



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

[PR/166/2018-DD/243/2018-DC/1423/2021]

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. : [PR/166/2018-DD/243/2018-DC/1423/2021]

In the matter of:

DBS Bank Limited,

Through its Authorized Signatory,

Sh. Nitin Parmar

Express Towers, 19th Floor,

Nariman Point,

MUMBAI – 400021

.....Complainant

Versus

CA. Amaranath A (M.No. 213629)

No. 3440, G1, S R Harmony

4th Cross, 10th Main

Indiranagar, Hal 2nd Stage

Near Central Bank of India

BENGALURU-560 038

.....Respondent

Members present:

CA. Aniket Sunil Talati, Presiding Officer

Smt. Anita Kapur, Member (Govt. Nominee)

Shri P.K. Srivastava, Member (Govt. Nominee)

CA. Vishal Doshi, Member

CA. Sushil Kumar Goyal, Member

Date of Hearing: 25.04.2022 through Video Conferencing

Place of Hearing: New Delhi

Party Present:

(i) CA. Amaranath A – Respondent (appeared from his personal location)

1. That vide report dated 8th February 2022 (copy enclosed), the Disciplinary Committee was of the opinion that **CA. Amaranath A (M.No. 213629)** was **GUILTY** of Professional and Other Misconduct falling within the meaning of Items (5), (6), (7), (8) and (9) of Part I of Second Schedule as well as Item (2) of Part IV of the First Schedule to the Chartered Accountants Act, 1949 with respect to the allegation that Respondent being the statutory auditor of M/s Opto Circuits (India) Ltd. (hereinafter referred to as the "**Company**") for F.Y. 2015-16 failed to report about the material misstatement stated in the financial statement in relation to the loan taken by the Company from the Complainant Bank.

It was stated that taking advantage of assignment of M/s Cardiac Science Corporation (hereinafter referred to as "**CSC**" or "**step-down subsidiary**") loan portfolio to third party by DBS Singapore, the Company had filed the annual report/financial statements for the year 2015-16 (**C-9 to C-130**) wherein it was stated that during F.Y. 2014-15, the said loan of the Company was restructured with

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the Bank, and as a result the loan taken from the Complainant Bank got extinguished. It was alleged that it was misrepresentation of material fact in the financial statements (C-55 to C-77) which was completely false and made in order to defraud the stakeholders and that the Respondent, being Statutory Auditor of the Company, was aware of whole transaction but failed to disclose the material fact in the financial statements and also failed to report (C-49 to C-54) such material misstatement known to him. It was further alleged that the Respondent also acted in connivance with the Company to defraud the creditors, investors, shareholders and general public who were interested in the Company's affairs.

It was noted that Item (5), (6), (7), (8) and (9) of Part I of Second Schedule and Item (2) of Part IV of the First Schedule states as under:-

Second Schedule

PART I: Professional misconduct in relation to chartered accountants in practice

A chartered accountant in practice shall be deemed to be guilty of professional misconduct, if he-

...

"(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"

"(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"

"(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" and

"(9) Fails to invite attention to any material departure from the generally accepted procedure of audit applicable to the circumstances"

First Schedule

PART IV: Other misconduct in relation to members of the Institute generally

A member of the Institute, whether in practice or not, shall be deemed to be guilty of other misconduct, if he-

...

"(2) Brings disrepute to the profession/Institute as a result of his action whether or not related to his professional work"

2. An action under Section 21B (3) of the Chartered Accountants Act, 1949 was contemplated against the Respondent and communication dated 11th April, 2022 was addressed to him thereby granting him an opportunity of being heard in person and/or to make oral/ written representation before the Committee on 25th April, 2022 through video conferencing.

