



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

**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.**  
**[PR/146/2016/DD/177/2016/DC/679/2017]**

**Joint Director, SFIO**  
Ministry of Corporate Affairs,  
2nd Floor, Paryavaran Bhawan,  
CGO Complex, Lodhi Road,  
New Delhi- 110003

....Complainant

**Versus**

**CA. Amit Kumar Gupta (M. No. 099522)**  
**M/s. Amit R. Gupta & Associates**  
Chartered Accountants,  
153, 155, 1st Floor,  
Vardhman City Centre,  
Shakti Nagar, Gulabi Bagh,  
Delhi- 110052

....Respondent

**MEMBERS PRESENT:**

1. CA. Nihar N Jambusaria, Presiding Officer
2. Ms. Nita Chowdhury, Member (Government Nominee)
3. Shri Arun Kumar, Member ( Government Nominee)
4. CA. Manu Agarwal, Member

**Date of Final Hearing: 07<sup>th</sup> September, 2021 through Video Conferencing**  
**Place of Hearing: New Delhi**

1. That vide findings dated 03.02.2020, 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 of the opinion that **CA. Amit Kumar Gupta (M. No. 099522)** (hereinafter referred to as the **Respondent**) was **GUILTY** of professional misconduct falling within the meaning of Clauses (7) and (8) Part I of Second Schedule to the Chartered Accountant Act, 1949 in respect of statutory audit of the accounts/ financial statements of M/s. Vamshi Chemicals Limited (*hereinafter referred as the Company*) for the year 2005-06 to 2007-2008. It was alleged that he did not take necessary steps and failed to point out in his audit



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report, the irregularities in the books of accounts as in his statement given to SFIO, he had admitted to have signed the Financial Statements without obtaining the confirmation from the creditors, loan parties, debtors and banks regarding their balance shown in these statements relating to period i.e. 2005-06 to 2007-08 (C-304) and that he had also failed to verify the terms and condition of the loan agreement of the loans taken by the Company from M/s. Basil International Limited (BIL) for Rs. 3.66 cr (approx) & from Nixcil for Rs. 32.20 cr. (approx) during 2006-07.

It was noted that Clause (7) and (8) of Part I of the Second Schedule to the Chartered Accountants Act, 1949 states as under:-

*Second Schedule Part I*

*"(7) does not exercise due diligence, or is grossly negligent in the conduct of his professional duties"*

*"(8) fails to obtain sufficient information which is necessary for expression of an opinion or its exceptions are sufficiently material to negate the expression of an opinion"*

2. That an action under Section 21B (3) of the Chartered Accountants (Amendment) Act, 2006 was contemplated against the Respondent and a communication dated 25<sup>th</sup> August, 2021 was addressed to him thereby granting an opportunity of being heard in person and/or to make a written representation before the Committee on 07<sup>th</sup> September, 2021 through video conferencing.

3. The Committee, at the outset, noted that the Respondent appeared before it on 7<sup>th</sup> Sept, 2021 through video conferencing and made his oral representations on the findings of Disciplinary Committee. The Respondent submitted that he stand by his submissions made earlier before the Disciplinary Committee at the time of enquiry and leave to the wisdom of the Committee to take decision on the matter.

4. The Committee considered the oral as well as written submissions of the Respondent and noted that the Respondent had denied allegations of the Complainant as well as the Final

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Shri Saud Ahmad, Joint Director, SFIO, New Delhi -vs- CA. Amit Kumar Gupta (M. No. 099522), Delhi



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Finding of Disciplinary Committee objecting on the procedure adopted in conducting proceedings stating that its findings were not based upon cognate/substantiated material evidence /witness because the documents relied upon by the Complainant and that used for forming Prima facie Opinions were never confronted and neither the Complainant Witness nor the Respondents Witnesses were examined /cross examined to prove case against him. Further during the course of Disciplinary Committee meeting held on different dates, neither the Respondent was conferred adequate opportunity to rebut allegation made against him nor the documents relied upon by him submitted alongwith his reply dated 10.01.2018 were considered to arrive at the said Findings.

5. The Committee noted that neither of the parties concerned including the Respondent or the Director(Discipline) had ever placed before it the request to produce any witness further the documents relied upon by the Complainant as well as Director(Discipline) were provided to the Respondent and sufficient opportunity was given to the Respondent to defend the matter against him. In fact, the Committee had concluded its Findings based on the submissions of the Respondent dated 10.01.2018, hence, the Committee noted that the submissions of the Respondent were unacceptable.

