



भारतीय सनदी लेखाकार संस्थान

(संसदीय अधिनियम द्वारा स्थापित)

THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA

(Set up by an Act of Parliament)

[DISCIPLINARY COMMITTEE [BENCH-I (2022-2023)]]

[Constituted under Section 21B of the Chartered Accountants Act, 1949]

**ORDER UNDER SECTION 21B(3) OF THE CHARTERED ACCOUNTANTS ACT, 1949
READ WITH RULE 19(1) OF THE CHARTERED ACCOUNTANTS (PROCEDURE OF
INVESTIGATIONS OF PROFESSIONAL AND OTHER MISCONDUCT AND CONDUCT
OF CASES) RULES, 2007.**

In the matter of:

Shri M.K. Sahoo, Addl. Director, SFIO, MCA, New Delhi

-Vs-

**CA. Amit Bhattacharjee (M. No. 050714) of M/s. Manabendra Bhattacharyya & Co.,
Chartered Accountants, Kolkata
[PR/G/266/17-DD/232/17-DC/1248/19]**

MEMBERS PRESENT:

**CA. ANIKET SUNIL TALATI, PRESIDING OFFICER,
SHRI PRABHASH SHANKAR, I.R.S. (RETD.), (GOVERNMENT NOMINEE),
CA. GYAN CHANDRA MISRA, MEMBER,
CA. PRITI PARAS SAVLA, MEMBER**

1. That vide findings dated 05.02.2022 under Rule 18(17) of the Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007, the Disciplinary Committee was inter-alia of the opinion that **CA. Amit Bhattacharjee (M. No. 050714)** (hereinafter referred to as the **Respondent**) was **GUILTY** of professional misconduct falling within the meaning of Clauses (5), (7) & (9) of Part I of the Second Schedule to the Chartered Accountants Act 1949.
2. That pursuant to the said findings, an action under Section 21B(3) of the Chartered Accountants (Amendment) Act, 2006 was contemplated against the Respondent and communication was addressed to him thereby granting an opportunities of being heard in person / through video conferencing and/or to make a written & verbal representation before the Committee on 01st June, 2022.
3. The Committee noted that on the aforesaid date of hearing i.e., 01st June, 2022, the Respondent was present through video conferencing from ICAI Kolkata office. The Respondent confirmed receipt of the report of the Disciplinary Committee and thereafter, he made his verbal submissions on the findings of the Disciplinary Committee.
4. The submissions of the Respondent on the findings of the Disciplinary Committee, in brief, were as under:-



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i) The Disciplinary Committee has gone into the merits of the case without considering his preliminary submissions. He was not appointed as statutory auditor of the Company and the Committee failed to appreciate that the Complainant could not bring on record any documentary evidence regarding appointment of the Respondent as Statutory Auditor of the Company. The Respondent stated that he had only issued the draft report as his appointment was subject to compliance of Section 224 by the Company. The Respondent further stated that albeit an attempt was made to complete the audit report of the Company which stands incomplete and unqualified on account of being a draft accounts which was in anticipation of compliance of Section 224 of the Company was communicated to the Company.

ii) In respect of charge relating to accepting of deposits by the Company, the Respondent reiterated his earlier submission as made earlier before the Disciplinary Committee.

iii) In respect of charge relating to non-maintenance of working papers, the Respondent stated that an auditor is required to preserve his working papers for a specified period of 7 years and in his case, the said period should be computed from 31st March 2009. He had received the first summon dated 20.11.2015 and the same was duly replied by him on 03.12.2015 which qualifies the period of 7 years as mandated. Hence, he preserved the working papers for 7 years and thus, he cannot be held guilty for non-maintenance of working papers.

iv) In respect of charge relating to the non-compliance of the requirement of CARO 2003, the Respondent reiterated his submissions as made with regard to the first charge.

5. The Committee considered the reasoning as contained in findings holding the Respondent Guilty of professional misconduct vis-à-vis written and verbal submissions of the Respondent and noted that the Disciplinary Committee has given its findings after consideration of all the facts, documents and submissions on records.

6. Keeping in view the facts and circumstances of the case, the material on record including written and verbal submissions of the Respondent on the findings of the Committee, the Committee is of the view that the professional misconduct on the part of the Respondent is established, and the ends of justice would be met if a reasonable punishment is awarded to the Respondent in this case. Accordingly, the Committee ordered that name of the Respondent i.e., CA. Amit Bhattacharjee (M. No. 050714) be removed from the Register of Member for a period of One month.