3. The Respondent appeared before the Committee on 25th April, 2022 through video conferencing and made his oral representation on the findings of the Disciplinary Committee. At the



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outset, the Respondent submitted that imposition of Items (5), (6), (7), (8) and (9) of Part I of Second Schedule as well as Item (2) of Part IV of the First Schedule to the Chartered Accountants Act, 1949 were unjustified. Regarding the extinguishment of loan liability of Rs. 128 Crores towards Complainant Bank from the financial statement of the Company as at 31/03/2016, the Respondent stated there was a contract of restructure of loan that took place in December 2014. The bank had recovered their dues on the strength of that restructure agreement in which all the dues of the parent and subsidiary were combined and were capable of being offset. It was in this background that the offsetting (extinguishment of liability) of loans was done by the Company and that it was well within his right to form own professional judgment to agree with accounting treatment adopted in the books of accounts of the Company for the alleged transaction. His act was bonafide. His working papers demonstrated application of mind on every crucial aspect around the loan liability set off of Rs. 128 Crores. According to the best of the judgment possible at the time of the audit of 2015-16, a detailed disclosure on the *liabilities shifted* was found sufficient. The Respondent, further, submitted that it was not possible for him to get the accounting transaction of offsetting liability undone by the Company, as the accounting decision was the prerogative of the company management.

3.1 He contended that it was a matter of his professional judgment to decide whether such accounting treatment was required to be qualified in the audit report. Though the Respondent felt that no audit qualification was necessary in 2015-16 but in view of subsequent developments appropriate audit qualification was done in 2016-17. There could be difference of opinion. However, challenging the decision taken by an auditor at the time of audit was unjustified. The Hon'ble Committee overlooked the crucial fact that the contentious transaction was not concealed from the financial statements. So long as the transaction of offsetting was clearly disclosed, users of financial statements were able to understand the accounting treatment given to the liability.

4. The Committee considered both the oral as well as written representation dated 18th April, 2022 as made by the Respondent on the findings of the Disciplinary Committee. At the outset, the Committee noted that the matter before it is only pertaining to F.Y 2015-16. In the Notes to accounts of Standalone Financial Statements, it was stated with respect to loan liability of Rs. 128 Crores, that the said loan of the Company was restructured with the Bank during F.Y. 2014-15, and as a result the loan taken from the Complainant Bank got *extinguished* and that there was no specific reporting by the Respondent in his audit report for the period in context of the extinguished liability. However, subsequently, in Audit Report of next FY 2016-17 on standalone financial statements of the Company the Respondent reported in his audit report under 'Emphasis of Matter' since dispute arose between the Complainant Bank and the Company and the matter was sub-judice before the High Court.

4.1 At the outset, the Committee noted that the Respondent was well aware of the fact that charge created against the loan liability was not cleared indicating that the liability to the bank was outstanding as on the date of balance sheet. Thus, the alleged act of the Company of transferring its liability to its subsidiary Company had resulted in understatement of liabilities of the Company for FY 2015-16. The Committee noted that a liability could be extinguished only when the party to the agreement extinguishes its right to claim money in favour of the loanee which is possible if the loan is repaid or the loanee is released of his obligation judicially or by loanee. However, as on the date of the balance sheet, there was neither any such judicial decision nor any arrangement between the Company and the Complainant Bank that the loan was repaid/settled. In fact the balances were transferred to a subsidiary and reason for such transfer was not clarified in the given response of the Company to the Respondent. The only basis was a legal opinion which was conditional and that the



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Respondent had failed to bring on record any corroborative evidence based on which he was convinced that the legal opinion given by the advocate could be relied upon which was obligatory on him as envisaged under SA 620, Using the Work of an Expert. It was, accordingly, noted that the Respondent had failed to conduct independent verification procedures as was warranted while conducting the audit and before issuing the audit report to certify the extinguishment of such a material liability. It was noted that standards on auditing requires the member to exercise his professional judgment so as to review the appropriateness of application of accounting principles, the need to obtain sufficient appropriate audit evidence and to modify his audit report when circumstances indicate there are material misstatements. In view of the lapses discussed, it is noted that the plea of the Respondent that he was well within his right to exercise his professional judgement was not sustainable. Thus, it was noted that by not reporting about the extinguishment of a material liability in his audit report, the Respondent had failed to report the material misstatement that existed in the financial statements and also failed to point out material departure from the audit procedures adopted as well as opinion expressed was not correct.

5. The Committee thus viewed that the misconduct on the part of the Respondent has been held and established within the meaning of Items (5), (6), (7), (8) and (9) of Part I of Second Schedule as well as Item (2) of Part IV of the First Schedule to the Chartered Accountants Act, 1949, read with Section 22 of the said Act and keeping in view the facts and circumstances of the case as aforesaid, ordered that the name of the Respondent **CA. Amaranath A (M.No. 213629)** be removed for a period of 6 (Six) months from the Register of members alongwith a fine of Rs. 50,000/- (Rupees Fifty Thousand Only) be levied upon him that shall be payable within a period of 3 (Three) months from the date of receipt of the Order and in case he failed to pay the same as stipulated, the name of the Respondent be removed from the Register of members for a further period of 1 (One) month as per the order of the Committee.

