

CONFIDENTIAL

DISCIPLINARY COMMITTEE [BENCH – III (2022-23)]

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

Findings under Rule 18(17) and 19(2) of the Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007

Ref. No. [PPR/P/102/16/DD/208/INF/18-DC/1432/2021]

In the matter of:

CA. Modi Surgyan,
F110 First Floor Bhanu Enclave
Above Maruti Showroom
Eragadda, Near ESI Hospital
HYDERABAD 500 018

...Respondent

Members present:

CA. Aniket Sunil Talati, Presiding Officer
Smt. Anita Kapur, Member (Govt. Nominee)
CA. Vishal Doshi, Member
CA. Sushil Kumar Goyal, Member

Date of Final Hearing: 13th September, 2022 through Video Conferencing

PARTIES PRESENT:

The following persons were also present: -

- (i) CA. Modi Surgyan – the Respondent
 - (ii) Sh. C V Sajan – Counsel for the Respondent
- (both appeared from personal location through video-conferencing)

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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 and Other Misconduct falling within within the meaning of Item (7) of Part I of Second Schedule to the Chartered Accountants Act, 1949.

Item (7) to the Second Schedule state as under: -

Part I of 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-

....
"(7) Does not exercise due diligence, or is grossly negligent in the conduct of his professional duties"

Brief background and the allegations against the Respondent

2. In the extant case, the complaint has been filed by General Manager (F&A) of National Highways Authority of India (hereinafter referred to as the "**Informant**" and "**Informant Department**" respectively) against the Respondent stating that the Respondent being the statutory auditor of Concessionaire M/s Srinagar-Banihal Expressway Ltd ("**SBEL**" or hereinafter referred to as '**Company**') certified two different balance sheets for the year ending 31st March 2016 (**A-4 to A-6 and A-7 to A-20**). One on standalone basis and other for consolidation into the holding Company and it was found that there was substantial difference between both these Balance Sheets particularly under 'Reserves and Surplus'.

It is alleged that there was apparent departure from the accepted practices in the sense that two balance sheets (for the year ended 31st March 2016) based on different accounting principles were certified by the Respondent which resulted in inflated net profit, reserves and net worth of the holding Company.

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Proceedings:

3. During the hearing held on 13th September 2022, the Committee noted that the Respondent alongwith his Counsel were present before it for the hearing. Thereafter, they gave a declaration that there was nobody except them in the room from where they were appearing and that they would neither record nor store the proceedings of the Committee in any form.

Being the first hearing, the Respondent was put on oath. Thereafter, the Committee asked the Counsel for the Respondent whether he wished the charges to be read out or it could be taken as read. The Counsel for the Respondent stated before the Committee that he was aware of the allegations raised against him and the same might be taken as read. On being asked, as to whether the Respondent pleaded guilty, his Counsel replied that the Respondent did not plead guilty and opted to defend his case.

The Committee, thereafter, asked the Counsel for the Respondent to make his submissions on the matter. The Counsel for the Respondent was examined by the Committee on the submissions made.

Based on the documents available on record and after considering the oral and/or written submissions of the parties concerned, the Committee concluded hearing in the matter.

Findings of the Committee:

4. The Committee noted that the allegation against the Respondent was that he being the statutory auditor of Concessionaire M/s Srinagar-Banihal Expressway Ltd (SBEL) certified two different balance sheets for the year ending 31st March 2016 (A-4 to A-6 and A-7 to A-20) - One on standalone basis and other for consolidation into the holding Company. As per the Informant, there was substantial difference between both the alleged Balance Sheets particularly under 'Reserves and Surplus'. It was ,thus, alleged that there was apparent departure from the accepted practices in the sense that two balance sheets (for the year ended 31st March 2016) based on different accounting principles were certified by the Respondent which resulted in inflated net profit, reserves and net worth of the holding Company.

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4.1 It was noted that the Respondent, inter alia, submitted that while one set of the financial statements were audited by him in the capacity of being the statutory auditor of SBEL for the year ended 31st March 2016, the other set of the financial statements were special purpose financial statements audited by him for the purpose of their consolidation in the financials of the parent company i.e. M/s Ramky Infrastructure Ltd. **(RIL)** Accordingly, he submitted that the former set of financial statements were prepared in compliance of Section 133 and Schedule III of the Companies Act, which was its applicable financial reporting framework. Accordingly, he conducted audit of said financial statements. He also brought on record an engagement letter dated 4th March 2016 clearly defining the scope of his assignment **(B-104 to B-105)**.