6. The Committee noted that the extant matter had arisen on account of certain banking transactions that were held between its Group Company viz Basil International Ltd and the Company itself during 12.06.2006 to 27.07.2010 which resulted in transfer of Rs.169.90 crores from the former to the latter Company. During the periods audited by the Respondent particularly in the year 2007-08 an amount of Rs.40.92 crore was transferred which as per books of BIL were transferred for the purpose of investment in the Company. However, no corresponding advances, or liabilities against capital or in form of any other balance appeared in the balance sheet of the Company. In context of allegation regarding non-confirmation of balances, it was noted that the Respondent had accepted that he had not obtained external confirmations of balances independently and categorically explained that beside relying upon

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the confirmations produced by the management, he had verified the balances individually. Further, to substantiate his defense, he also placed on record the extract of the tax audit report of the Company to establish that the audit was carried out by him after minutely verifying all the balances. It was noted that Group Summary of balances due "from Bodies Corporate" (W-35) as reflected in the books of the Company vis a vis Annexure VIII to Tax Audit Report (W-56) relating to 'Particulars of each loan or deposit in an amount exceeding the limit specified in section 269SS' of financial year 2007-08, it was noted that the entire amount of Rs. 40.92 cr was reported to be repaid by way of journal vouchers explained by way of 'Note 1' to the said Annexure of Tax Audit report which explained the reason of non-reflection of the funds collected by way of banking transactions in the balance sheet. Further, it also confirmed that the Respondent was aware of such adjustment by way of journal voucher. Hence, the audit evidences based on which balances were verified were important for extant case. The Committee noted that though the Respondent had argued to have relied upon confirmations produced by the management but he failed to bring on record any document which was so relied upon by him. The Committee viewed that it may be the prerogative of the auditor to determine the methodology for obtaining sufficient audit evidence to reasonably conclude that the financial statements give a true and fair view and he may obtain such convincing audit evidence based on facts and circumstances of each case.

7. Further, with regard to the second charge relating to non-verification of terms and agreement of the loan taken by the Company from the sister concerns, it was noted that the loan agreements between the group companies were not executed and that the Respondent, being the statutory auditor was responsible to only report if the loan taken was prejudicial to the interest of the Company. It was noted that significant value of funds were transferred among the group companies as evident from Group Summary of 'From Bodies Corporate' (W-35) and 'To Bodies Corporate' (W-27) for which the Respondent had failed to explain as to how he was convinced that the loan so obtained by the Company were well within the borrowing powers of



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the entity and that the audit procedures adopted by him were sufficient to conclude in respect of the same.

8. In view of the above, it was well established that the Respondent had not only failed to obtain sufficient audit evidence to express opinion on financial statement but also failed to diligently discharge his duty towards professional/ audit assignments. Thus, ends of justice could be met if punishment awarded is in commensurate with professional misconduct held and established against him.

9. The Committee thus viewed that the misconduct on the part of the Respondent has been held and established within the meaning of Clauses (7) and (8) of Part I of Second Schedule and keeping in view the facts and circumstances of the case as aforesaid ordered that a fine of Rs. 50,000/- (Rupees Fifty Thousand Only) be levied on the Respondent i.e. **CA. Amit Kumar Gupta (M.No.099522), New Delhi** that shall be payable within a period of 3 (three) months from the date of receipt of this Order and in case he failed to pay the same as stipulated, the name of the Respondent, **CA. Amit Kumar Gupta (M.No.099522), New Delhi** be removed for a period of 3(three) months from the Register of members.

