



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

[PR/267/2016-DD/292/2016-DC/1384/2020]

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.: PR/267/2016-DD/292/2016-DC/1384/2020

In the matter of:

Mr. N. Rajashekara

Central Bureau of Investigation
Bank Securities & Fraud Cell
Head of Branch, No. 36, Bellary Road,
Bangalore-560 032

.....Complainant

Versus

CA. Chandan Chauhan (M. No. 401474)

M/s C.S. Chauhan & Associates

Chartered Accountants,
No. 303, Sree Balaji Apartments,
7-1-67, Dharam Karam Road, Ameerpet,
Hyderabad – 500 016

.....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. Chandan Chauhan – 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. Chandan Chauhan (M. No. 401474)** was **GUILTY** of Professional and Other misconduct falling within the meaning of Items (4), (6), (7) and (8) of Part I of the Second Schedule, Item (1) of Part II of the Second Schedule and Item (2) of Part IV of First Schedule to the Chartered Accountant Act, 1949 with respect to the allegation that the figures of financial statements of M/s. Sheetal Refineries Ltd. (hereinafter referred as the 'Company') certified by him for financial year 2010-2011 and 2011-12 were manipulated in order to get credit facilities of Punjab National Bank as the said Balance Sheets of the Company certified by the Respondent reported the share application money at Rs. 10 crore and Rs. 26 crore respectively which on examination by the Complainant Department, it was found that the firms stated to have contributed for share application money, denied having paid any money to the Company. Further, various discrepancies/variations with respect to Share application money, Unsecured loans, Sundry Debtors and Sundry Creditors were pointed out by the Complainant Department when the set of financial statements of the Company for the F.Y 2010-11 certified by the Respondent were compared to the set of Financial Statements as certified by CA. S.B. Kabra. It was further alleged that the Respondent had acted as additional



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Director of the Company during the period from 24/01/2011 to 30/01/2012, and signed the Statutory audit report for Financial Year 2010-2011 on 01/09/2011 while he was Additional Director of the Company.

It was noted that Item (2) of Part IV of First Schedule, Items (4), (6), (7) and (8) of Part I of the Second Schedule and Item (1) of Part II of the Second Schedule to the Chartered Accountant Act 1949 state 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

"(4) expresses his opinion on financial statements of any business or enterprise in which he, his firm, or a partner in his firm has a substantial interest"

"(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"

Part II

"(1) contravenes any of the provisions of this Act or the regulations made thereunder or any guidelines issued by the Council"

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 representations on the findings of the Disciplinary Committee. The Committee considered the oral as well as his written representation dated **14th March, 2022** wherein the Respondent had at the outset submitted to have not agreed with the findings of the Hon'ble Disciplinary Committee. The Respondent further requested for lenient view in the matter against him on account of seventeen years of unblemished career as a practicing Chartered Accountant, dependent upon his practice as only source of income, liability towards his family consisting of two daughters, wife and elderly parents and that he had already suffered due to pendency of disciplinary proceedings. Further, he assured the Committee that he would be more careful while carrying his professional duties in future. The Respondent submitted that he was in the process of establishing his practice when the incident happened. He acted in complete good faith without any mala-fide. His client took advantage of his faith and trust. He was not personally benefitted from any of the impugned events, and it is amply clear from the fact that no chargesheet was filed against him. Accordingly, he prayed the Committee to take sympathetic and lenient view in his favour.

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4. The Committee noted that in extant case there were two sets of financial statements for F.Y 2010-11, while one set of Financial Statements were certified by CA. S. B. Kabra, partner of Ms/. S.B. Kabra & Co. (C-829 to C-850), the other set of Financial Statements for same financial year submitted to Punjab National Bank was signed by the Respondent (C-211 to C-227). It was noted there were financial and other documents available on record which indicate that CA.S.B. Kabra was associated with the Company since 2005 and financials certified by him were being regularly filed with ROC including that of F.Y 2010-11 whereas the financials certified by the Respondent were submitted with Punjab National Bank to obtain enhanced credit facilities. In the alleged financials of the Company for the F.Y 2010-11 as certified by the Respondent, there were discrepancies in context of share application money, unsecured loans and creditors. It was noted that in order to justify the alleged discrepancies, the Respondent had produced on record a Management representation letter dated 01/07/2012 (W-29), wherein it was stated that "the parties whose balances are appearing in the balance as on 31.03.2012 under head "Unsecured Loans" have given their consent to include the same from their credit balances with the Company". It was noted that firstly the said representation pertained to financial year 2011-2012 and not for year 2010-2011 which was subject year of the instant complaint and that conversion of loans/balances into equity could have never been possible by only obtaining management representation letter. Such event required a resolution be passed alongwith obtaining the approval of the then existing shareholders because such decision affected their interest in the Company. Further, it was noted that the Complainant Department had produced on record the statement recorded on Oath as well as letters received from parties that were stated to have contributed the alleged share application money wherein the said parties had clearly denied the fact that there was any balance with the Company and that they had not given any consent to the Company to treat balance amount as share application money. Moreover, in response to letter of CBI, certain firms in their letters had clearly mentioned that neither any investment was made by them in Share Application money of the Company nor any unsecured loans was lent at any point of time and even that there was no balance as on 31.03.2011/ 2012. In the absence of any concrete evidence to establish that the Respondent had adopted independent reasonable verification procedure to make the adjustments as appearing in the financials certified by him, it was noted that the Respondent had not only failed to gather sufficient evidence to form opinion on alleged financial but also failed to report material misstatement appearing in the financial statements. Thus, there was violation of Items (6), (7) and (8) of Part I of the Second Schedule to the Chartered Accountants Act, 1949.

