



भारतीय सनदी लेखाकार संस्थान

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

PPR/254F/2016/DD/118A/16-DC/1322/2020

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.

File No. : PPR/254F/2016/DD/118A/16-DC/1322/2020

In the matter of:

CA. P. Sivarajan (M.No. 200652),
10/491 Anugraha,
Gardens Street,
Palakkad (Kerala) – 678 001

.....Respondent

MEMBERS PRESENT:

Smt. Anita Kapur, Member (Govt. Nominee) & Presiding Officer
Shri Ajay Mittal, Member (Govt. Nominee)
CA. Chandrashekhar Vasant Chitale, Member
CA. P.K. Boob, Member

Date of Final Hearing: 09.09.2021 through Video Conferencing

Place of Final Hearing: New Delhi

Party Present:-

1) CA. P. Sivarajan – the Respondent (appeared from his personal location)

1. That vide report dated 11th February 2021 (copy enclosed), the Disciplinary Committee was of the opinion that CA. P. Sivarajan (M.No. 200652) was GUILTY of Professional Misconduct falling within the meaning of (5), (6), (7) and (8) of Part I of the Second Schedule to the Chartered Accountants Act, 1949 in respect of various non-compliances observed in General Purpose Financial Statements of M/s Southern Ispat Limited (hereinafter referred to as 'Company') for financial year 2007-08 audited by the Respondent. It was alleged against the Respondent that he being the statutory auditor failed to report in his statutory audit report regarding non-compliances observed with regard to AS-2, AS-3, AS-5, AS-26 & requirements of Schedule VI of the Companies Act, 1956. It was noted that Clauses (5), (6), (7) and (8) of Part I of the Second Schedule to the Chartered Accountants Act, 1949 state as follows: -

Clause 5: "fails to disclose a material fact known to him which is not disclosed in a financial statement, but disclosure of which is necessary in making such financial statement where he is concerned with that financial statement in a professional capacity"

Clause 6: "fails to report a material misstatement known to him to appear in a financial statement with which he is concerned in a professional capacity"

Clause 7: "does not exercise due diligence, or is grossly negligent in the conduct of his professional duties." and

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Clause 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. An action under Section 21B (3) of the Chartered Accountants Act, 1949 was contemplated against the Respondent and communication dated 25th August 2021 was addressed to him thereby granting him an opportunity of being heard in person and/or to make a written representation before the Committee on 9th September 2021 through video conferencing.
3. The Respondent appeared before the Committee on 9th September 2021 through video conferencing from his personal location and made his oral representations on the findings of Disciplinary Committee. The Committee considered both the oral submissions as well written submissions made vide letter dated 26th February 2021 by the Respondent. The Respondent, at the outset, submitted that the lapses on his part was only with regard to non-disclosure under the Companies Act and not with a view to defraud revenue or avail wrong tax/bank concessions etc. and he had considered 1% of the total turnover while fixing the materiality levels which led him to form a view that the said non-disclosures were not material. He also stated that negligence in performance of duties or errors of judgment in discharging such duties did not constitute misconduct unless ill motive in the acts could be established. He further submitted before the Committee that the Financial Statements of the Company certified by him were accepted by all including SEBI, Stock Exchange, Registrar of Companies, Income Tax Department, Central Exercise Department etc. He also reiterated his plea with regard to limitation of time in view of Rule 12 of CA Rules, 2007 and pending case against joint auditor of the same assignment.
4. The Committee considered the oral as well as the written submissions of the Respondent and noted that the Respondent mainly adopted the plea of materiality, limitation of time and pending case against the joint auditor of same assignment to defend his case. It was viewed that with respect to his plea under Rule 12 pertaining to limitation of time it was considered by competent authority in terms of provisions of Section 21A(4) of CA Act, 1949 and that the case against the joint auditor is a separate case, that would be duly considered. However, the nature of non-compliances on all the alleged observations signified his casual approach while performing the statutory audit of the Company. It was viewed that an audit is conducted to ensure compliance with financial reporting framework applicable on the enterprise which included in extant case compliance with the requirements of Schedule VI to the Companies Act, 1956 as well as applicable accounting standards and if it is stated in the audit report issued by the Respondent being the statutory auditor that financial statements were prepared in accordance with applicable financial reporting framework and that it had complied with the Accounting Standards referred in Section 211(3C) of the Companies Act, 1956, then non-compliance of the same is not acceptable.