Sd/-
[CA. Aniket Sunil Talati]
Presiding Officer

Sd/-
[Smt. Anita Kapur]
Member (Govt. Nominee)

Sd/-
[Shri P.K. Srivastava]
Member (Govt. Nominee)

Sd/-
[CA. Vishal Doshi]
Member

Sd/-
[CA. Sushil Kumar Goyal]
Member

Date: 14.06.2022
Place: New Delhi

Jyotika
प्रमाणित सत्य प्रतिलिपि / Certified true copy

सीए. ज्योतिका गौवर / CA. Jyotika Grover
सहायक सचिव / Assistant Secretary
अनुशासनात्मक विदेशालय / Disciplinary Directorate
इंस्टीट्यूट ऑफ चार्टर्ड अकाउंटेंट्स ऑफ इंडिया
The Institute of Chartered Accountants of India
आइसीएआई भवन, विश्वास नगर, शाहदरा, दिल्ली-110032
ICAI Bhawan, Vishwas Nagar, Shahdara, Delhi-110032

CONFIDENTIAL

DISCIPLINARY COMMITTEE [BENCH – III (2021-22)]

[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-166-2018-DD-243-2018-DC-1423-2021

In the matter of:

**DBS Bank Limited,
Through its Authorized Signatory,
Sh. Nitin Parmar
Express Towers, 19th Floor,
Nariman Point,
MUMBAI – 400021**

....Complainant

-vs-

**CA. Amaranath A (M.No. 213629)
No. 3440, G1, S R Harmony
4th Cross, 10th Main
Indiranagar, Hal 2nd Stage
Near Central Bank of India
BENGALURU-560 038**

.....Respondent

MEMBERS PRESENT:

**CA. Nihar N Jambusaria, Presiding Officer
Smt. Anita Kapur, Member (Govt. Nominee)
Shri Ajay Mittal, Member (Govt. Nominee)
CA. Chandrashekar Vasant Chitale, Member**

Date of Final Hearing: 24th January, 2022

Place of Final Hearing: New Delhi

The following persons were also present:

- (i) CA. A. Amarnath - the Respondent
- (ii) CA R.G. Rajan and CA G. Somdas- the Counsels for the Respondent
(all appeared from their personal locations)

Charges in Brief:

1. The Committee noted that in the *Prima Facie* Opinion formed by Director (Discipline) in terms of Rule 9 of the Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007, the Respondent was held *prima facie* guilty of all charges except in respect of allegation discussed in paragraph 8.5.11 of *Prima Facie*

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Opinion. However, the Committee on consideration of prima facie opinion as formed by Director (Discipline) decided to proceed with the inquiry in respect of all the charges levelled against the Respondent and the Respondent was held *prima facie* guilty of Professional and Other Misconduct falling within the meaning of I Item (5), (6), (7), (8) and (9) of Part-I of Second Schedule to the Chartered Accountants Act, 1949 as well as Item (2) Part IV of First Schedule to the Chartered Accountants Act, 1949. The said Items to the Schedule states as under: -

First Schedule

Part-IV

"(2) Brings disrepute to the profession/Institute as a result of his action whether or not related to his professional work"

Second Schedule

Part-I

"(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"

"(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"

"(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" and

"(9) Fails to invite attention to any material departure from the generally accepted procedure of audit applicable to the circumstances"

Brief background of the extant case:

2. The Complainant Bank had granted multiline working capital facility aggregating to INR 128 crores which was availed by M/s Opto Circuits (India) Ltd., (hereinafter referred to as "**Company**"). However, in view of the subsequent default by the Company, in repayment of the said credit facility, the Bank recalled the facilities by notice dated 29-08-2016 calling upon the Company to make payment of outstanding dues (including interest) of INR 177,84,07,832.21 as on 31st July 2016. It was further reported that DBS Singapore branch had also extended credit facilities to M/s Cardiac Science Corporation (hereinafter referred to as "**CSC**"), having its office in United States of America, which was a subsidiary of the Company. It was stated that the said

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transaction was independent and separate and did not have any connection to the working capital facility extended to the Company by the bank. CSC also committed default in discharging the liability and therefore, DBS Singapore had, by virtue of assignment, transferred / assigned the loan portfolio of CSC to Aurora Capital. It was also pertinent to mention that M/s Cardiac Science Corporation (CSC) was the subsidiary company of M/s Opto Cardiac Care Limited (hereinafter referred to as "OCCL") and thus, CSC was the step down subsidiary of M/s Opto Circuits (India) Limited i.e., the Company.