4.2 The Committee, with respect to the charge that Respondent had acted as additional Director of the Company during the period from 24/01/2011 to 30/01/2012 and had also signed the Statutory audit report for Financial Year 2010-2011 on 01/09/2011, while he was Additional Director of the Company, noted that as per documents available on record viz annual report, notice to annual general meeting, annual return and respective e-forms for the relevant FY 2010-11 and FY 2011-12 it was evident that the Respondent had held the directorship of the Company till 30th Jan, 2012 whereas as per the contention of the Respondent, there was no dispute that the Respondent was additional director of the Company from 24/01/2011 till 30/03/2011 and that he had conducted the audit of the period from 1st April 2010 to 31st March, 2011 which include the period from 24th Jan, 2011 to 30th March, 2011 when the Respondent had also acted as additional Director of the Company thereby jeopardizing the requirement of independence. The Committee noted as per SA 200, "Guidance Note on Independence of Auditors" as well as Code of ethics, in the case of an audit engagement it is in the public interest that the auditor be independent of the entity subject to the audit. Such independence include both independence of mind and independence in appearance. The auditor's independence from the entity safeguards the auditor's ability to form an audit opinion without being affected by influences that might compromise that opinion. It was further noted that a member is expected to interpret the requirement regarding independence much more strictly than

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that as the law required and he should not place himself in a compromising situation or in that which jeopardised his independence. Accordingly, it was viewed that in light of such requirements, the act of the Respondent in holding the position as the statutory auditor of the Company for the F.Y. 2010-11 and signing the audit report on 1st September 2011 while acting as additional Director of the Company during the period from 24/01/2011 to 30/01/2012 was a clear conflict of interest and duty which was in violation of the intent of the provisions envisaged under Item (4) of Part I of the Second Schedule to the Chartered Accountant Act 1949 and is not expected of a Chartered Accountant who is expected to maintain high standards of conduct in his profession.

5. The Committee thus viewed that the Professional and Other misconduct on the part of the Respondent has been held and established within the meaning of Items (4), (6), (7) and (8) of Part I of the Second Schedule, Item (1) of Part II of the Second Schedule and Item (2) of Part IV of First Schedule to the Chartered Accountant Act, 1949 and keeping in view the facts and circumstance. of the case as aforesaid ordered that the name of the Respondent **CA. Chandan Chauhan (M. No. 401474)** be removed for a period of 2 (Two) years from the Register of members alongwith a fine of Rs. 25,000/- (Rupees Twenty Five 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 for a further period of 1 (One) month from the Register of members as per the order of the Committee. The said punishment shall run concurrently with the punishment awarded in another matter against the Respondent in case reference no. PR/63/14/DD/172/2014/DC/790/2018.

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

प्रमाणित सत्य प्रतिज्ञा, 2022 copy

सी.ए. ज्योतिका गोवर / CA. Jyotika Gower
सहायक सचिव / Assistant Secretary
अनुशासनात्मक निदेशालय / Directorate
इंस्टीट्यूट ऑफ चार्टर्ड अकाउंटेंट्स ऑफ इंडिया
The Institute of Chartered Accountants of India
आइ सी ए आई ब्लाक, पश्चिमी नए दिल्ली, दिल्ली-110032
ICAI Bhawan, West Block, New Delhi, 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-267/2016-DD/292/2016/DC/1384/2020

In the matter of:

Mr. N. Rajashekara

Central Bureau of Investigation
Bank Securities & Fraud Cell
Head of Branch, No. 36, Bellary Road,
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Versus

CA. Chandan Chouhan... (M. No. 401474)

M/s C.S. Chauhan & Associates

Chartered Accountants,
No. 303, Sree Balaji Apartments,
7-1-67, Dharam Karam Road, Ameerpet,
Hyderabad – 500 016

.....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: 17th December, 2021 through VC

Place of Final Hearing: New Delhi

The following persons were also present:

i) **Ms. Vinithra Srinivasan, Advocate – Counsel for the Complainant Bank**

ii) **CA. Chandan Chouhan – Respondent**

(both appeared from their respective personal location)