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5. The Committee thus viewed that the misconduct on the part of the Respondent has been held and established within the meaning of Clauses (5), (6), (7) and (8) of Part I of Second Schedule to the Chartered Accountants Act, 1949 and keeping in view the facts and circumstances of the case as aforesaid and ordered that the Respondent, CA. P Shivarajan (M. No.200652) be Reprimanded.

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Sd/-

[Smt. Anita Kapur]

Member (Govt. Nominee) & Presiding Officer

Sd/-

[Shri Ajay Mittal]

Member (Govt. Nominee)

Sd/-

[CA. Chandrashekhar Vasant Chitale]

Member

Sd/-

[CA. P.K. Boob]

Member

प्रमाणित सत्य प्रतिलिपि / Certified true copy

Mohita Khanna
सीए, मोहिता खन्ना / CA. Mohita Khanna
सहायक सचिव / Assistant Secretary
अनुशासनात्मक निदेशालय / Disciplinary Directorate
इंस्टिट्यूट ऑफ चार्टर्ड एकाउंटेंट्स ऑफ इंडिया
The Institute of Chartered Accountants of India
आइसीएआइ भवन, विश्वास नगर, शाहदरा, दिल्ली-110032
ICAI Bhawan, Vishwas Nagar, Shahdra, Delhi-110032

CONFIDENTIAL

DISCIPLINARY COMMITTEE [BENCH – III (2020-21)]
[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. : [PPR/254F/2016/DD/118A/16-DC/1322/2020]

In the matter of:

**CA. P Sivarajan,
10/491, Anugraha,
Garden Street, College Road,
Palakkad,
KERALA 678 001**

----Respondent

MEMBERS PRESENT:

**Smt. Anita Kapur, Member (Govt. Nominee)
Shri Ajay Mittal, Member (Govt. Nominee)
CA. Chandrashekhar Vasant Chitale, Member
CA. Manu Agrawal, Member**

Date of Final Hearing: 23rd November, 2020

Place of Final Hearing: New Delhi (through Video Conferencing)

PARTIES PRESENT:

- (i) CA. P. Sivarajan – Respondent**
 - (ii) Shri Anil D Nair – Counsel for Respondent**
 - (iii) Shri Mahadevan – Counsel for Respondent**
- (all of them appeared from their personal location)**

Allegations:

1) The Committee noted that the instant case has emanated from report (A-3 to A-53) received from Financial Reporting and Review Board of the ICAI (hereinafter referred as the "Board"/ "FRRB") wherein it has informed about various non-compliances observed in General Purpose Financial Statements with regard to AS-2, AS-3, AS-5, AS-13, AS-15, AS-26, Guidance Note on Audit of Capital & Reserves, SA-700, CARO-2003 & Schedule VI of the Companies Act, 1956 of M/s Southern Ispat Limited (hereinafter referred to as 'Company') for financial year 2007-08 audited by the

Respondent. The Director(Discipline) in his prima Facie Opinion had held the Respondent guilty of professional misconduct falling within the meaning of Clauses (5), (6), (7) and (8) of Part I of the Second Schedule to the Chartered Accountants Act, 1949 which reads as follows:-

Clause 5: *"fails to disclose a material fact known to him which is not disclosed in a financial statement, but disclosure of which is necessary in making such financial statement where he is concerned with that financial statement in a professional capacity"*

Clause 6: *"fails to report a material misstatement known to him to appear in a financial statement with which he is concerned in a professional capacity"*

Clause 7: *"does not exercise due diligence, or is grossly negligent in the conduct of his professional duties." and*

Clause 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"*

The charges alleged against the Respondent in extant matter were as under:-

1.1 Charge No 1: The first allegation (A-3 & A-4) of the Board was related to determination of 'cash flows from operating activities' (A-52) for financial year 2007-08. It was stated that the same was determined on the basis of Net Profit/Loss before Tax and exceptional items which included interest income and interest expenses. As per Paragraph 30 of AS 3, this should have been adjusted and disclosed separately under Cash Flows from Investing and Financing Activities. Hence, there was non-compliance of AS-3 which the Respondent had failed to report in his Audit Report.