In the extant case, the aforesaid liability of Rs. 128 crores had been extinguished from the books of Company as at 31st March 2016 by transferring the same to its subsidiary company namely OCCL.

Allegations against the Respondent

3. The Respondent firm was the Statutory Auditor of the Company for FYs 2015-16 and 2016-17 and in view of the above background, it was alleged that taking advantage of assignment by DBS Singapore, the Company had filed the annual report for the year 2015-16 (C-9 to C-130) with all regulatory authorities including Registrar of Companies, stating that in the year 2014-15, the said loan of the Company was restructured with the Bank, and as a result got extinguished. It was stated that this misrepresentation of material facts in financial statements (C-55 to C-77), was completely false and made in order to defraud the creditors, investors, shareholders and the general class of people who were interested in its affairs.

3.1 Thus, in the **first allegation**, it was alleged that the Respondent being appointed as the Statutory Auditors of the Company was aware of whole transaction but failed to disclose the material fact in the financial statements of F.Y. 14-15 and also failed to report (C-49 to C-54) such material misstatement known to him. Thus, he did not exercise due diligence as required by a Statutory Auditor and also failed to obtain satisfactory information from the Company before auditing and certifying its financial statements.

3.2 In the **second allegation**, it was alleged that the Respondent also acted in connivance with the Company to defraud the creditors, investors, shareholders and general public who were interested in the Company's affairs.

Proceedings:

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4. At the time of hearing on 24th January 2022, the Committee noted that the Respondent along with his authorized Counsel appeared before it for hearing. Thereafter, they both gave declaration that there was nobody present except them in their respective room from where they were appearing and that they would neither record nor store the proceedings of the Committee in any form. The Committee noted that neither any adjournment request nor any communication was received from the Complainant and since at the time of last hearing on 17th December 2021, the Committee had afforded last opportunity to the Respondent to defend the extant matter against him, the Committee proceeded ahead in the matter.

The Committee thereafter noted that in pursuance to the direction of the Committee at the time of hearing held on 18th October 2021 to submit his Written Submissions alongwith evidences based on which the Respondent was convinced during FY 15-16 that the loan was extinguished and was not required to be reported upon in the audit report in compliance of the Standards of Auditing, the Respondent vide his e-mail dated 20th January 2022 had made the said submissions dated 18th January 2022. The Committee noted the submission and asked the Counsel for the Respondent to proceed ahead in the matter and make his final submissions on merits of the matter. The Counsel for the Respondent made his submissions in the matter. The Committee, thereafter, examined him on the facts of the case.

Based on the documents and information 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:

5. At the outset, the Committee noted that the Respondent had raised certain preliminary objections in the matter. He argued that the Complaint was liable to be rejected since the copy of resolution passed by the Complainant Bank for authorizing the Complainant to file the complaint with the Institute was not furnished. Further, he stated that the Complaint filed was time barred as the notice of complaint was served upon him after the lapse of 60 days as against the requirement of Rule 8 (1). Similarly, he raised the objection that DC proceedings held were time barred as the date of Prima facie Opinion was 12th Feb 21 whereas the first hearing was scheduled on 23rd July, 2021.

5.1 The Committee decided to address the preliminary objections of the Respondent before considering the merits of the matter. With respect to non-supply of document authorizing the

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Complainant to file the complaint, it was noted that Rule 3(4) of the Chartered Accountants (Procedures of Investigation of Professional and Other Misconduct and Conduct of Cases) Rules 2007 reads as follows

"A complaint filed by or on behalf of a company or a firm, shall be accompanied by a resolution, duly passed by the Board of Directors of the company or the partners of the firm, as the case may be, specifically authorizing an officer or a person to make the complaint on behalf of the company or the firm.