Sd/-
(CA. ANIKET SUNIL TALATI)
PRESIDING OFFICER,

(confirmed & approved through email)
(SHRI PRABHASH SHANKAR, I.R.S. (RETD.))
GOVERNMENT NOMINEE

(confirmed & approved through email)
(CA. GYAN CHANDRA MISRA)
MEMBER

Sd/-
(CA. PRITI PARAS SAVLA)
MEMBER

DATE: 20.06.2022

सही प्रतिलिपि होने के लिए प्रमाणित /
Certified to be true copy
CA. Anand Sharma
उप सचिव / Deputy Secretary
अनुशासनालयक निदेशालय / Disciplinary Directorate
इंस्टिट्यूट ऑफ चार्टर्ड एकाउंटेंट्स ऑफ इंडिया
The Institute of Chartered Accountants of India
आईसीएआई भवन, विश्वास नगर, शाहदरा, दिल्ली-110032
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DISCIPLINARY COMMITTEE [BENCH – I (2021-2022)]**[Constituted under Section 21B of the Chartered Accountants Act, 1949]****Findings under Rule 18(17) of the Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007****Ref. No. PR/G/266/17-DD/232/17-DC/1248/19****In the matter of:****Additional Director**

Serious Fraud Investigation Office

Ministry of Corporate Affairs, Government of India

2nd Floor, Paryavaran Bhavan,

CGO Complex, Lodhi Road

NEW DELHI – 110 003.**.....Complainant****Versus****CA. Amit Bhattacharjee (M.No.050714)**

Raja Chambers, 4,

Kiran Sankar Ray Road

KOLKATA – 700 001.**.....Respondent****MEMBERS PRESENT :-****CA. Nihar N Jambusaria, Presiding Officer (in-person at ICAI Bhawan, New Delhi),
Shri Jugal Kishore Mohapatra, I.A.S. (Retd.) (Government Nominee) (Through VC),
Ms. Rashmi Verma, I.A.S. (Retd.) (Government Nominee), (Through VC),****DATE OF FINAL HEARING : 27.10.2021
PLACE OF FINAL HEARING : Through Video Conferencing****PARTIES PRESENT (Through VC):-****Complainant's representative : Shri Pushpender Kumar
Counsel for the Complainant : Shri Kunal Rawat, Advocate
Respondent : CA. Amit Bhattacharjee
Counsel for the Respondent : Shri Dipajan Roy, Advocate**

BRIEF OF THE DISCIPLINARY PROCEEDINGS:-

1. On the day of hearing held on 27th October, 2021, the Committee noted that the Complainant's representative was present. The Respondent along with his Counsel was present. Thereafter, the hearing continued from the stage as it was left in last hearing. The Committee asked the Respondent to make his submissions on the charges. The Counsel for the Respondent made his submissions and also stated that certain documents have not been provided by the Complainant. On the same, when the Committee asked the Complainant's representative to make his submissions, the Complainant's representative stated that their Counsel is not available and he will be able to join hearing in next 10 minutes. On the same, the Committee decided to adjourn the hearing for some time. After 15 minutes, when the hearing reassumed, the Counsel for the Complainant was not present. When the Committee asked the Complainant's representative to make his submissions in the matter, the Complainant's representative did not give any response and remain silent even after repetitive requests. Thereafter, the Committee asked the Respondent to make his submissions. When the Counsel for the Respondent was making submissions, the Counsel for the Complainant joined the hearing. The Committee expressed its displeasure to the Counsel for the Complainant over their casual approach towards hearing. On the same, the Counsel for Complainant apologized and stated that since he was busy in court matter, he could not join the hearing on time. After submissions of the Respondent, the Counsel for the Complainant made his submissions on the charges. After hearing the final submissions of the Complainant and the Respondent, the Committee concluded the hearing in the matter.

1.1 In respect of previous hearings(s) held in the above matter, the Committee observed as under:-

1.1.1 On the day of hearing held on 26th August, 2020, the Complainant was not present but his Counsel was present. The Respondent was present. The Respondent was put on oath. On being enquired from the Respondent as to whether he is aware of the charges leveled against him, the Respondent replied in affirmative and pleaded not guilty. Thereafter, the Respondent made his submissions. The Counsel for the Complainant also made his contentions. The

Committee also posed questions to the Respondent and the Counsel for the Complainant. After hearing the submissions, the Committee directed the Respondent to file his written submissions within 15 days and also directed the Complainant to file their submissions within next 15 days. With this, the hearing in the aforesaid matter was adjourned.