1.2 Charge No 2: The second allegation (A-4) was related to non-disclosure of cash flows on sale and purchase of fixed assets (A-43) which as per the requirements of paragraph 21 of AS 3 should have been disclosed separately in the Cash Flow Statement. It is stated that only net cash flows on sale and purchase of fixed assets have been reported in the cash flow statement for financial year 2007-08. Hence, there

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was non-compliance of AS-3 which the Respondent had failed to report in his Audit Report.

1.3 Charge No 3: As per third allegation(A-6) of the Board, the Company in its significant accounting policies mentioned that Inventory of Raw Material be valued based on 'Average Cost Basis'. While, AS 2 prescribes to adopt either FIFO or 'Weighted Average' cost formula to determine the value of inventories. Thus, it was alleged that inventories were valued on the basis of 'Average' cost formula which was not permissible under AS 2 which the Respondent had failed to report in his Audit Report.

1.4 Charge No 3A: As far as the other allegation (A-6) of the Board was concerned, it was alleged that the company, in its accounting policy, had provided for valuation of Finished Goods inventory at the cost of raw material consumed and direct cost related to production *excluding depreciation*. It was stated that AS 2 requires depreciation should form part in the valuation of inventory. Hence, there was non-compliance of AS-2 which the Respondent had failed to report in his Audit Report.

1.5 Charge No 4: The fourth allegation (A-7) of the Board was related to inappropriate disclosure of Share Warrant Application money under the head 'Share Capital' (A-42) which the Respondent being Auditor had failed to report in his Audit Report.

1.6 Charge No 5: In the fifth allegation (A-8) of the Board, it was stated that under the head Inventories, it was mentioned – "Inventories as certified and valued by the Management" (A-44). It was stated that in terms of Guidance Note on Audit of Inventories, the usage of such expression might lead the users of the financial statements to believe that the Auditor had merely relied on the Management Certificate without carrying out any appropriate audit procedures to convince himself about the existence and valuation of inventories. Hence, it was alleged that the Respondent had failed to report about non-compliance of the requirements of the said Guidance Note.

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1.7 Charge No 6: The Board, further, alleged that the Respondent Auditor had failed to report in his Audit Report the fact of non-disclosure of quantities of trading goods purchased and sold separately as per the requirements of Part II of Schedule VI of Companies Act, 1956 (A-10,A-45 & A-50).

1.8 Charge No 7: The seventh allegation (A-11) of the Board was that an auditor could not be both internal and statutory auditor and reported the fact that internal & statutory audit fees paid had been shown as consolidated fees (A-46) vis a vis requirement of Schedule VI to Companies Act, 1956 which required to show the fees paid in different capacities separately.

1.9 Charge No 8: The eighth allegation (A-12) of the Board was that the Respondent Auditor, though had given reference of non-compliance of AS-15, which was a non-compliance of financial reporting framework, accordingly, the Respondent Auditor was supposed to report this non-compliance when he had stated whether the financial statements comply with Accounting Standards referred to in Section 211 (3C) of the Companies Act, 1956. However, the Respondent had failed to do so. Further, it was stated that Respondent had reported an array of his observation in Annexure to Audit Report relating to non-confirmation of debtors, creditors, loans and advances balance, depreciation etc. It was alleged that the Respondent had not failed to state the purpose of separate disclosure of such observations.

1.10 Charge No 9: The Board had observed in its Ninth allegation (A-14) that the Respondent Auditor had pointed out in CARO Report that the company did not have an internal audit system in place (para 7 on A-38) and that the company had not maintained cost records under Section 209 (1) (d) of the Companies Act, 1956 (para 8 on A-38) but had not reported the same either in thick type or italics as required under Section 227(3)(e) of the same Act. It was stated that the observations or comments had adverse effect on the functioning of the company so it should have been reported in thick and italics which the Respondent had failed to comply with.

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1.11 Charge No 10: The Board in the Tenth observation (A-14) had alleged that the company had clubbed the depreciation for the previous year(s) in the current year depreciation (Para 17 on A-50) while the reason for the same had not been disclosed. It was argued that if it was an adjustment due to change in estimate or depreciation method, the reason of such adjustment or had it been prior period adjustment then, as per the requirements of AS 5, it should have been disclosed separately on the face of Profit & Loss Account as prior period items. It was alleged that the Respondent had failed to report the said non-compliance in his audit report.