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 Professional Misconduct Items

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(4), (6), (7) and (8) of Part I of the Second Schedule, Item (1) of Part II of the Second Schedule and Item (2) of Part IV of First Schedule to the Chartered Accountant Act 1949. The said Item 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

"(4) expresses his opinion on financial statements of any business or enterprise in which he, his firm, or a partner in his firm has a substantial interest"

"(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"

Part II

"(1) contravenes any of the provisions of this Act or the regulations made thereunder or any guidelines issued by the Council"

Brief background of the extant case:

2. The Committee noted that as per annual report of the M/s. Sheetal Refineries Ltd. (hereinafter referred as **the Company**) for financial year 2010-2011, the Respondent was appointed as additional director of the Company for the period from 24th January, 2011 to 30th January, 2012. There were two sets of financial statements for F.Y 2010-11, while one set of Financial Statements were certified by CA. S. B. Kabra, partner of Ms/. S.B. Kabra & Co. (C-829 to C-850), the other set of Financial Statements for same financial year submitted to Punjab National Bank was signed by the Respondent (C-211 to C-227).\

3. Against the aforesaid background, the Committee noted that the Complainant had raised following two allegations against the Respondent:

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1) As regard the **first allegation**, it was alleged that figures in set of financial statements of the Company certified by the Respondent for financial year 2010-2011 and 2011-12 (**C-211 to C-227**) were manipulated in order to get credit facilities of Punjab National Bank as the said Balance Sheets of the Company certified by the Respondent reported the share application money at Rs. 10 crore and Rs. 26 crore respectively but on examination by the Complainant Department, the firms stated for share application money, denied having paid any money to the Company. Further, various discrepancies/variations with respect to Share application money, Unsecured loans, Sundry Debtors and Sundry Creditors were pointed out by the Complainant when the set of financial statements of the Company for the F.Y 2010-11 certified by the Respondent were compared to the set of Financial Statements as certified by CA.S.B. Kabra (**C-829 to C-850**).

2) As regard the **second allegation**, it was alleged that the Respondent had acted as additional Director of the Company during the period from 24/01/2011 to 30/01/2012, and also signed the Statutory audit report for Financial Year 2010-2011 on 01/09/2011 while he was Additional Director of the Company.

Proceedings:

4. At the time of hearing on 17th December 2021, the Committee noted that the both the Complainant's Counsel and the Respondent appeared before it. The Respondent sought adjournment stating his main counsel; Mr. Ashish Makhija was travelling and therefore was not available to defend the matter against him. The Committee noted that the ground of non-availability of Authorized Counsel had been the regular ground on which the Respondent had been seeking adjournment from time to time on one pretext or the other which could not treated as valid ground to request for adjournment in the matter as per CA Rules 2007. The same was intimated to the Respondent in past as well. The Committee noted that sufficient opportunities and co-operation had been extended in the alleged matter in terms of principles of natural justice and that the Respondent had accordingly, been informed about rejection of his adjournment request and that availability of the main counsel being not valid ground to seek adjournment under CA Rules, 2007.

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It was also noted that for extant hearing the main Counsel had informed about his engagement with one of the Institute's programme arranged by Coimbatore Branch of ICAI which had been confirmed by the Branch stating his engagement being only from 10am to 12.00noon and accordingly, hearing time in the matter was re-scheduled to 12.15pm still the Main Counsel chose to seek adjournment showing his availability only from Jan 1, 2022 to Jan 16, 2022. It was viewed that sufficient opportunities and co-operation had been extended in the extant matter. The Committee considered the fact that the matter was pending for long and that last opportunity had been granted to the Respondent to defend his case, still his main Counsel was not available to defend the matter. Accordingly, the Committee decided to proceed in the matter.

The Committee asked the Respondent to present his defence in the matter to which he expressed his inability and requested for time. The Committee thereafter directed the Respondent to file his Written Submissions in the matter within 7 days of the date of hearing with a copy of the Complainant who might file his rejoinder, if any, within next 7 days thereafter. With the aforesaid directions, hearing in the matter was concluded and the judgment was reserved.

4.1 Thereafter, on 24th January 2022, the Committee noted that the Respondent vide his e-mail dated 24th December 2021, submitted his Written Submissions in the matter as directed by the Committee but the Complainant opted not to submit his Rejoinder on the Written Submissions of the Respondent. Accordingly, the Committee considered the documents available on record alongwith oral and written submissions made by both the parties before it and accordingly decided on the matter.

