



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

[PR/145/16-DD/171/16-DC/962/18]

**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/145/16-DD/171/16-DC/962/18]

In the matter of:

**Shri K.S. Kaushik, Deputy Director,
SFIO, Ministry of Corporate Affairs,
2nd Floor, Paryavaran Bhawan,
CGO Complex, Lodhi Road
NEW DELHI - 110 003**

.... Complainant

-Vs-

**CA. Amar Tandon (M.No.072630),
LG-1, Pinky Apartment,
93-N, Dali Bagh,
Near Ganna Sansthan
LUCKNOW – 226 001**

.... Respondent

MEMBERS PRESENT:

1. CA. (Dr.) Debashis Mitra, Presiding Officer (Present in person)
2. Mrs. Rani Nair, I.R.S. (Retd.), Government Nominee (Present in person)
3. CA. Rajendra Kumar P, Member (Present through Video Conferencing)
4. CA. Cotha S Srinivas, Member (Present in person)

DATE OF MEETING : 25.04.2022 (Through Physical/ Video Conferencing Mode)

1. That vide findings under Rule 18 (17) of the Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007 dated 19.01.2022, the Disciplinary Committee was inter-alia of the opinion that CA. Amar Tandon (M.No.072630), Lucknow (hereinafter referred to as the Respondent") was GUILTY of professional misconduct falling within the meaning of Item (6) and (7) of Part I of the Second Schedule to the Chartered Accountant Act, 1949.

2. The Committee noted that the Respondent was present through video conferencing mode. The Respondent submitted that Form 5 for raising of authorized capital was filed by the Company with ROC on 29th March 2008, which was much earlier than the signing of financial

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statements for Financial Year 2007-08 by him on 22nd August 2008. He further requested the Committee to take the lenient view by awarding least punishment to him.

3. The Committee noted that issue relates to signing of financial statements with inclusion of Preference Share Capital without proper revision in the Memorandum of Association. The Committee noted that the revised Memorandum of Association filed on 24th March 2009 along with Form 23 speaks about an increase in authorized share capital of the Company as Rs. 175 crores comprising of 17.50 crore equity shares of Rs. 10 each. Further, in the Memorandum of Association filed on 14.4.2009 there was no mention of preference share capital, whereas it was disclosed in the balance sheet for FY 2007-08. The Committee also noted the Memorandum of Association showing Preference Share capital as part of authorized share capital was filed with MCA on 11th November 2009 with Form 23. The Committee noted that hence, this was an ultra-vires action on the part of the Company in question (i.e. Nixcil Pharmaceutical Specialties Ltd.) and the Respondent failed to exercise due diligence and non-reporting/ non qualification of this fact in his audit report.

4. Accordingly, the Committee viewed that ends of justice can be met if reasonable punishment is given to the Respondent to commensurate his above professional misconduct.

5. Therefore, keeping in view the facts and circumstances of the case, material on record and submissions of the Respondent before it, the Committee ordered that the name of that name of the Respondent - CA. Amar Tandon (M.No.072630), Lucknow be removed from the Register of members for a period of 03 (Three) months along with fine of Rs. 1,00,000/- (Rupees One Lakh).

Sd/-

(CA. (DR.) DEBASHIS MITRA)
PRESIDING OFFICER

Sd/-

(MRS. RANI NAIR, I.R.S. RETD.)
GOVERNMENT NOMINEE

Sd/-

(CA. RAJENDRA KUMAR P)
MEMBER

Sd/-

(CA. COTHA S SRINIVAS)
MEMBER

Date: 01.06.2022

Place: New Delhi

सही प्रतिलिपि होने के लिए प्रमाणित /
Certified to be true copy

Nisha Sharma

निशा शर्मा / Nisha Sharma
श्रीष्ठ कार्यकारी अधिकारी / Sr. Executive Officer
अनुशासनात्मक निर्देशालय / Disciplinary Directorate
इंस्टिट्यूट ऑफ चार्टर्ड एकाउंटेंट्स ऑफ इंडिया
The Institute of Chartered Accountants of India
आइसीएआई भवन, विश्वास नगर, शाहदरा, दिल्ली-110002
ICAI Bhawan, Vishwas Nagar, Shahdara, Delhi-110002

CONFIDENTIAL

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

[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/145/2016-DD/171/2016]-DC/962/2018]

In the matter of:

**Shri Saud Ahmad, Joint Director (Legal & Persecution),
Serious Fraud Investigation Office,
Ministry of Corporate Affairs, Govt of India
2nd Floor, Paryavaran Bhawan,
CGO Complex, Lodhi Road
NEW DELHI - 110 003**