1.12 Charge No 11: The Board, in its Eleventh observation (A-15) had alleged that the Company had not disclosed the Provisions as per the requirements of AS 29 – 'Provisions, Contingent Liabilities and Contingent Assets' and had only disclosed a consolidated sum (A-45), the nature and purpose of which various provisions were made was not clear and for this, the Respondent had failed to report about non-compliance of AS 29 in his Audit Report.

1.13 Charge No 12: In the twelfth observation (A-16), the Board alleged that requirements of AS 26 – 'Intangible Assets' were not complied with when Deferred Revenue Expenditure was capitalised in Balance Sheet.

1.14 Charge No 13: In the thirteenth observation (A-18), it was alleged that the Respondent had contradicted his opinion as in the main report he had stated that proper books of accounts were maintained by the company (Para 5 on A-36) while in the CARO 2003 reporting, he mentioned that cost records were not maintained (para 8 on A-38).

1.15 Charge No 14: In the Fourteenth observation (A-19), the Board alleged that Cash & Bank balances were not shown separately as required under Schedule VI to Companies Act, 1956 which again the Respondent had failed to report in his audit report.

1.16 Charge No 15: In the Fifteenth observation (A-19), the Board alleged that Investments in Kerala Sponge Iron Ltd was not classified as long term or short term as

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per the requirements of para 26 of AS 13 – ‘ Accounting for Investments’ (A-20) and the Respondent failed to report non-compliance of AS 13 in his audit report.

1.17 Charge No 16: In the Sixteenth observation, the Board pointed out that the Company had not provided the corresponding previous year figures in the Fixed Assets Schedule (A-43) which as per the General Instructions for preparation of Balance Sheet given under Part I, Schedule VI to the Companies Act, 1956 should have been given. Hence, the Board alleged that the Respondent had failed to report non-compliance of the requirements of Schedule VI to the Companies Act, 1956 in his Audit Report.

1.18 Charge No 17: In the Seventeenth observation, the Board pointed out that the Company had not provided the break-up of current assets either in the Balance sheet or in the notes to accounts (A-20 & A-21 & Schedule ‘I’ on A-44) which was non-compliance of the requirements of Schedule VI to the Companies Act, 1956 and the Respondent had failed to report the same in his Audit Report.

1.19 Charge No 18: In the Eighteenth observation, the Board had alleged that the Audit Report had been signed by Auditor Sunil Johri (joint auditor with the Respondent) with the impression that it had been signed ‘by and on behalf of the Board of Directors’ which was not in line with the requirements of SA 700 (A-21 & A-51).

1.20 Charge No 19 : In the Nineteenth observation (A-22), it was alleged by the Board that bifurcation of Repairs & Maintenance expenses had not been provided as to its classification for repair and maintenance for Building and Plant & Machinery separately as required under Schedule VI to the Companies Act, 1956 which the Respondent had failed to report in his Audit Report.

Proceedings:

2. At the time of hearing on 23rd November 2020, the Committee noted that the Respondent along with his Counsels appeared before the Committee from their personal location. Thereafter, all three of them gave a declaration that there was nobody present except them in the room from where they were appearing and that they would neither record nor store the proceedings of the Committee in any form. Being first

hearing, the Respondent was put on oath. Thereafter, the Committee asked the Respondent whether he wished the charges to be read out or it could be taken as read. The Respondent stated he was aware of the charges against him and the same might be taken as read. On being asked, as to whether the Respondent pleaded guilty, the Respondent pleaded not guilty and thereafter the Counsels for the Respondent made their submissions in the matter.

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

Findings of the Committee:

3. At the outset, the Committee noted that the Director (Discipline) in his prima facie opinion dated 21st October 2019 had held the Respondent guilty of charges as discussed in para no. 1.2, 1.3, 1.4, 1.6, 1.7, 1.11 and 1.13 above. Accordingly, the Committee held the enquiry on the date of hearing in respect of the said charges only.

