, the Director (Finance) passed such entry. Since the amount was material, he made a qualification in paragraph 8.6(i) of his audit report for the year ended 31.03.2015. The Respondent further stated that the fact that Rs.20 crores withdrawn from the Gratuity Trust was found received in IDBI Collection Accounts of HPCL, was not explained to him.

5.4.1 In respect of above charge, the Committee noted that the Respondent took plea that he was not auditor of the Gratuity trust and hence, he was not having access to the accounts of the Gratuity Trust and the Respondent has raised question on the authenticity of gratuity amount of Rs.25 crore in his audit report. In view of the above submissions and reporting made by the Respondent, the Committee decided to extend benefit to the Respondent in this regard. Accordingly, the Committee decided to hold the Respondent not guilty with respect to above charge.

Conclusion:-

6. In view of above noted facts and discussion, in the considered opinion of the Committee, 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 Accountant Act, 1949.

6.1 Accordingly, the Committee passed an Order for closure of this case under Rule 19 (2) of the Chartered Accountants (Procedure of Investigation of Professional and Other Misconduct and Conduct of cases) Rules, 2007.

Sd/-

**CA. NIHAR N JAMBUSARIA,
PRESIDING OFFICER**

(approved and confirmed through e-mail)

**(SHRI JUGAL KISHORE MOHAPATRA,
I.A.S.(RETD.)), GOVERNMENT NOMINEE,
PRESIDING OFFICER**

(approved and confirmed through e-mail)

**(MS. RASHMI VERMA, I.A.S. (RETD.)),
GOVERNMENT NOMINEE**

Date:- 05.02.2022

प्रमाणित सत्य प्रतिलिपि / Certified true copy

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