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Sd/-  
(CA. NIHAR N JAMBUSARIA)  
PRESIDING OFFICER

Sd/-  
(MS. NITA CHOWDHURY)  
GOVERNMENT NOMINEE

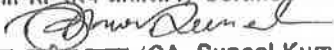
Sd/-  
(SHRI ARUN KUMAR)  
GOVERNMENT NOMINEE

Sd/-  
(CA. MANU AGARWAL)  
MEMBER

Date; 28/01/2022

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प्रमाणित सत्य प्रतिलिपि / Certified true copy

  
 सीए. सुनील कुमार / CA. Suneel Kumar  
 सहायक सचिव / Assistant Secretary  
 अनुशासनात्मक निदेशालय / Disciplinary Directorate  
 इंस्टिट्यूट ऑफ चार्टर्ड एकाउंटेंट्स ऑफ इंडिया  
 The Institute of Chartered Accountants of India  
 आईसीएआई भवन, विश्वास नगर, शाहदरा, दिल्ली-110032  
 ICAI Bhawan, Vishwas Nagar, Shahdara, Delhi-110032

**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/P/146/16/DD/177/16-DC/679/2017**

**In the matter of:**

**Shri Saud Ahmad,  
Joint Director, SFIO  
Ministry of Corporate Affairs,  
2<sup>nd</sup> Floor, Paryavaran Bhawan,  
CGO Complex, Lodhi Road,  
New Delhi- 110003**

**....Complainant**

**Versus**

**CA. Amit Kumar Gupta (M. No. 099522)  
M/s. Amit R. Gupta & Associates  
Chartered Accountants,  
153, 155, 1<sup>st</sup> Floor,  
Vardhman City Centre,  
Shakti Nagar, Gulabi Bagh,  
Delhi- 110052**

**....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: 26<sup>th</sup> November, 2019**

**Place of Final Hearing: New Delhi**

**Parties Present:**

- (i) Smt. Deepmala Bagri, Assistant Director (Law) – Complainant's Representative**
- (ii) Shri Pradeep Chandra Sati, Consultant, SFIO – Complainant's Representative**
- (iii) Shri Kunal Rawat, Advocate – Counsel for Complainant**
- (iv) CA. Amit Kumar Gupta – Respondent**
- (v) CA. C V Sajan – Counsel for Respondent**

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**Allegations of the Joint Director, SFIO:**


1. Sh. Saud Ahmad, Joint Director, SFIO, Ministry of Corporate Affairs, New Delhi (hereinafter referred to as the "Complainant") has filed complaint in Form 'I' dated 6<sup>th</sup> June, 2016 (C-1 to C-314) against CA. Amit Kumar Gupta (M. No. 099522) of M/S Amit R. Gupta & Associates, New Delhi (hereinafter referred to as the "**Respondent**" and "**Respondent Firm**"). The Complainant in the instant complaint as stated as under:-

1.1 The Government of India, Ministry of Corporate Affairs ordered an investigation into the affairs of Basil International Ltd (hereinafter referred to as the "**BIL**") and its other group companies including Vamshi Chemicals Ltd. by the Serious Fraud Investigation Office (SFIO). In its investigation report, it recommended disciplinary proceedings against the Respondent for his professional misconduct. Accordingly, the complaint was filed under the Chartered Accountants Act, 1949.

1.2 The Respondent was one of the Statutory Auditors of Vamshi Chemicals Ltd (hereinafter referred as **Company**) for the period 2005-2006 to 2007-2008. As per the investigation concluded by the SFIO, it was reported that the Respondent being the Statutory Auditor did not take necessary steps and failed to point out the possible irregularities in the maintenance of the books of accounts in his Audit report. As per the investigation, the main activity of the BIL was the mobilization and collection of money from the public at large under two schemes namely Produce Card Scheme and Redeemable Preference Share Scheme which was siphoned off to the group companies.

**1.3 Against the aforesaid background, it has been alleged against the Respondent as under:**

(i) While auditing the accounts of the Company for the year 2005-06 to 2007-2008, he did not take necessary steps and failed to point out in his audit report, the irregularities in the books of accounts as in his statement given to SFIO, the Respondent admitted to have signed the Financial Statements without obtaining the confirmation from the creditors, loan parties, debtors and banks regarding their balance shown in these statements relating to his period i.e. 2005-06 to 2007-08 (C-

304) and  
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(ii) The Respondent had also not seen and verified the terms and condition of the loan agreement in respect of the loan taken by the Company from BIL for Rs. 3.66 cr (approx) & from Nixcil for Rs. 32.20 cr. (approx) during 2006-07.

**Proceedings:**

2. At the time of hearing on 26<sup>th</sup> November, 2019, the Committee noted that the Complainant and the Respondent along with their respective Counsels were present. The Committee, thereafter, noted that the matter was part-heard at the last hearing. Accordingly, the Committee decided to proceed in the matter. The Committee, thereafter, examined the Respondent and his Counsel made final submissions before the Committee.