3.1. Further, the Committee noted that the Respondent had at the outset, made certain preliminary submissions stating that that it was a case of receipt of "Information" by one wing of ICAI i.e. Disciplinary Directorate from another wing of ICAI i.e. FRRB which as per the Respondent was in the nature of suo motto proceedings. It could not be treated as information under Rule 7 of CA Rules, 2007. Further, the Respondent also contended that in extant case decision with respect to Rule 12 was taken by the Board of Discipline whereas Rule 12 vest the authority to Director (Discipline) and does not permit him to delegate the same to Board of Discipline. He also expressed his inability to produce further documents in the matter since it was quite old matter. Further, he submitted that non-compliances observed by the FRRB were not material affecting true and fair view of the financial statements and that he was required to express his opinion on the financial statements of the Company considering the overall status. There could be certain errors but the said

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individual errors might not be material to warrant his comment in audit report. Thereafter, the Respondent made his submission in detail in respect of each allegation held against him which was dealt accordingly.

3.2. With respect to preliminary submissions of the Respondent, the Committee noted that Rule 7 (1) of CA Rules 2007 read as under:

"Any written information containing allegation or allegations against a member or a firm, received in person or by post or courier, by the Directorate, which is not in Form I under sub-rule (1) of rule 3, shall be treated as information received under section 21 of the Act and shall be dealt with in accordance with the provisions of these rules."

In view of the above, the Committee noted that the Director (Discipline) could receive information from any source and as such there was no bar to have complaint or information from any specific source. Thus, the plea of the Respondent that the case had emanated from "Information" which was reported by one wing of ICAI to the other wing of ICAI was not maintainable. Further, with respect to decision regarding Rule 12 being taken by the Board of Discipline, it was noted that Rule 12 of CA Rules, 2007 and Section 21A(4) of CA Act, 1949 state as under:

Rule 12 of CA Rules, 2007

12. Time limit on entertaining complaint or information. – *Where the Director is satisfied that there would be difficulty in securing proper evidence of the alleged misconduct, or that the member or firm against whom the information has been received or the complaint has been filed, would find it difficult to lead evidence to defend himself or itself, as the case may be, on account of the time lag, or that changes have taken place rendering the inquiry procedurally inconvenient or difficult, he may refuse to entertain a complaint or information in respect of any misconduct made more than seven years after the same was alleged to have been committed and submit the same to the Board of Discipline for taking decision on it under sub-section (4) of section 21*

Section 21A(4) of CA Act, 1949

The Director (Discipline) shall submit before the Board of Discipline all information and complaints where he is of the opinion that there is no prima facie case and the Board of Discipline may, if it agrees with the opinion of the Director (Discipline), close the matter or in case of disagreement, may advise the Director (Discipline) to further investigate the matter

On perusal of the above it was viewed that the CA Rules, 2007 and CA Act, 1949 have vested the ultimate authority to Board of Discipline. In case, even if Director (Discipline) is of opinion to grant relief under Rule 12 still Board of Discipline has authority to deny the same. So the matter was accordingly dealt with. Hence, the Committee decided to consider the merits of the matter.

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4. The Committee noted that the Charge no 2 as mentioned in Para 1.2 was related to non-disclosure of separate cash flows pertaining to sale and purchase of fixed assets (A-43) which as per the requirements of paragraph 21 of AS 3 were required to be disclosed separately in the Cash Flow Statement. It was stated that, in the extant matter, only net cash flow on sale and purchase of fixed assets was reported in the cash flow statement for financial year 2007-08. In other words, gross cash flows pertaining to purchase and sale of fixed assets were not shown in the Cash Flow Statement. The Committee further noted that the Respondent in this regard submitted that the amount involved was not material, the net cash flow amounted less than 1% of turnover. The Committee, however, on perusal of 'Cash flows from Investing Activities' in the Cash Flow Statement for the financial year 2007-08 (A-52), noted that the entire cash flow under this sub head was from sale and purchase of fixed assets only and not from any other source, therefore, the amount of sale and purchase of fixed assets was found to be material. Further, it was viewed that the Respondent had again argued in terms of net cash flow whereas; the non-compliance had been raised for gross amounts involved. Hence, the contention of the Respondent as to non-materiality of the amount in this charge was not found acceptable. Moreover, neither any profit nor any loss has been reported to have occurred on such sale of fixed assets in Profit & loss Account (A-41 & A-43) and as such effectively, there was omission of entire related information from the financial statements. The Committee, accordingly, noted that omission of such information was not only an omission of material information from the financial statement but also it led to non-compliance of AS -3 which should have been reported by the Respondent in his audit report. Accordingly, the Committee was of the considered opinion that the Respondent was guilty of this charge for professional misconduct falling within the meaning of Clauses (6) & (7) of Part I of Second Schedule to the Chartered Accountants Act, 1949 with respect to this charge.