Findings of the Committee:

5. At the outset, the Committee noted that the Respondent vide his Written submissions dated 12th February 2021 had requested for an opportunity to cross-examine 19 (nineteen) witnesses whose statements, according to him, were relied upon by the Complainant for filing complaint against him with the Director (Discipline) of the Institute. The Committee considered the said request, at its hearing held on 21st June, 2021, and asked the Counsel for the Respondent to show if any adverse inference was drawn from the said statements of the requisite witnesses by the Director (Discipline) in his prima facie opinion based on which the extant disciplinary proceedings of the Committee had

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been initiated. It was noted that the Counsel could not submit any thing in this regard but insisted to obtain permission for examination of the enlisted witnesses. Thereafter, the Committee considered the said request in light of the allegations made against the Respondent, applicable laws and regulations as well as documents available on record. After due deliberation on the same, it was viewed that the Respondent was not able to put forth the relevance for summoning numerous witnesses for examination before the Committee. Accordingly, the Committee disallowed the said request for summoning the enlisted 19 (nineteen) witnesses on the grounds that no representation was made by the Respondent to rationalize the reasons for summoning 19 (nineteen) witnesses for deposition before the Committee and thus, it appeared to the Committee, that it was made for the purpose of vexation or delay or for defeating the ends of justice in the matter.

6. The Committee before proceeding to give its findings on merits of the case, also noted that certain preliminary objections had been raised by the Respondent against the Committee's proceedings in the matter stating that in total disregard of the CA Rules 2007 and without completing the process, the Respondent was suddenly asked by the Committee, at the hearing held on 17th December, 2021, to argue the matter who was not being represented by his authorized Counsel being pre-occupied. The Respondent further objected stating that he requested for adjournment of hearing on grounds of pre-occupation of his authorized Counsel to any of the dates in the next fortnight when the Committee had scheduled some more hearings, but the request so made by the Respondent was rejected in complete disregard to the principles of natural justice and thus disallowed an opportunity to present his case before the Committee through his Counsel.

Further, he submitted that the matter was not delayed due to the Respondent in the past. On the contrary, the suo moto adjournments were granted by the Disciplinary Committee on two earlier occasions at the last moment despite the readiness of the Respondent and his counsel to appear. Thus, as per him, the process followed by the Committee was against the principles of natural justice. Firstly, the Respondent was denied an opportunity to make oral submissions and secondly, the Complainant was granted an opportunity to file rejoinder against written submissions of the Respondent behind his back. Thus, he argued that the Respondent would not have any opportunity

to meet the averments made in the rejoinder by the Complainant. This would have been possible only in personal hearing and oral submissions being made. Hence, as per him, the process adopted by the Committee during its proceedings was totally incorrect and untenable.

The Committee noted that the hearing in the extant matter had been scheduled on 23rd January, 2021, 21st June, 2021, 23rd July, 2021, 11th August, 2021, 30th September, 2021, 15th November 2021 and 17th December 2021. It was noted that on 23rd January, 2021, the Respondent had sought adjournment in the matter seeking time to file his written submissions in the matter. On 21st June, 2021, the request of the Respondent to summon 19 (nineteen) witnesses was considered. Thereafter, on 23rd July, 2021, the Respondent sought adjournment on the grounds of death of a close relative in his family and on being asked to represent himself through his authorized Counsel(s) before the Committee, the Respondent vide his another e-mail dated 20th July 2021 requested to either reschedule the time of hearing from 11:00 a.m to 4:00 p.m as his Counsel was stated to have had three cases scheduled simultaneously for hearing on the same day till 4 pm or adjournment be granted in the matter. Further, he reiterated the adjournment requests vide e-mail dated 22nd July 2021. The Committee granted adjournment for the said hearing but at the same time decided that last opportunity was granted to the Respondent to appear before it and defend the matter and also that no further adjournment would be granted in the said matter(s) which was duly communicated to him.

As regard next hearing scheduled on 11th Aug, 2021, another mail was received from the Counsel on 9th August, 2021 requesting to postpone the time of hearing the matter after 2pm as the Main Counsel was stated to be arguing some other matter before the Hon'ble Delhi High Court. It was noted that the Respondent/ Counsel for Respondent was informed that non-availability of Authorized Counsel could not be treated as valid ground to request for short adjournment/adjournment in the matter as per CA Rules 2007 and that while granting adjournment during previous hearing last opportunity had been granted to the Respondent to defend the matter. It was noted that thereafter, the Respondent appeared alongwith his Main Counsel to defend the case against the Respondent and the matter was part heard.

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Thereafter, for the hearing scheduled on 30th Sept, 2021 and 15th November, 2021, the Respondent had particularly pointed out that the *suo moto* adjournments were granted by the Disciplinary Committee during the said hearings at the last moment despite the readiness of the Respondent and his counsel to appear for the said hearings. However, the Committee noted that on 30th September 2021, when the case was taken up by it for hearing although the Respondent appeared before it but his Main Counsel was not available in the waiting room of the video-conferencing platform, so the Committee had no option but to adjourn the hearing. Later, on review of attendance, it was noted that the Main counsel had joined the said meeting twice for a duration of 1 minute only which could not be taken as presence before the Committee for the purpose of defending the case. It was noted that it was only on 15th November, 2021 that all the scheduled hearings were cancelled by the Committee due to certain unavoidable circumstances.