1.1.2 On the day of next hearing held on 22nd July, 2021, the Complainant's representative along with Counsel was present. The Respondent was also present. The hearing in the above matter continued from the stage as it was left in last hearing held on 26th August, 2020, to which neither of the parties raised objection on the same. The Complainant's representative made his contentions and the Respondent made his submissions on the charges. During the course of hearing, the Respondent admitted that he had signed the audit reports. After hearing the submissions, the Committee decided to adjourn the hearing in the above matter.

1.1.3 On the day of next hearing held on 16th August, 2021, the Complainant was not present but his Counsel was present. The Respondent was present in person at ICAI Kolkata Office. When the Committee asked the Respondent to make his submissions in the matter, the Respondent stated that he needs time to collect documents / evidence in the matter. Further, he wants to bring his Counsel to defend his case at next hearing. The Counsel for the Complainant stated that he had not received copy of submissions of the Respondent. On the same, the office clarified to the Committee that the copy of submissions of the Respondent was duly sent to the Complainant on 10th August, 2021. Thereafter, upon informing, the Counsel for the Complainant stated that he would confirm receipt of the same from the Complainant office. Thereafter, the Committee directed the office to send copy of the submissions of the Respondent to the Complainant. With the aforesaid directions, the hearing in the above matter was adjourned.

1.1.4 In respect of next hearing held on 8th October, 2021, it is observed that the Complainant's representative was present. The Respondent along with his Counsel was present. Thereafter, the hearing in the matter commenced from the stage as it was left in last hearing. The Counsel for the Respondent made his submissions and stated that the Respondent had signed the draft accounts and audit report was not his letter head. He was not appointed as auditor of the Company. At that time, the Respondent's appointment as statutory auditor was pending for approval. After hearing the submissions of the Respondent, when the

Committee asked the Complainant's representative to make his submissions, the Complainant's representative requested for adjournment hearing. On the same, the Committee expressed its displeasure and asked him to come fully prepared at next hearing. Thereafter, the Committee directed to the Respondent to submit his specific submissions on the charges and also explanation as to why he signed audit report when he was not appointed as auditor of the Company. The Committee also informed the Complainant's representative and the Respondent that next hearing would be final opportunity to both the parties. With this, the hearing in the aforesaid matter was adjourned.

CHARGES IN BRIEF AND FINDINGS OF THE DISCIPLINARY COMMITTEE:-

2. The Committee observed that the Respondent was the Statutory Auditor of M/s. Rahul Hirise Limited (hereinafter referred as the "Company" or "RHRL") for financial year 2008-2009. The following charges were made against the Respondent:-

- a. The Respondent wrongly certified that the Company has not collected deposits from public within meaning of deposits as defined in Section 58A and 58AA of the Companies Act, 1956 being material fact known to the Respondent and not disclosed in audit report.
- b. The Respondent failed to give full disclosure for deviation made under various accounting standards and its effect of the results of the Company in audit report.
- c. The Respondent did not provide any working paper in respect of above audit of the Company.
- d. The Respondent failed to appear before Investigation team despite the fact that several summons were issued under provisions of Companies Act, 2013.
- e. There is a non-compliance of the Companies Auditors' Order (CARO), 2003 read with paragraph 3 and Section 227 (4A) of the Companies Act, 1956.

3. The Respondent made the following submissions in his defence:-

3.1 The Respondent stated that he has requested the Complainant to provide documents and information as mentioned in the prima facie opinion but the Complainant did not provide the same.

3.2 That he had not been appointed as auditor of the Company and his appointment was under consideration of the Company. The audit report signed by him was not on the letter head of the Respondent and the same was filed with ROC without using the digital signature of the Respondent. The Respondent stated that he signed the draft accounts and audit reports and the same does not carry the character and shape of an auditor's report and it is not having any legal sanctity.

3.3 The Respondent stated that an attempt was made to complete the audit report for the Company but the same stands incomplete and unqualified on account of financial accounts being a draft accounts as compliance of Section 215 and 224 of the Companies Act, 1956 was not made by the Company.

4. In respect of charges made against the Respondent, apart from contentions / submissions on record, the Complainant made the following submissions to substantiate the charges:-

4.1 The Complainant stated that investigation clearly establishes that the Respondent was statutory auditor of the Company for the financial year 2008-09. The Complainant further stated that they brought on record copy of financial statements filed with ROC which was certified under the name and membership number and signature of the Respondent.