5. The Committee noted that the Charge no 3 as mentioned in Para 1.3 was related to the significant accounting policies of the Company related to inventories which mentioned that Inventory of Raw Material be valued based on 'Average Cost Basis' whereas, AS 2 prescribes to adopt either FIFO or 'Weighted Average' cost formula to

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determine the value of inventories. Thus, it was alleged that inventories valued on the basis of 'Average' cost formula was not permissible under AS 2 and the Respondent had failed to report about the same in his Audit Report. The Committee further noted the written submission of the Respondent in this regard wherein he submitted that there was no change in the valuation methodology of inventories adopted during the alleged year from that of previous years. He further submitted that due to long lapse of time this fact could not be substantiated by him. Further, no addition was made by the Income Tax Department to the total income on this count. The Respondent, however, admitted that it was an inadvertent error but there is no under/over statement of profit for the year.

5.1 The Committee viewed that the plea of the Respondent that the valuation methodology followed during the previous years was only followed could not be accepted. It was viewed that whenever an auditor state in his report that the financial statements were in compliance with accounting standards referred in Section 211 (3C) of the Companies Act, 1956, it was his responsibility to verify the documents accordingly. In any case, the Respondent had accepted an error in respect of the same. Accordingly, the Committee was of the considered opinion that the Respondent was guilty of professional misconduct falling within the meaning of clauses (5), (6) & (7) of Part I of Second Schedule to the Chartered Accountants Act, 1949 with respect to this charge.

6. The Committee noted that in the charge no 3A as mentioned in Para 1.4 above, it has been stated that the company, in its accounting policy, has provided for valuation of Finished Goods inventory at the cost of raw material consumed and direct cost related to production *excluding depreciation* whereas AS 2 requires depreciation should form part in the valuation of inventory. Accordingly, it was alleged that the Respondent had failed to report non-compliance of AS 2 in his Audit Report. The Committee further noted the written submission of the Respondent in this regard wherein he submitted that the valuation policy followed was consistent with that followed during the earlier year. The Company had not charged depreciation in the accounts at all during earlier years

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which was provided in the alleged period only. So, he contended that to exclude previous year depreciation in the inventory valuation and add to this year would have distorted the view of inventory valuation of the current year. He further argued that **disclosure, to that extent, had been made. He stated that the Depreciation for the current year on Factory Assets was only Rs. 27.48 lakhs and the value of closing inventory of Finished Goods was Rs. 35.72 lakhs whereas that of opening stock was Rs. 22.37 as on 31.03.2007 lakhs. Thus, the incremental value of Finished Goods as on 31.03.2008 was Rs. 13.35 lakhs only. As per him, the depreciation constituted only 1.01% of the total Cost of Goods sold and undervaluation on account of non-consideration of depreciation on incremental increase of Closing Stock of FG was only 0.005% of Cost of Goods Sold, and was of insignificant impact.**

6.1 The Committee, however, on perusal of documents on record noted that the Company had earned profit after tax of only Rs. 2.70 lakhs (A-41), hence the value of depreciation not included in inventory had a material effect. As regards disclosure being made it was noted that only the disclosure of arrears of depreciation charged had been disclosed. There was no disclosure about impact of the said policy of inventory valuation. Further, it was viewed that whenever an auditor state in his report that the financial statements were in compliance with accounting standards referred in Section 211 (3C) of the Companies Act, 1956, it was his responsibility to verify the documents accordingly. Accordingly, it was viewed that defence of the Respondent for non-inclusion of depreciation in value of inventory for not being material was not found acceptable. Accordingly, the Committee was of the considered opinion that the Respondent was guilty of professional misconduct falling within the meaning of clauses (5), (6) & (7) of Part I of Second Schedule to the Chartered Accountants Act, 1949 with respect to this charge.