Explanation: In case of a bank or a financial institution, the general resolution or power of attorney authorizing an officer holding a particular position to file complaints on behalf of the bank or financial institution, shall be deemed to be specific resolution passed by the bank or financial institution concerned, for the purpose of these rules.

On review of documents available on record, it was noted that the power of attorney in favour of the Complainant was duly filed and hence the complaint was filed in accordance with the said rules, 2007.

5.2 As regards the objection of the Respondent that the Complaint filed was time barred in terms of Rule 8 (1), it was noted that irrespective of the dates being stated on the Complaint or its accompanying documents, it is the date of receipt of the Complaint which is relevant in the matter. It was noted that the said complaint was received on 12th June 2018 (the receipt date stamped on Form I)(C-1), hence, if the said complaint was served on the Respondent Firm on 10th Aug, 2018 (W-1), it was duly served within the time frame as envisaged under Rule 8(1).

5.3 With respect to Respondent's objection on time barred DC proceedings, it was noted that Rule 18(6), inter alia, states as follows:

*"(6) The Presiding Officer of the Committee shall fix a date, hour and place of hearing, which shall not **ordinarily** be later than 45 days from the date of receipt of prima facie opinion"*

It was viewed that the timelines prescribed in the said Rule is directory and not mandatory in nature in view of usage of word 'ordinarily'. There is no intention under this Rule to make any complaint defunct/ invalid merely on the ground that 45 days had lapsed in fixing the first

hearing after the receipt of prima facie opinion. It was viewed that such Rule could not take away the responsibility of the Committee to conduct investigation and complete the disciplinary proceedings which is a statutory duty under the provisions of the Chartered Accountants Act, 1949. Therefore, the said plea of the Respondent was observed to be not maintainable. Accordingly, the Committee decided to consider merits of the matter.

6. As regard the **first allegation**, the Committee noted that it was stated that taking advantage of assignment of CSC loan portfolio to third party by DBS Singapore, the Company had filed the annual report/financial statements for the year 2015-16 (C-9 to C-130) wherein it was stated that during F.Y. 2014-15, the said loan of the Company was restructured with the Bank, and as a result the loan taken from the Complainant Bank got extinguished. It was alleged that it was misrepresentation of material fact in the financial statements (C-55 to C-77) which was completely false and made in order to defraud the stakeholders and that the Respondent, being Statutory Auditor of the Company, was aware of whole transaction but failed to disclose the material fact in the financial statements and also failed to report (C-49 to C-54) such material misstatement known to him.

6.1. The Committee noted the submissions of the Respondent that when he queried the Management of the Company about its claim of the settlement of dues to DBS, it provided him with a detailed explanation as well as the legal opinion which clearly mentioned that the Company had settled DBS Bank's dues of INR 128Crores. He further submitted that it was the management of the Company that was vested with the responsibility of preparation and presentation of Financial Statement including Notes to Account which clearly disclosed the facts and as such was accepted by the Respondent on the basis of Legal Opinion obtained by the Company. It was with a bonafide belief, he relied on the legal opinion. He further argued that the prima facie opinion did not establish as to why he could not have relied on the given legal opinion. He also stated that the liability was neither understated nor misstated as on account of extinguishment of the loan of DBS, the amount was not taken to profit and loss account but transferred as payable to the subsidiary of the Company as it had settled the said liability.

6.2 The Committee further noted that in pursuance to the direction of the Committee to the Respondent at the time of hearing held on 18th October 2021 to submit his Written Submissions alongwith evidences based on which the Respondent was convinced during FY 15-16, that the

loan was extinguished and was not required to be reported upon in the audit report in compliance of the Standards of Auditing, the Respondent had primarily reiterated the submissions made earlier. Apart from that he also stated that before approaching the Company, he had requested DBS bank for confirmation vide letter dated 9th June 2016 by ordinary post. A copy of the said letter was produced on record. The said request was not replied by the Bank, so he requested the Company to obtain the confirmation.