From the above-said details, it was noted by the Committee that when on 17th Dec, 2021, the Main Counsel again sought adjournment indicating his pre-occupation for a seminar of the Institute, again the Committee had re-scheduled its hearing after obtaining details of his engagement in the programme, still the Main Counsel chose not to appear before it. The Committee noted the facts that the matter was pending for long and that last opportunity had been granted to the Respondent to defend his case. Since, sufficient opportunities and co-operation had been extended in the alleged matter in terms of principles of natural justice; the Committee had rejected the request for adjournment of hearing being non-availability of the main counsel not valid ground to seek adjournment under CA Rules, 2007. In any case, in terms of principle of natural justice, an opportunity was given to the Respondent to submit his written submissions.

Further, the Respondent's argument that the Complainant was also given an opportunity to file his rejoinder on his final submission but not providing the Respondent further opportunity to make his submissions on the averments made in rejoinder was against the law. It was viewed that firstly, the Committee could not withdraw the right of the Complainant to file the rejoinder and that providing both the parties to keep on submitting on each other's submissions would have been a never ending process and it would in any case to be considered by the Committee in view of the documents/information available on records. It was viewed that the parties concerned

should entrust the Committee for diligently discharging its responsibility. Accordingly, it was viewed that the preliminary objections raised by the Respondent was untenable and it accordingly decided to consider the merits of the matter.

7. As regard the **first allegation**, it was alleged that figures in set of financial statements of the Company certified by the Respondent on 01/09/2011 as an auditor (C-211 to C-227) were manipulated in order to get credit facilities of Punjab National Bank. Further, following discrepancies/variations were pointed out by the Complainant in the second set of financial statements of the Company certified by the Respondent for the F.Y 2010-11 (C-829 to C-850):

S. No.	Particulars	Difference (Rs. In crores)	Financial Statements certified by CA. S.B. Kabra submitted to ROC (C-829 to C-850)	Financial Statements certified by the Respondent submitted to PNB (C-211 to C-227)
1.	Share Application money	10.00	Nil	10.00
2.	Unsecured Loans	(2.50)	28.25	25.75
3.	Sundry Creditors	(7.50)	29.36	21.86
4.	Sundry Debtors	0	62.10	62.10

7.1 The Committee noted the submissions of the Respondent wherein he stated that he was unaware about the fact that the accounts were being audited by another auditor for financial year 2010-2011. The share application money mentioned as Rs. 10 crores and Rs. 26 crores as on 31.03.2011 and 31.03.2012 respectively was based upon books of accounts maintained by the Company. Further, he had obtained management representation letters dated 25.08.2011 and 01.07.2012 (W-27 & 28) confirming that parties had given their consent to apply for the shares of the Company from their credit balances. Furthermore, the notes to accounts dated 31.03.2011 clearly states "confirmation letters from sundry debtors, creditors, loan creditors, bank deposit depositors, advances are awaited" (C-231). He also stated that the books of accounts were maintained by the Management of the Company and as an auditor he was required to audit the accounts based on the information provided to him by the management of the Company and he could not be held responsible for the error in books of accounts. He

further stated that he did not come across any incidence which could have arisen any suspicion in his mind about the Company.

7.2 The Committee on perusal of documents available on record noted from the Balance Sheet of the Company for Financial Year 2010-2011 and 2011-12, as certified by the Respondent, that the share application money was reported at Rs. 10 crore and Rs. 26 crore respectively. The Complainant in this regard had stated on record that when the list of persons/firms to whom Rs. 10 crore and Rs.26 crore belonged was sought, the Respondent submitted the same as below:-

S. No.	Name of Firm	Amount as on 31.03.2011(Rs.)	Amount as on 31.03.2012 (Rs.)
1.	Radha Food Products	2,50,00,000	--
2.	Kamdhenu & Co.	2,90,00,000	--
3.	Siddaganga Oil Extraction Pvt. Ltd.	3,80,00,000	2,00,00,000
4.	Ind-Barath Commodities Pvt. Ltd.	80,00,000	1,60,00,000
5.	Anand Solvex Ltd.		50,00,000
6.	Ananth Refinery Pvt. Ltd.		50,00,000
7.	Dulichand Musaddilal Oil Mill		3,60,00,000
8.	Liberty Foods & Fats		3,80,00,000
9.	Nidhi Agencies		2,60,00,000
10.	Pawan Oil Industries		1,50,00,000
11.	Pooja Trading Co.		6,00,00,000
12.	Sai Teja Solvent & Foods		70,00,000
13.	Health Heart Foods		1,00,00,000
14.	Sri Sai Baba Traders		2,20,00,000
	Total	10,00,00,000	26,00,00,000

On examining the matter, it was established that these firms had not paid any money to the Company and thus the figures in Balance Sheet were manipulated in order to get credit facilities of Punjab National Bank. The Committee further noted that there were two set of financial statements of the Company for F.Y. 2010-11 - one set of Financial Statements was certified by CA.S.B. Kabra (C-829 to C-850) on 10th May 2011 and another set of financial statements were certified by the Respondent on 1st September 2011 (C-211 to C-227) which was submitted to Punjab National Bank.