... Complainant

-Vs-

**CA. Amar Tandon (M.No.072630),
LG-1, Pinky Apartment,
93-N, Dali Bagh,
Near Ganna Sansthan
Lucknow – 226001**

... Respondent

MEMBERS PRESENT AS ON 14.06.2021:

**CA. (Dr.) Debashis Mitra, Presiding Officer, through Video Conferencing
Shri Rajeev Kher, I.A.S.(Retd.), Government Nominee, through Video
Conferencing**

CA. Amarjit Chopra, Government Nominee, through Video Conferencing

CA. Babu Abraham Kallivayalil, Member, through Video Conferencing

CA. Rajendra Kumar P, Member, present in person

DATE OF FINAL HEARING : 14.06.2021 (through Video Conferencing)

PARTIES PRESENT:

Complainant Representative : Ms. Sumaiya Bansal (Prosecutor)
Counsel for Complainant : Mr. Kunal Rawat, Advocate
Respondent : CA. Amar Tandon
Counsel for Respondent : CA. C.V. Sajan

CHARGES IN BRIEF:

1. The Committee noted that in present case the Complainant Department i.e. SFIO had conducted investigation into the affairs of the M/s Basil International Ltd. (hereinafter referred to as the "**Company/ BIL**") and its group Companies including M/s Nixcil Pharmaceuticals Specialities Ltd. (hereinafter referred to as the "**Nixcil/ NPSL**") and M/s Vamshi Chemical Ltd. (hereinafter referred to as the "**Vamshi/ VCL**") vide MCA Order dated 4th July, 2012 and thereafter submitted its investigation report dated 31st March, 2014. Charges in which the Respondent was held Prima-facie guilty by Director (Discipline) are as under:-

A. With respect to Nixcil Pharmaceuticals Specialities Ltd.

- (i) The Respondent was unable to explain the variation of authorised share capital of Nixcil as per MOA of Rs. 175 crores comprising of 17.50 crores equity shares of Rs.10/- each whereas as per Balance Sheet the share capital has been split into equity shares and as preference shares.
- (ii) The Respondent did not check the agreement of investment (interest free-loan) made by Nixcil in Vamshi of Rs. 110.11 crores in 2007-08 which was squared off in 2010-11.
- (iii) That the Respondent failed to collect direct confirmation from loanees parties, creditors and bankers regarding their balances shown in the financial statements audited by him during his periods of audit.

B. With respect to M/s Vamshi Chemicals Ltd.

- (i) The Respondent failed to report that pre-operative expenses of Rs. 82.73 crores in the F.Y. 2010-11 were capitalized separately despite the Company was in operations.

Brief facts of the Proceedings:

2. On the day of hearing held on 14/06/2021, the Committee noted that the Complainant Department was represented by Ms. Sumaiya Bansal, Prosecutor, SFIO along with Counsel Mr. Kunal Rawat, Advocate through Video Conferencing mode. The Respondent was also present before it along with his counsel CA. C.V. Sajan through Video Conferencing mode. At the outset, the Committee enquired from the parties that since the composition of the Committee had changed further to the hearing held on 24th December 2020, as to whether they wished to have a de-novo hearing. The Counsel of the Respondent on the same submitted that the Committee may continue from the stage it was left at the time of last hearing. The Complainant/ their Counsel did not object to the option opted by the Respondent in this regard. Accordingly, the Committee continued hearing in the instant matter from the stage it was left at the time of last hearing while considering papers already on record.

2.1 Thereafter, the Committee asked the authorized representative from Complainant Department to present the charges. The Counsel for the Complainant Department read the charges before it. The Counsel for the Respondent presented arguments in defense and presented matter as per charges alleged upon the Respondent and relied upon his written submissions on record and presented the matter in detail. The Complainant and the Respondent were examined by the Committee. After considering all papers available on record and after detailed deliberations and recording the submissions, the Committee decided to conclude the hearing and reserved its decision.

2.2 Thereafter this matter was placed in meeting dated 25th June 2021 for consideration of the facts and arriving at a decision by the Committee.

MEMBERS PRESENT ON 25.06.2021:

- CA. (Dr.) Debashis Mitra, Presiding Officer, through Video Conferencing
- CA. Amarjit Chopra, Govt. Nominee, through Video Conferencing
- CA. Babu Abraham Kallivayalil, Member, present in person
- CA. Rajendra Kumar P, Member, through Video Conferencing

Findings of the Committee

3. The Committee noted that according to the Investigation Report of SFIO, the Respondent was the Statutory Auditor of M/s Basil International Ltd. and its group Companies as per the details given below:-

Name of the Company	Year
Nixcil Pharmaceuticals Specialities Ltd.	2007-08, 2010-11 and 2011-12
M/s Vamshi Chemicals Ltd.	2010-11 and 2011-12

Findings on Charges relating to M/s Nixcil Pharmaceuticals Specialities Ltd.