4.2 The Complainant denied that there was any contradiction between the facts of Investigation report and the complaint filed with ICAI.

5. The Committee perused the facts and documents on record. After perusal of the documents, the Committee noted that the Respondent had signed the financial statements of the Company and audit report for the financial year 2008-09. It is noted that apart from the signature of the Respondent, stamp of the Respondent firm was affixed on the financial statement and audit report. Further, the Respondent signed as proprietor of M/s. Manabendra Bhattacharyya & Co. along with his membership number 50714. The first para of the audit report signed by the Respondent reads as under:-

"We have audited the attached Balance Sheet of M/s. Rahul Hirise Limited, as at 31st March, 2009 and the annexed Profit & Loss Account of the Company for the year ended 31st March, 2009. These financial statements are the responsibility of the Company's Management. Our responsibility is to express an opinion on these financial statements based on our audit."

In opinion para of the audit report, the Respondent mentioned as under:-

"In our opinion and to the best of our information and according to the explanations given to us, the said accounts give the information required by the Companies Act, 1956, in the manner so required and give a true and fair view in conformity with the accounting principles generally accepted in India;

- i) in case of the Balance Sheet, of the state of affairs of the Company as at 31st March, 2009.*
- ii) in the case of the Profit & Loss Account of the Profit for the period ended on that date."*

6. Though the Respondent stated that he had not been appointed as auditor of the Company and audit report issued by him was only draft report on the financial statements of the Company yet the aforementioned facts clearly establish that the Respondent has issued audit report along with his opinion on the state of affairs of the Company. Further, during the course of hearing, the Respondent cannot give any cogent reply to the question as to when he had not been appointed as auditor of the Company then why he signed the financial statement and audit report of the Company. In view of the above, it is clear that the Respondent has signed the financial statement and issued audit report on the accounts of the Company for the financial year 2008-09. Hence, the Respondent cannot escape from the responsibility of reporting as auditor of the Company in accordance with the applicable auditing standards.

7. In respect of first charge related to reporting made by the Respondent with regard to the deposit, the Respondent stated that he had made reporting based on the documents produced before him by the Company and public deposit were not routed through the bank. He can comments based on the documents produced before him and he had no access to the documents related to deposit. When the Committee put a question to the Respondent that if the Company did not provide records / documents to him, he should have pointed out the same in his audit report, the Respondent only stated that he did not want to add the same in audit report. In respect of violation of Section 58A of the Companies Act, 1956 by the Company, on perusal of the findings of the Investigation Report, the Committee observed as under:-

- i) Four companies i.e. RHRL, RIHL, IRCL and IREL collected funds from the public under three schemes (Para 4.2.3).

- ii) Although there were four fund raising companies, there was no segregation of the amount of deposit collected by each of these four companies in the operational database.
- iii) The directors of Rahul Group of companies devised / formulated various schemes under the name SD/FD/RD and MIS. They promoted the same through a network of the 36 agents. The agents were paid commissions ranging from 15% to 40%. (Para 4.2.7)
- iv) The audited balance sheets of the four fund raising companies also revealed that they had not accounted for the actual collections, in their books.
- v) The investigation also revealed that four companies were not engaged in any meaningful income generating activities. The huge payment made to the agents as commissions and returns to the investors, as promised by these companies, was not possible in the absence of any revenue model other than the circulation of money collected from the public.
- vi) Shri Diptendu Banerjee, the director of Rahul Group (including RHRL), in his statement on oath stated that wrong particulars had been filed in MCA 21 portal (Para 4.2.8).
- vii) The investor under RD and MIS were not interested in buying any product. The investors were paid the maturity amount in cash. The receipt and pass book issued under the schemes were not showing any offer of product to the investors.
- viii) RHRL, RIHL, IRCL and IREL have collected the investments (deposits) having maturity period varying from 1 to 15 years. Issuance of deposits having a maturity period beyond 3 years is in contravention to Rule 3 of Companies (Acceptance of Deposit Rule), 1975 (Para 4.2.9).
- ix) RHRL, RIHL and IREL have accepted the deposits which were more than the statutory limit of 10% of their respective paid up share capital and free reserves.
- x) Shri Diptendu Banerjee, Shri Mrinmoy Bose and Shri Abhijit Majumdar, all directors in their depositions have also stated that the deposits were accepted in the guise of product booking schemes such as land bookings and hotel booking.
- xi) Details of the collection made under each of the above mentioned scheme are as under:-

Financial Year wise – Initial and Renewal Payments						
	Initial Payments				Renewal Payments	Total Fund mobilized
xxxx	Xxxx	xxx	xxxx	xxxx	xxxx	Xxxx
2008-09	-	43,85,000	27,12,350	3,32,95,700	3,40,73,850	7,44,66,900

- xii) Deposits were collected by RHRL under different schemes from 2008 to 2012 (Para 4.2.20).