Based on the documents available on record and after considering both oral and written submissions made by both the Complainant and the Respondent, hearing in the matter was concluded.

**Findings of the Committee:**

3. It was noted that the extant matter has arisen on account of banking transactions that were held between BIL and the Company during 12.06.2006 to 27.07.2010 which resulted in transfer of Rs.169.90 crores from BIL to the Company. It was noted that out of alleged transfer which went unverified, the following transactions were held when the Respondent was the Statutory Auditor (C-170)

Sl.No	Fin. Year	Name of Inventory	Name of the Investor	Nature	Value
1	2005-06	Basil International Ltd	Vamshi Exports Ltd	Investment in Equity Shares unquoted (non-trade)	2,98,25,000
2	2006-07	Basil International Ltd	Vamshi Chemicals Ltd. (erstwhile Vamshi Exports Ltd.)	Loans & Advances	3,66,40,000
3	2007-08	Basil International Ltd	Vamshi Chemicals Ltd.	Investment in Equity Shares	40,92,40,000

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It was noted that extant allegations have arisen due to absence of any correlation between figures gathered from bank statement of the Company and those mentioned in its balance sheet. As per the investigation, the amounts were transferred from BIL to the Company as evident from Bank Statement but the following was observed:

- (i) In 2006-07, BIL had given a loan of Rs.3.68 crore to the Company which was indeed has shown in the financial of both BIL and the Company.
- (ii) However, in the next year 2007-08 again an amount of Rs.40.92 crore was transferred which as per books of BIL were transferred for the purpose of investment in the Company. However, no such advances, or liabilities against capital or in form of any other balance appeared in the balance sheet of the Company and as such the Complainant has raised allegation in relation to verification conducted by the Respondent for the balances shown in the balance sheet and stated that:
  - (i) The Respondent failed to obtain confirmation from the creditors, loan partites, debtor and Banks for their balances.
  - (ii) He failed to verify the terms of the loan agreement on which the loans were obtained.


4. The Committee noted that the Respondent has submitted as regard first allegation that the confirmation produced by the management were relied upon and also the details of all the parties were obtained and verified individually. He further stated that there is no provision of law which necessitated the auditor to obtain compulsory direct confirmations from various parties and the Complainant has a predetermined conviction of invoking the burden of direct and independent confirmations on the Respondent.

5. The Committee on perusal of the papers / documents on record in the instant case, observed that the Complainant has sought reference from the statements of the Respondent dated 07.12.2012 (**C-298 to C-314**) which he made before SFIO during their investigation into the affairs of the Company while raising allegations in the extant case. However, from perusal of the statement of the Respondent dated 07.12.2012 (**C-298 to C-308**), it was noted that the Respondent has although accepted that he had not sought external confirmations of balances from creditors,

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loan parties, debtors and bankers directly and independently but in his oral and written submissions made before the Committee, he had categorically explained that beside relying upon the confirmations produced by the management, he had sought the list of all debtors and creditors and verified them individually. Further, to substantiate his defence, he has placed on record the extract of the tax audit report of the Company to establish that the audit was carried out by him after minutely verifying all the balances pertaining to the debtors and creditors as even transactions of immaterial amount which were in violation of the provisions of the Income Tax Act were pointed out in the annexure to the tax audit report.

6. On review of Group Summary of balances due "from Bodies Corporate" (W-35) as reflected in the books of the Company read with Annexure VIII to Tax Audit Report (W-56) relating to 'Particulars of each loan or deposit in an amount exceeding the limit specified in section 269SS', both pertaining to financial year 2007-08, it is noted that on comparing the figures of opening balances, the receipt of Rs.3.66 crore obtained during previous year was treated as 'unsecured loan', however, when the other figures were compared, it is evident from the facts of Annexure to Tax Audit Report that a further receipt of Rs. 37.26cr was obtained from BIL during FY 2007-08 which were indeed described as 'Loans' (W-56) and the entire amount of Rs. 40.92 cr was repaid by way of journal vouchers explained by way of 'Note 1' to the said Annexure of Audit report. Such position is also confirmed with the fact that the funds collected by way of banking transactions were nowhere reflected in the balance sheet. Further, it also confirms that the Respondent was aware of such adjustment by way of journal voucher. Hence, the audit evidences based on balances were verified are important for extant case. The Committee noted that though the Respondent has argued to have relied upon confirmations produced by the management but he failed to bring on any document which was so relied upon by him. The Committee viewed that it may be the prerogative of the auditor to determine the methodology for obtaining sufficient audit evidence to reasonably conclude that the financial statements give a true and fair view and he may obtain such convincing audit evidence based on facts and circumstances of each case. In extant case, the Respondent had failed to rationally explain as to how he had satisfactorily verified the balances of debtors, loans and creditors while carrying out audit which enabled him to draw reasonable conclusion to base the audit opinion. The Committee was thus of