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7.3 The Committee further noted that in notes to accounts at point 18 (C-235), it was reported that the Company had returned back share application money of Rs. 1.95 crores to the applicants during the year. However, there was no mention of share application money received and name of parties from whom said money was received. Furthermore, the Complainant had provided the list of the parties (C-5) and their statements recorded by the Complainant department during investigation (C-53 to C-62) wherein the parties had clearly denied the fact that there was any balance with the Company and that they had not given any consent to the Company to treat balance amount as share application money. Moreover, in response to letter of CBI, certain firms (C-175 & C-176) in their letters had clearly mentioned that neither any investment was made by them in Share Application money of the Company nor any unsecured loans was lent at any point of time and even that there was no balance as on 31.03.2011 & 2012.

7.4 The Committee further noted that in the Management representation letter dated 01/07/2012 (W-29) it was stated that *"the parties whose balances are appearing in the balance as on 31.03.2012 under head "Unsecured Loans" have given their consent to include the same from their credit balances with the Company"*. In view of this letter, it was noted that the said representation pertained to financial year 2011-2012 and not for year 2010-2011 which was subject year of the instant complaint. Further, it was viewed that conversion of loans/balances into equity could have never been possible by obtaining management representation letter. Such event required a resolution be passed alongwith obtaining the approval of the then existing shareholders because such decision affects their interest in the Company. However, in the extant case, the Respondent had failed to bring on record any concrete evidence to establish that he has adopted independent reasonable verification procedure to make the adjustments as appearing in the financials certified by him. Accordingly, it was viewed that the Respondent had not only failed to gather sufficient evidences to form opinion on alleged financial but also failed to report material misstatement appearing in the financial statements. He had, thus, failed to exercise due diligence in his professional duties. Accordingly, the Committee held the Respondent guilty of professional misconduct within meaning of Items (6), (7) and (8) Part I of Second Schedule to the Chartered Accountant Act, 1949 for the extant charge.

(R)

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8. As regard the **second charge**, the Committee noted that it was alleged by the Complainant that that he acted as additional Director of the Company during the period from 24/01/2011 to 30/01/2012 and had also signed the Statutory audit report for Financial Year 2010-2011 on 01/09/2011, while he was Additional Director of the Company. The Committee noted the Respondent had submitted that he had acted as an Additional Independent Director from 24.01.2011 to 30.03.2011 **(W-6)** and tendered his resignation on 30.03.2011. It was noted that he brought on record his resignation letter. Thereafter on 28.04.2011 he was appointed as statutory auditor of the Company and audit report was signed on 01st September, 2011 **(C-800 & 801)** which was almost after a period of six months. With respect to his resignation as additional director and its filing with ROC, the Respondent argued that it was the responsibility of the Management of the Company to update the ROC records about resignation of any Director and he had no role to play in filing Form 32 with ROC. He further stated that there was no bar on appointment of a statutory auditor who was the Director of the Company.

8.1 It was noted that during proceedings, the Respondent was asked to copy of intimation letter to ROC for acceptance of appointment as statutory auditor for F.Y. 2010-11, he submitted that being an old record of almost 10 years, he was not able to trace them in his office records and also that in any case, filing of intimation was only a ministerial act and non-filing neither affected the underlying appointment nor any penalty was prescribed under the Companies Act, 1956 and for this reason, under the Companies Act, 2013, the responsibility of intimation about the appointment of auditors now rests with the company. He further stated that in the extant case, his firm was appointed by the shareholders of the Company for both financial years 2010-2011 and 2011-2012 and his appointment was valid and effective. He further re-iterated that he was an Additional Director in the Company for a limited period from 24.1.2011 to 30.3.2011 and resigned with effect from 30.3.2011 and that the resignation letter, so submitted, was duly acknowledged by the Company. He, thus, contended that at the time of the firm's appointment as the Statutory Auditor, he was not holding the position of a Director and that the appointment as an Auditor was in accordance with the provision of law.

(M)

8.2 The Committee on perusal of the documents available on record, it was noted financial and other documents were available on record which indicate that CA.S.B. Kabra was associated with the Company since 2005 and financials certified by him were being regularly filed with ROC including F.Y 2010-11. In fact on review of Form 23AC – XBRL filed after the AGM held on 30th Sept 2011, it was noted that said form contained attachments of its financial statements and 13th Annual Report for Yr 10-11 (C-908-C-909) which contained the Director Report dated 1st Sept, 2011 stating as follows (C-918-C-909):

Directors

"Your Directors have co-opted Mr Chandan Chauhan as an Additional Director on the Board with designation as Independent Director w.ef 24th January 2011. It is proposed to regularize his appointment in the ensuing Annual General Meeting."