7. The Committee noted that in the charge no 5 as mentioned in Para 1.6 above, it was stated that under the head Inventories, it was mentioned – "Inventories as certified and valued by the Management" (A-44) whereas in terms of Guidance Note on Audit of Inventories, the usage of such expression might lead the users of the financial

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statements to believe that the Auditor had merely relied on the Management Certificate without carrying out any appropriate audit procedures to satisfy him about the existence and valuation of inventories. Thus, it was alleged against the Respondent that he had not complied with the requirements of Guidance Note. The Committee further noted the written submission of the Respondent in this regard wherein he submitted that the valuation of inventory such as steel was a technical subject, outside the domain of the auditor. Further, he argued that even the clarification issued in the Guidance Note clarified that "The Council of the Institute hereby clarifies that despite the expression (as valued by the management and certified by the management), the duties of the auditors roles not diminished". The Auditor might advise the clients to omit the words "as valued and certified by the management" when describing the inventory valuation and that the authority of Guidance Note is only recommendatory and not mandatory.

7.1 The Committee noted the submissions of the Respondent and viewed that the Respondent had shifted the responsibility of audit verification of inventories stating that it was a technical item and that the authority of Guidance Note was recommendatory. So there was no mandate to follow it. However, on review of the portion of Guidance Note as produced by the Respondent, it was viewed that it clearly state that the auditor should adopt sufficient audit procedure to verify the inventories. His role could not be diminished by usage of the said phrase. Further, it also noted Announcement of the Council relating to "Clarification regarding Authority Attached to Documents Issued by the Institute" which describe the authority of Guidance Note as follows:

*"5. 'Guidance Notes' are primarily designed to provide guidance to members on matters which may arise in the course of their professional work and on which they may desire assistance in resolving issues which may pose difficulty. Guidance Notes are recommendatory in nature. **A member should ordinarily follow recommendations in a guidance note relating to an auditing matter except where he is satisfied that in the circumstances of the case, it may not be necessary to do so.** Similarly, while discharging his attest function, a member should examine whether the recommendations in a guidance note*

relating to an accounting matter have been followed or not. If the same have not been followed, the member should consider whether keeping in view the circumstances of the case, a disclosure in his report is necessary (emphasis added).

In view of the above, it was noted that the Respondent had in extant case had failed to bring forth the circumstances due to which he felt that compliance of Guidance Note was not necessary. Further, it was noted that out of total Balance Sheet size of Rs 14 crores (approx) (A-40), inventory worth Rs 6.7 crores (approx.) which was quite material (A-40) and thus the approach adopted by Respondent was not found acceptable. Accordingly, the Committee was of the considered opinion that the Respondent was guilty of professional misconduct falling within the meaning of clauses (7) and (8) of Part I of Second Schedule to the Chartered Accountants Act, 1949 with respect to this charge.

8. The Committee noted that in the charge no 6 as mentioned in Para 1.7 above, it was alleged (A-10) that the Respondent Auditor had failed to report in his Audit Report the fact of non-disclosure of quantities of trading goods purchased and sold separately as per the requirements of Part II of Schedule VI of Companies Act, 1956 (A-45 & A-50). The Committee also noted the written submission of the Respondent in this regard wherein he submitted that it was only a presentation requirement, having no impact on the true and fair view of the reported figures. Further, he also argued that the requirements of Schedule VI of the Companies Act, 1956 was amended w.e.f. 1.4.2011 wherein this requirement of disclosing quantities had been dispensed with which clearly indicate that disclosure of quantitative particulars had no significance in the financial statements.

8.1 The Committee noted that a professional should be guided by then prevailing laws and regulations instead of defending themselves with subsequent amendments. It was noted that Clause 3 (i) (a) of Part II of Schedule VI to the Companies Act, 1956, required disclosure of the following information:

"(i) (a) The turnover, that is, the aggregate amount for which sales are effected by the company, giving the amount of sales in respect of each class of goods

dealt with by the company, and indicating the quantities of such sales for each class separately."

It was, accordingly, noted by the Committee that quantitative disclosure of trading goods was a mandatory requirement under the Companies Act, 1956 which was not complied with. As regard the Respondent's argument that it was only a presentation error, it was viewed that mandate requirements have been designed to provide necessary information to the stakeholders concerned and hence its omission could not be regarded as only presentation error. It was noted that the Respondent had failed to report about the said non-compliance in his audit report Accordingly, the Committee was of the considered opinion that the Respondent was guilty of professional misconduct falling within the meaning of clauses (5) and (7) of Part I of Second Schedule to the Chartered Accountants Act, 1949 with respect to this charge.