7. The Committee on perusal of papers on record noted that in the Annual Report of the Company for the FY 2015-16 (C-9 to C-130), Note no. 5.1.B to Note No. 5A – Short Term Borrowings of Notes to Standalone financial statements of the Company for the FY 2015-16 (C-63) reads as under:

"5.1.B) The Company along with its stepdown subsidiary (Cardiac Science Corporation) had borrowed funds from DBS Bank Limited. In the year 2014-15, the said loan was restructured and as a part of the said process, Rs. 12,678.41 Lakhs borrowed by the company was also restructured. As per the terms of the agreement with DBS Bank Limited, upon default by stepdown subsidiary (Cardiac Science Corporation), the bank exercised their right and assigned the debts to a third party and also exercised proxy voting rights to take management control of company. As result of this, the loan borrowed by the company to the tune of Rs. 12,678.41 Lakhs stands extinguished (emphasis added)."

7.1 Further, from the copy of Audit Report issued on the Standalone financial statements of the Company for the FY 2015-16 (C-49 to C-54), it was noted that there was no specific reporting in context of the extinguished liability of Rs. 12,678.41 lakhs by the Respondent in his audit report for the period. However, subsequently, in Audit Report of next FY 2016-17 (W-13 to W-17) on standalone financial statements of the Company the Respondent has reported the following under 'Emphasis of Matter' paragraph:

"EMPHASIS OF MATTER

1. Company along with its step down subsidiary (Cardiac Science Corporation) had borrowed funds from DBS Bank Ltd. In the year 2014-15, the said loan was restructured and as part of the said process, Rs.12,678.41 lakhs borrowed by the company was also restructured. As per the

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terms of the agreement with DBS Bank Ltd, upon default by step down subsidiary (Cardiac Science Corporation), the bank exercised their rights and assigned the debts to a third party and also exercised proxy voting rights to take management control of the company. As a result of this, the loan borrowed by the company to the tune of Rs. 12,678.41 lakhs stands extinguished. DBS Bank has objected to the stand taken by the Company and also want to classify the loan as red flagged account and recommended for a forensic audit. The banks also have convened a Joint Lender Forum on the above matter.

The Company has raised objections to the stand taken by DBS Bank and moved the Court and obtained Injunction Order [Under Order F.R. NO: O.S./292/2017 dated 06th March, 2017 from the Hon'ble City Civil Court restraining the Bank [DBS bank] from

- A) Declaring the Company as Willful defaulters,*
- B) Classifying the company's loan account as substandard or red flagged account,*
- C) Appointing / conducting any forensic audit in the precincts of the company.*

*The Company also made a claim of USD 160.82 Million against DBS Bank Ltd vide its letter dated 24th January, 2017 and this claim is part of the above petition filed before the Hon'ble Court by the Company and that the matter is before the Hon'ble High Court. The Company has also informed all the other Banks in the above matter. **Since matter is sub-judice, we cannot express our opinion on the above matter and its impact on financial liability.**" (emphasis added)*

From the above, it was noted that for F.Y. 15-16, the Respondent had found that disclosure of the fact that on account of default by step down subsidiary, its management control was taken over by the Complainant Bank which had assigned the debt of the said step down subsidiary to the third party and as such the liabilities of extant Company stood extinguished was sufficient disclosure and as such not reported on the matter in his audit report of said period. However, in F.Y. 16-17, dispute occurred between the Company and the Complainant Bank regarding the liabilities extinguished/settled or not and as such he reported on the matter with emphasis in his audit report.

7.2 On perusal of documents available on record, it was noted there was a note on 'Audit Observations/Queries: Ref07/Opto/2016' dated 11.06.2016 (D-50) pertaining to observations

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made by the Respondent on the basis of his verification for F.Y. 15-16, which, interalia, state as under:

"Audit Observation Reference to DBS Bank Loans

With reference to the above we have come across the following observations:

1 ROC Charge is Not Cleared

2 Loan confirmation of balances not provided

3 On what basis DBS loan has been extinguished

4 Please let us know why contingent liability for this loan not been provided as there is no clear payment through bank has been noticed in the books of accounts

Please provide the related documentary evidences at the earliest"

In response to above, the Respondent received a letter dated NIL (D-51 to D-53) from the Company, some of the relevant paragraphs of the said letter (D-51 to D-53) are reproduced as under:

"We had referred the matter to our legal advisor who has gone through the various facility agreement executed with DBS Bank Ltd and expressed the opinion that consequently Supplemental Agreement (Single currency term facility and Uncommitted facility agreement dated 31 December 2014 and assignment dated 30th September 2015, DBS Bank Ltd Bangalore India loan of Rs 128 Crores has been set off with the transfer of securities. Date of Legal Opinion dated 4/1/2016 is furnished for your record.