4. The Committee with regard to charge relating to variation in authorised share capital of M/s Nixcil Pharmaceuticals Specialities Ltd., noted that in the Memorandum of Association (MOA) filed on 14.04.2009 there was no mention of preference share capital whereas the Preference Share Capital was disclosed in the Balance Sheet for FY 2007-08. The Committee also noted that resolution amending Articles & Memorandum of Association approving issuance of preference share capital was passed at a later date i.e. on 21/10/2009 and the relevant Form 23 in this regard i.e., for registration of resolutions and agreements was filed with MCA on 11/11/2009. The Committee hence noted that this was a clear case of ultra-virus action on the part of the aforesaid Company in question as far as issue of preference share capital is concerned and also a case of professional misconduct on the part of the Respondent for non-application of due diligence and not-reporting/non-qualifying of this fact in his audit report. Therefore, the Committee held

him Guilty of Professional Misconduct falling within the meaning of Item (6) and (7) of part I of Second Schedule to the Chartered Accountants Act, 1949 in respect of this charge.

5. With respect to next charge that the Respondent did not check the agreement of investment (interest free-loan) made by Nixcil in Vamshi, the Committee noted that the Investment in Vamshi was made and squared off at face value. The Committee also was of view that the transaction was for sale of shares and not sale of business for which agreement is not required. The Committee was opined that normally when the shares are brought or sold these are made through transfer deed and no separate agreement are required. Hence the Committee decided to exonerate the Respondent from this charge.
6. With respect to third charge that the Respondent failed to collect direct confirmation from loanees parties, creditors and bankers regarding their balances shown in the financial statements audited by him during his periods of audit, the Committee noted that although there was admitted lapse in this regard by the Respondent, but when it enquired from the Complainant Department as to whether there were differences in the bank balances when compared with bank statements, the latter submitted that there were no assertions or aversions with regard to differences. The Committee looking into the fact that no contra evidences were brought on record by the Complainant that the reliance by Respondent on the management with respect to balances was incorrect, decided to exonerate the Respondent on this charge too.

Findings on Charges relating to M/s Vamshi Chemicals Ltd.

7. With respect to allegation relating The Respondent failed to report that pre-operative expenses of Rs. 82.73 crores in the F.Y. 2010-11 were capitalized separately despite the Company was in operations, the Committee noted that in previous years (i.e. from 2005-06 onwards) these expenses were shown in the same manner. The Committee further noted that the Complainant Department did not contradict the Respondent version that

disclosure by previous auditor was accepted by the Complainant Department.

- 7.1 The Committee also noted the submissions of the Respondent's Counsel that said expenditure relates to Company's project in Asansol and these includes administrative expenditure attributable to plant in Asansol and these expenses were separately allocated right from 2005-06 onwards. The Committee was also convinced with his submissions that as per policy of the Company these amount were added under Capital work in progress and after completion of a section is completed, the related expenditure were capitalized.
- 7.2 The Committee looking into the same and defence of the Respondent was convinced that these expenses were of Capital nature and disclosure made the Respondent was in terms of prevailed accounting policies of the Company. Accordingly the Committee hold the Respondent Not Guilty of this charge.

CONCLUSION

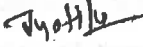
8. In view of the findings as mentioned in above paragraphs, the Committee is of the considered opinion that the Respondent is Guilty of 1st charge only as mentioned in para 4 above. Accordingly, the Respondent is **GUILTY** of Professional Misconduct falling within the meaning of Item (6) and (7) of Part-I of Second Schedule to the Chartered Accountants Act, 1949.

sd/-
(CA. (DR.) DEBASHIS MITRA)
PRESIDING OFFICER

(approved & confirmed through email)
(CA. AMARJIT CHOPRA)
GOVERNMENT NOMINEE

(approved & confirmed through email)
(CA. BABU ABRAHAM KALLIVAYALIL)
MEMBER

(approved & confirmed through email)
(CA. RAJENDRA KUMAR P)
MEMBER


प्रमाणित सत्य प्रतिलिपि / Certified true copy

Date : 19.1.2022
Place : New Delhi

सीए. ज्योतिका ग्रोवर / CA. Jyotika Grover
सहायक सचिव / Assistant Secretary
अनुशासनात्मक निदेशालय / Disciplinary Directorate
इंस्टीट्यूट ऑफ चार्टर्ड एकाउंटेंट्स ऑफ इंडिया
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