Auditors

M/s. S.B. Kabra and Co.. Chartered Accountants. Hyderabad, Statutory Auditors of the Company, retires at the ensuing Annual General meeting and is eligible for re-appointment.

Further, the audit report alongwith financials of the Company for F.Y. 2010-11as certified by CA. S B. Kabra were also contained therein. Further, it is noted that Annual Report 10-11 was also available on record that contained Notice dated 1st Sept 2011 of AGM Ordinary Business and Explanatory Statement in pursuance to Sec 173(2) of the Companies Act, 1956 state as follows:

ORDINARY BUSINESS

3. To Consider and if thought fit to pass with or without modification(s) the following resolution as an Ordinary Resolution relating to appointment of Statutory Auditors of the Company:

"RESOLVED THAT pursuant to Section 224 and other applicable provisions, if any, of the Companies Act, 1956. M/s. S. B. Kabra & Co., Chartered Accountants Hyderabad (Registration No. 001651S) be and are hereby re-

appointed as Statutory Auditors of the Company to hold office from the conclusion of this Annual General Meeting until the conclusion of next Annual General Meeting of the Company, at such remuneration plus service tax as applicable and reimbursement of actual out of pocket expenses as may be incurred in the performance of their duties, as the Board of Directors may fix in this behalf'.

SPECIAL BUSINESS

4. To consider, and if thought fit, to pass with or without modification(r), the following resolution as an Ordinary Resolution:

"RESOLVED THAT Mr. Chandan Chauhan who was appointed as an Additional Director of the Company with effect from 24th January, 2011, by the Board of Directors and who hold office upto the date of the forthcoming Annual General Meeting of the members of the Company under Section 260 of the Companies Act, 1956 (the Act), who is eligible for appointment and in respect of whom the Company has received a notice in writing under Section 257 of the Act from a Member proposing his candidature for the office of Director of the company be and is hereby appointed as an Independent Director of the Company liable to retire by rotation".

From the above, it was noted that the Chairman and Managing Director of the Company, under his signature as on 1st Sept, 2011 was stating that the Respondent had held office at least till the Annual General Meeting (AGM) scheduled on 30th Sept, 2011 (C-800) as stated in the notice of the said AGM.

8.3 Further, on perusal of Form 20B (C-888 to C-894) and Annual Return dated 23rd November, 2011(C-895 to C-907) attached to the said Form which was filed under the signature of Sh Jitendra Kumar Agarwal, it was noted that the Respondent was reported to Director and only his appointment date 24/01/2011 was stated, thus, signifying that the Respondent was associated with the Company as Director of the Company as on date of AGM i.e. 30/09/2011 which outrightly negates his submission of resigning from Company w.e.f. 30.03.2011. It is further noted that Form 20B has been filed by Mr. Jitender Kumar Agarwal, a Director of the Company who had signed the appointment letter dated 28/04/2011 (D-52) brought on record by the Respondent

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appointing him Statutory auditor of the Company. Further, Form 20B (C-963 to C- 968) and Annual Return dated November, 2012(C-969 to C-979) attached to the said Form which was filed under the signature of Sh Jitendra Kumar Agarwal, it was noted that the Respondent was reported to held the position of the Director from 24/01/2011 till 30/01/2012 (C-966, C-973). Incidentally, it was noted that there were two appointment letters dated 28th April, 2011 and 7th Oct, 2011, brought on record by the Respondent showing his appointment as auditor in the Company for which he contended that while the former pertained to his appointment for F.Y 10-11, the other was related his appointment for F.Y 11-12. It was noted that the former letter did not mention the period for which the Respondent was appointed as auditor which raises negates the contention of the Respondent that he was appointed as auditor for F.Y 2010-11.

8.4 The Committee noted that the Respondent had conducted audit and certified the Financial Statements of the Company for F.Y. 2010-2011 on 01/09/2011 (C-211 to C-227). The Respondent had argued to have resigned on 30th March, 2011 and therefore was eligible to be appointed as auditor in subsequent period, though as per discussion held in paragraph 8.3 and 8.4 above, it was noted that there were ample evidence that indicated that the Respondent had held the directorship of the Company till 30th Jan, 2012. In any case, it was noted that as per the documents on record as well as per the contention of the Respondent, there was no dispute that the Respondent was additional director of the Company from 24/01/2011 till 30/03/2011 and that he had conducted the audit of the period from 1st April 2010 to 31st March, 2011 which include the period from 24th Jan, 2011 to 30th March, 2011 when the Respondent had also acted as additional Director of the Company thereby jeopardizing the requirement of independence.