We have extinguished the DBS Bank liability as on 31.03.2016, by transferring these liabilities to our wholly owned subsidiary Opto Cardiac Care Ltd since the Cardiac Science Corporation and Criticare Systems INC are the step down subsidiaries of the Opto Cardiac Care Ltd (Ledger extracts enclosed). Please note the following information will be provided as notes to accounts under short term borrowings

The Company along with its step down subsidiary (Cardiac Science Corporation) had borrowed funds from DBS Bank Ltd. In the year 2014-15, the said loan was restructured and as part of the said process, Rs.12,678.41 lakhs borrowed by the company was also restructured. As per the terms of the agreement with DBS Bank Ltd, upon default by step down subsidiary (Cardiac Science Corporation), the bank exercised their rights and assigned the debts to a third party and also exercised proxy voting rights to take

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management control of the company. As a result of this, the loan borrowed by the company to the tune of Rs. 12,678.41 lakhs stands extinguished in our books of account"

7.3 On perusal of above, the Committee noted the abstracts of ledger account as available on record and it was noted that from the books of the Company the advances made to step down subsidiary as well as the loans due to the Complainant Bank were transferred to its subsidiary OCCL. It was viewed that the fact of extinguishment of liability towards the Complainant bank under Notes to Accounts (C-63) of its financial statements for the FY 2015-16 was stated but it was not disclosed that the loans were extinguished by transferring the balances to its subsidiary i.e. M/s Opto Cardiac Care Limited. Further, it was viewed that a liability could be extinguished only when the party to the agreement extinguishes its right to claim money in favour of the loanee which is possible if the loan is repaid or the loanee is released of his obligation judicially or by loanee. However, as on the date of the balance sheet, there was neither any such judicial decision nor any arrangement between the Company and the Bank that the loan was repaid/settled. In fact the balances were transferred to a subsidiary and reason for such transfer was not clarified in the given response of the Company to the Respondent. The only basis was a legal opinion.

7.4 The Committee further perused the legal opinion dated 04.01.2016 (D-54 to D-55) brought on record by the Respondent and noted Point 7, 10, 11, 12 and 15 which read as under:

"7. The Recipient has referred to me for providing an opinion as to whether the DBS Bank Bangalore / Singapore has sold the entire loan portfolio or sold only partially the loan portfolio to Aurora Capital."

"10. No doubt that DBS Bank Ltd (Singapore, Bangalore) has joined hands and sold the asset of Cardiac Science Corporation to Aurora Capital."

"11. From a scrutiny of the various agreements, it appears initially that DBS Bank Ltd had not sold the India Loan to Aurora."

*"12. However, on further examination of the Document of Assignment of Open Ended Mortgage to secure present and future loans under chapter 25 of Title of 34 of the General Laws, DBS Bank Limited Bangalore has assigned the MCH Realty LLC real estate in the Town of North Kingstown, Rhode Island USA. **We are given to***

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understand that this was also one of the security provided by Opto to DBS Bank Bangalore against its India Loan to Opto.

"15. In view of the above and on perusal of the above agreements, read with the Assignment, I am of the opinion that the DBS Bank Ltd, Bangalore INDIA loan of Rs 128 Crores (approx.) has been set off."

7.5 The Committee viewed that the above legal opinion was conditional as discussed in point 12 above. However, it was noted that the Respondent had failed to bring on record any corroborative evidence based on which he was convinced that the legal opinion given by the advocate could be relied upon which was obligatory on him as envisaged under SA 620, Using the Work of an Expert, that interalia states as follows:

Evaluating the Adequacy of the Auditor's Expert's Work

12. *The auditor shall evaluate the adequacy of the auditor's expert's work for the auditor's purposes, including: (Ref: Para. A32)*

(a) The relevance and reasonableness of that expert's findings or conclusions, and their consistency with other audit evidence; (Ref: Para. A33-A34)

(b) If that expert's work involves use of significant assumptions and methods, the relevance and reasonableness of those assumptions and methods in the circumstances; and (Ref: Para. A35-A37)

c) If that expert's work involves the use of source data that is significant to that expert's work, the relevance, completeness, and accuracy of that source data. (Ref: Para. A38-A39)

13. *If the auditor determines that the work of the auditor's expert is not adequate for the auditor's purposes, the auditor shall: (Ref: Para. A40)*

(a) Agree with that expert on the nature and extent of further work to be performed by that expert; or

(b) Perform further audit procedures appropriate to the circumstances.