9. The Committee noted that with respect to charge no 10 as mentioned in Para 1.11 above, that the arrears of depreciation was charged in the current year depreciation **(Para 17 on A-50)** while the reason for the same had not been disclosed and as per the requirements of AS 5, it should have been disclosed separately on the face of Profit & Loss Account as prior period items. Thus, it was alleged that requirements of AS-5 were not complied with which the Respondent had failed to report in his audit report. The Committee further noted the written submission of the Respondent in this regard wherein he submitted that the fact of charging previous year depreciation was disclosed appropriately and also the amount involved was not material enough to affect the true & fair view, hence, in his opinion, sufficient compliance was made.

9.1 The Committee, however, on perusal of documents on record noted that neither the fact that whether it was a change in estimate/ depreciation method or any error giving rise to a 'prior period item' was disclosed nor was it disclosed in the Profit & Loss A/c but in notes to accounts **(para 17 on A-50)**. It further noted that amount involved constituted more than 50% of total depreciation charged during the financial year and thus it was material adjustment in the context of 'Profit After Tax' (PAT). Accordingly, in

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view of the fact that disclosure of such adjustment with a meaningful reason for such adjustment on the face of P&L A/c was not made, therefore, the Respondent was held guilty of professional misconduct falling within the meaning of clauses (7) & (8) of Part I of Second Schedule to the Chartered Accountants Act, 1949 with respect to this charge.

10. The Committee noted that with respect to charge no 12 as mentioned in Para 1.13 above, that the requirements of AS 26 – 'Intangible Assets' were not complied with when Deferred Revenue Expenditure was capitalised in Balance Sheet which the Respondent being the statutory auditor failed to report the same in his audit report. The Committee further noted the written submission of the Respondent in this regard wherein earlier he had submitted that such expenses were incurred to increase authorised capital (D-26) which was in the nature of share expenses and hence, AS 26 was not applicable on such expenditure. However, when the Director (Discipline) in his prima facie opinion referred to Opinion of Expert Advisory Committee (EAC) issued opinion on the matter, the respondent submitted that the said Opinion was issued 6 years after the alleged audit was conducted by him. Further, he argued that on the authority of Opinion of Expert Advisory Committee, being non-binding. He also stated that the amount involved was also not material considering the size of the Balance sheet.

10.1 The Committee, however, on perusal of the said Opinion of Expert Advisory Committee viewed that the said Opinion was purely based on the requirements of Accounting Standard 26 which was mandatorily applicable on the Company. Accordingly, it was viewed that since the expenses incurred to increase authorised capital did not give rise to any resource controlled by the entity and such increase in authorised capital did not ensure inflow of cash until or unless share capital was issued against it. Accordingly, the plea of Respondent was not found acceptable and the Committee was of the considered opinion that the Respondent was guilty of professional misconduct falling within the meaning of Clauses (6) & (7) of Part I of Second Schedule to the Chartered Accountants Act, 1949 with respect to this charge.

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11. It was further observed that almost all the observations were defended by taking the plea of materiality, which signifies the casual approach adopted by the Respondent while performing audit of the Company. It was viewed that an audit is regarded to be conducted to ensure compliance with financial reporting framework applicable on the enterprise which included in extant case compliance with the requirements of Schedule VI to the Companies Act, 1956 as well as applicable accounting standards. Hence, if an auditor state in his audit report that financial statements have been prepared in accordance with applicable financial reporting framework and that it complies with the Accounting Standards referred in Section 211(3C) of the Companies Act, 1956, then non-compliance of the same is not acceptable. Also, in nutshell, if the effect of the misstatement as mentioned in various allegations, was considered in aggregation, its consequential effect was material.

Conclusion :

12. Thus in conclusion, in the considered opinion of the Committee, the Respondent was held **GUILTY** of professional misconduct falling within the meaning of (5), (6), (7) and (8) of Part I of the Second Schedule to the Chartered Accountants Act, 1949.

BPO

Sd/-
[Smt. Anita Kapur]
Presiding Officer & Member, (Govt. Nominee)

Sd/-
[Shri Ajay Mittal]
Member, (Govt. Nominee)
(approved & confirmed through e-mail)

Sd/-
[CA. Chandrashekhar Vasant Chitale]
Member

Sd/-
[CA. Manu Agrawal]
Member

DATE: 11th February, 2021

PLACE: New Delhi

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