8.5 In this regard, the Committee perused Standard on Auditing (SA) 200, "Overall Objectives of the Independent Auditor and the Conduct of an Audit in Accordance with Standards on Auditing" which provides as under-

"The auditor is subject to relevant ethical requirements, including those pertaining to independence, relating to financial statement audit engagements. Relevant ethical requirements ordinarily comprise the Code of Ethics issued by the Institute of Chartered Accountants of India.

In the case of an audit engagement it is in the public interest and, therefore required by the Code of Ethics, that the auditor be independent of the entity

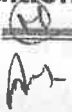
subject to the audit. The Code describes independence as comprising both independence of mind and independence in appearance. The auditor's independence from the entity safeguards the auditor's ability to form an audit opinion without being affected by influences that might compromise that opinion. Independence enhances the auditor's ability to act with integrity, to be objective and to maintain an attitude of professional skepticism."

8.6 In view of the above, the Committee noted that the auditor should act independently while forming an opinion on the financial statements of the company without being effected/involved in the influences which might compromise his independence. In respect to the Independence of Auditor, ICAI has issued the "Guidance Note on Independence of Auditors" which further provides that:

"Independence of the auditor has not only to exist in fact, but also appear to so exist to all reasonable persons. The relationship between the auditor and his client should be such that firstly, he is himself satisfied about his independence and secondly, no unbiased person would be forced to the conclusion that, on an objective assessment of the circumstances, there is likely to be an abridgement of the auditors' independence. In all phases of a Chartered Accountant's work, he is expected to be independent, but in particular in his work as auditor, independence has a special meaning and significance. Not only the client but also the stakeholders, prospective investors, bankers and government agencies rely upon the accounts of an enterprise when they are audited by a Chartered Accountant."

8.7 Thus, in light of the facts and reasoning given in above stated paras, it was evidently clear that the Respondent had failed to follow the mandatory requirement of Independence laid down in SA-200 and is thus **GUILTY** of professional misconduct falling within the meaning of Item (7) of Part I of the Second Schedule and Item (1) of Part II of the Second Schedule to the Chartered Accountant Act 1949.

8.8. It further noted that explanation to Clause (4) of part I of the Second Schedule to the Chartered Accountant Act 1949 in Code of Ethics 2009 (page 240, Eleventh Edition) also states as follows:



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*"...Public conscience is expected to be ahead of the law. **Members, therefore, are expected to interpret the requirement as regards independence much more strictly than what the law requires and should not place themselves in positions which would either compromise or jeopardise their independence.***

*Member must take care to see that they do not land themselves in situations where there could be conflict of interest and duty. For example, **where a Chartered Accountant is appointed the Liquidator of a company, he should not qua a Chartered Accountant himself, audit the Statement of Accounts to be filed under Section 551(1) of the Companies Act, 1956. The audit in such circumstances should be done by a Chartered Accountant other than the one who is the Liquidator of a company.***

8.9 Thus as per the provisions of the CA Act 1949, a member is expected to interpret the requirement regarding independence much more strictly than what the law required and he should not place himself in a compromising situation or in that which jeopardised his independence. Accordingly, it was viewed that in light of such a requirement, the act of the Respondent in holding the position as the statutory auditor of the Company for the F.Y. 2010-11 and signing the audit report on 1st September 2011 while acting as additional Director of the Company during the period from 24/01/2011 to 30/01/2012 was a clear conflict of interest and duty which was in violation of the intent of the provisions envisaged under Item (4) of Part I of the Second Schedule to the Chartered Accountant Act 1949 and is not expected of a Chartered Accountant who is expected to maintain high standards of conduct in his profession and whom society look upon with integrity and trust. Accordingly, the Committee was of the considered opinion that the Respondent is guilty of professional and Other misconduct falling within the meaning of Item (4) of Second Schedule and Item (2) of Part IV of First Schedule to the Chartered Accountant Act, 1949 for this charge.

Conclusion

9. Thus in conclusion, in the considered opinion of the Committee, the Respondent is **GUILTY** of professional misconduct falling within the meaning of Items (4), (6), (7) and

A-1

(8) of Part I of the Second Schedule, Item (1) of Part II of the Second Schedule and Item (2) of Part IV of First Schedule to the Chartered Accountant Act 1949.

A2 (A)

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

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

Sd/-
[CA. Chandrashekhar Vasant Chitale]
Member

Sd/-
[CA. P.K. Boob]
Member

Date: 8th February, 2022

Place: New Delhi

प्रमाणित सत्य प्रतिलिपि / Certified true copy
सीए. मोहिता खन्ना / CA. Mohita Khanna
सहायक सचिव / Assistant Secretary
अनुशासनात्मक विभाग / Disciplinary Committee
इंस्टीट्यूट ऑफ चार्टर्ड एकाउंटेंट्स ऑफ इंडिया
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