Thus, it was viewed that the Respondent had failed to conduct independent verification procedures as was warranted while conducting the audit and before issuing the audit report to certify the extinguishment of such a material liability. It was noted that the Respondent was well

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aware of the fact that ROC Charge was not cleared indicating that the liability to the bank was outstanding as on the date of balance sheet. Thus, the alleged act of the Company by transferring its liability to its subsidiary Company had resulted in understatement of liabilities of the Company for FY 2015-16. It was noted that the Respondent had argued that both the advances given to step down subsidiary as well as the loans taken from the Bank were transferred and hence there was no understatement of liabilities. The Committee viewed that advances to X party and Loan from Y party are separate transactions until or unless Y agrees to accept as X to be primary obligor to the loan. In the absence of such information, it was viewed that the transfer of balances to a subsidiary effectively made the balance sheet of the Company clean by wiping off the term loan payable to the Complainant Bank. Thus, it was viewed that by not reporting this fact in his audit report, the Respondent being Statutory Auditor of the Company for FY 2015-16, had failed to disclose material fact, in fact he failed to report the material misstatement that existed in the financial statements and also failed to point out material departure from the audit procedures adopted as well as opinion expressed was not correct. Accordingly, the Respondent is held GUILTY of Professional Misconduct falling within the meaning of Items (5), (6), (7) (8) and (9) of Part I of Second Schedule to the Chartered Accountants Act, 1949.

8. As regard the **second allegation**, the Committee noted that it was alleged that the Respondent also acted in connivance with the Company to defraud the creditors, investors, shareholders and general public who were interested in the Company's affairs. The Respondent in this regard submitted that the said charge was unsubstantiated.

8.1 The Committee noted that from audit observations raised by the Respondent that he was aware of the status of the liabilities when he had observed that ROC Charge in relation to loan was not clear and that the repayments were not made through bank leading to the requirement to create at least contingent liability against the said liabilities. However, thereafter, on receipt of the response from the Company, he seemed to get convinced merely with a legal opinion which was conditional and even opted not to further obtain evidence to understand if the said condition was justified before relying on it. This clearly indicate that the Respondent had instead of acting independently, relied on the decision taken by the management of the Company and even he justified the position taken by the Company in the dispute with the Bank and agreed with the treatment adopted that the transfer of liabilities to subsidiary was sufficient to extinguish

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liabilities of the Company which was blatantly incorrect against the generally accepted accounting principles. Further, when the Company raised claim against the Bank, he reported the matter with emphasis in the audit report of the subsequent period. It was pertinent to note here that the alleged liability amounted Rs. 128 crores which was significant and when the same was wiped off cleaning the balance sheet, the Respondent prefer to stay silent on the matter which was nothing but a deliberate act of misrepresenting a material fact for the benefit of the Company. Thus, it was viewed that the Respondent acted in connivance with the Company to the detriment of other stakeholders which was unbecoming of the chartered accountant. Thus in light of the same, the Committee was of the opinion that the Respondent was also **Guilty** of 'Other Misconduct' falling under Item (2) of Part-IV of First Schedule to the Chartered Accountants Act, 1949 in respect of instant allegation.

Conclusion:

9. In view of above noted facts and discussion, in the considered opinion of the Committee, the Respondent is GUILTY of 'Professional and Other Misconduct' falling within the meaning of Items (5), (6), (7), (8) and (9) of Part I of Second Schedule as well as Item (2) of Part IV of the First Schedule to the Chartered Accountants Act, 1949, read with Section 22 of the said Act.

Sd/-
[CA. Nihar N Jambusaria]
Presiding Officer

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

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

Sd/-
[CA. Chandrashekhar Vasant Chitale]
Member

DATE: 8th February, 2022

PLACE: New Delhi

प्रमाणित सत्य प्रतिलिपि / Certified true copy
सीए. मोहिता खन्ना / CA. Mohita Khanna
सहायक सचिव / Assistant Secretary
अनुशासनान्तक निदेशालय / Disciplinary Directorate
इंस्टीट्यूट ऑफ़ चार्टर्ड एकाउंटेंट्स ऑफ़ इंडिया
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