7.1 From the above, it appears that the Company (RHRL) was collecting deposits in the guise of various schemes and the same were not shown in the financial statement of the Company.

The Respondent as statutory auditor was required to verify the documents and records before certifying the financial statements. In case where the sufficient records were not provided to the Respondent for verification, he was required to point out the same in his audit report but he failed to do so. Hence, the Committee is of the view that the Respondent not only failed to point out material facts known to him but also he was negligent in performing his duties as auditor of the Company. Thus, the Respondent was guilty of professional misconduct falling within the meaning of Clauses (5), (7) & (9) of Part I of Second Schedule to the Chartered Accountants Act, 1949.

8. In respect of next charge related to not giving full disclosure for deviation made under various accounting standards and its effects, though the Respondent did not make any specific submissions on the same yet it has also been observed that the Complainant did not make any specific anomaly with regard to disclosures. Hence, in absence of any specific discrepancies with regard to the disclosure, benefit can be extended to the Respondent. Thus, the Respondent is not guilty with respect to the above charge.

9. As regard the third charge related to non-providing the working paper, the Respondent did not make specific submissions. In respect of charge, it is noted that an auditor is required to maintain his working paper for a prescribed minimum period of seven years. The Respondent was summoned by the Complainant Department on various dates in 2015 and 2016 and hence, during 2009 to 2016, the working papers must have been with the Respondent and thereafter, the Respondent was supposed to preserve the working papers with him in view of pendency of SFIO investigation and complaint filed with the ICAI. The Respondent neither submitted his working papers to SFIO nor brought on record before the Committee and the same indicates that the Respondent did not maintain his working papers as required by SA-230 on "Audit Documentation" issued by ICAI. Therefore, the Respondent is guilty of professional misconduct falling within the meaning of clause (7) of Part I of Second Schedule to the Chartered Accountants Act, 1949.

10. As regard the next charge related to non-appearance before investigation team of SFIO, the Respondent did not make any submissions. However, it is observed from the documents on record that the Respondent had vide letters dated 03.12.2015, 18.02.2016 and 04.03.2016 responded to the Complainant Department. In view of the fact that he had responded to the

summons issued by the Complainant Department, mere non-appearance before the Complainant department cannot be considered as misconduct on the part of the Respondent. Accordingly, the Committee decided to hold the Respondent not guilty with respect to the above charge.

11. In respect of next charge related to non-compliance of the Companies Auditor's Report Order 2003, the Respondent did not make any submissions and merely stated that there was no procedural compliance. It is observed that in point no.06 of CARO 2003, it was mentioned that "the Company has not accepted any deposits from the public within the meaning of Section 58A and 58AA of the Companies Act and the rules framed thereunder" whereas observation in first charge establish that the Respondent failed to verify records related to acceptance of deposits and accordingly, he made incorrect reporting in his audit reports. Accordingly, the Committee is of the view that the Respondent made incorrect reporting in respect of public deposit in point no.6 under CARO reporting. Thus, he is guilty of professional misconduct falling within the meaning of Clause (7) of Part I of Second Schedule to the Chartered Accountants Act, 1949.

Conclusion:-

12. Thus in the considered opinion of the Committee, the Respondent is **GUILTY** of Professional Misconduct falling within the meaning of Clauses (5), (7) and (9) of Part I of Second Schedule to the Chartered Accountants Act, 1949 with respect to the charges related to public deposit, working papers and reporting under CARO 2003.

Sd/-

(CA. NIHAR N JAMBUSARIA)
PRESIDING OFFICER

(approved and confirmed through e-mail)

(SHRI JUGAL KISHORE MOHAPATRA, I.A.S.
(RETD.)), GOVERNMENT NOMINEE

(approved and confirmed through e-mail)

(MS. RASHMI VERMA, I.A.S. (RETD.))
GOVERNMENT NOMINEE

Jyoti/G
प्रमाणित सत्य प्रतिलिपि / Certified true copy

DATE: 05.02.2022

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