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the considered opinion as regard this charge that the Respondent is guilty of the alleged professional misconduct.

7. The Committee further noted that the submissions of the Respondent, with regard to the second charge relating to non-verification of terms and agreement of the loan taken by the Company from the sister concerns. The Respondent has submitted to have examined them from the balance sheets of the respective investor companies and that the loan agreements between the group companies were not executed especially when directors were common. He further stated that his duty as an auditor was to ensure that the loan taken was not prejudicial to the interest of the shareholders which was evident in the absence of such agreement..

8. In this regard, on perusal of the Financial Statements of the Company for the F.Y. 2006-2007 and 2007-08, the Committee noted that total loans taken were reported at Rs. 46.92 Crores and Rs. 22.64 Crores respectively **(C-262)** and that significant value of funds were being transferred among the group companies as evident from Group Summary of 'From Bodies Corporate' **(W-35)** and 'To Bodies Corporate' **(W-27)** for which the Respondent had not reasonably explained as to how he was convinced that the loan so obtained by the Company were well within the borrowing powers of the entity and what other audit procedures were adopted by him to conclude regarding the authority to undertake such transaction, their balance verification and their impact on the interest of the Company.

9. The Committee further noted the investigation report in this regard which inter-alia states that :

***4.125** During investigation, it was observed that in the Financial Year 2006-07 a Loans & Advances of Rs. 3,66,40,000/- was given to M/s Vamshi Chemicals Ltd which has been shown in the Balance sheet of BIL. In respect of this loan, no Loan Agreement has been provided by the present management of BIL to the investigation team. In this regard, Sh. M.K. Basu, Director BIL in his statement dated 05.01.2013 (ans. To Q.No. 68) has admitted that there was no such Loan agreement between the both companies.*

***4.126** It is also observed that in all instances of such transfer of funds from BIL to VCL, the management of BIL has not provided the respective Board Resolutions authorizing such investment or any loan agreements towards loans and advances to VCL.*

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**4.127** Thus, the nature of investment (whether loan or equity share) and the amount of investment claimed to be made by BIL in VCL is unascertainable, especially in view of the contradictory claims by the both the parties i.e. BIL and VCL. As per BIL the amounts invested in VCL were in the form of loan (interest-bearing @ 18%) whereas as per VCL, in the investments received from BIL were in the nature of equity share. This uncertainty further raises doubt on the viability of the business of BIL as huge amount of its investment is neither yielding any returns nor it seems to be recoverable in the near future. Also, the above facts establish that BIL has siphoned off major funds to M/s Vamshi Chemicals Ltd."

10. The Committee on perusal of above noted that as per para 4.127 of the Investigation Report, the loan taken by the Company from BIL was bearing interest @18% whereas the Respondent in his statement on oath has stated that the loans were interest free. Thus, in light of such apparent contradiction, the Committee was of the considered opinion that the Respondent not only failed to discharge his duties diligently but also failed to disclose material fact that the loans were bearing rate of interest at 18% thereby vitiating the true and fair view of the financial statements as certified by him. He is accordingly held guilty of professional misconduct with respect to this charge falling within the meaning of Clauses (7) and (8) of Part I of the Second Schedule to the Chartered Accountants Act, 1949.

**Conclusion:**

11. Thus, in conclusion, in the considered opinion of the Committee, the Respondent is held **GUILTY** of Professional Misconduct falling within the meaning of Clause (7) and Clause (8) of Part I of the Second Schedule to the Chartered Accountants Act, 1949.

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**Sd/-**  
**(CA. Prafulla Premasukh 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

7 Disciplinary Directorate  
The Institute of Chartered Accountants of India