4.1.1 The Respondent further submitted that the management of the Company, further asked him to audit other set of financial statements of the Company prepared under a special purpose reporting framework, for the exclusive use of the parent company. It was explained to him that the use of the special purpose financial statements was to prepare a set of consolidated financial statements of the parent company. The special purpose financial reporting framework was the accounting principles laid down in the Accounting Standards notified u/s 133 of the Companies Act 2013 along with the principles laid down in draft Guidance Note issued by the ICAI dated 6th Oct 2008 on Service Concession Arrangement Contracts. He also brought on record an engagement letter dated 18th April 2016 clearly defining the scope of his assignment **(B-106 to B-107)**.

4.1.2 He contended that the audit reports were prepared in accordance with applicable Standards on Auditing clearly bringing the difference in financial reporting frameworks of the two sets of financial statements. Unlike in the audit report issued for the first set, contents of the audit report for the second set **(B-53 to B-54)** include "Emphasis of Matter" as well as "Restriction on Distribution and end use" paragraphs wherein certain specific disclosures were made to distinguish it from a regular audit report issued as per the requirement of the Companies Act 2013. Hence, the second set could not be assumed as the one issued for statutory audit under Companies Act 2013 by any stretch of imagination.



4.1.3 The Respondent contended that the company took no advantage from the second set. Review of financial statements of a concessionaire company was a procedural matter for the Complainant Department. SBEPL being a concessionaire operated under a service concession arrangement with it. Hence, no benefit was obtained from giving a different set of financial statement. As the terms of arrangement with it, the Complainant Department and the Company was associated based on a contract and was independent of the numbers in the financial reports.

5. In respect of allegation, it was noted that the purpose of the two sets of financial statements was different as evident from their respective financial reporting framework stated in the audit report as produced below:

In respect of financial statement subject to statutory audit

“To the Members of SRINAGAR BANIHAL EXPRESSWAY LIMITED”

“The Company's Board of Directors are responsible for the matters stated in Section 134(5) of the Companies Act, 2013 (“the Act”) with respect to the preparation of these financial statements that give a true and fair view of the financial position, financial performance and cash flows of the Company in accordance with accounting principles generally accepted in India, including the Accounting Standards specified under section 133 of the Act, read with Rule 7 of the Companies (Accounts) Rules, 2014. This responsibility also includes maintenance of adequate accounting records...”

Our responsibility is to express an opinion on these financial statements based on our audit. We have taken into account the provisions of the Act, the accounting and auditing standards and matters which are required to be included in the audit report under the provisions of the Act and the Rules made thereunder. We conducted our audit in accordance with the Standards on Auditing, issued by the Institute of Chartered Accountants of India, as specified under Section 143(10) of the Act...”

“In our opinion and to the best of our information and according to the explanations given to us, the financial statements give the information required by the Act in the manner so required and give a true and fair view in conformity with the accounting principles generally accepted in India, of the state of affairs of the Company as at March 31, 2016, its profit and its cash flows for the year ended on that date...”

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"2. As required by section 143 (3) of the Act, we report that:

...

(d) *In our opinion, the aforesaid financial statements comply with the Accounting Standards specified under section 133 of the Act, read with Rule 7 of the Companies (Accounts) Rules, 2014;*"

In respect of financial statements for the purpose of consolidation

"To the Board of Directors of SRINAGAR BANIHAL EXPRESSWAY LIMITED"

"The management responsible for the preparation and presentation of these financial statements to give a true and fair view of the financial position, financial performance of the Company in accordance with the accounting principles generally accepted in India, including the Accounting Standards specified under Section 133 of the Act, read with Rule 7 of the Companies (Accounts) Rules, 2014 and Exposure Draft on the Guidance Note on Accounting for Service concession agreement (SCA) for public to private issued by ICAI. ..."

"4. Opinion

In our opinion and to the best of our information and according to the explanations given to us, the aforesaid financial statements give the information required by the Act in the manner so required and give a true and fair view in conformity with the accounting principles mentioned in the significant accounting policy of the Company, of the state of affairs of the Company as at March 31, 2016, and its profit for the year ended on that date..."

"Restriction on Distribution and Use

Without modifying our opinion, we would like to highlight that the financial statements have been prepared in accordance with the recognition and measurement criteria as given in the significant accounting policy of the company for the purpose of preparing consolidated financial information of Parent Company which is different from the generally accepted accounting principles (GAAP) in India to the extent of provisions of Exposure Draft on Guidance Note on Accounting for service concession agreement (SCA) for public to private issued by ICAI. Our report is intended solely for the Company and the Parent Company and should not be distributed to or used by any other parties in India other than the Company or the Parent Company."

5.1 On review of the two audit reports, it was noted that whereas the first audit report was addressed to members, the other one was only addressed to the Board of Directors of the Company. Further, in the opinion paragraph of first audit report, the Respondent has specifically

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opined of the financial statements being complied with the requirements of Sec 133 of the Companies Act 2013 which signify the statutory audit and in the second audit report, under 'Restriction on Distribution and Use' it is clearly reported by the Respondent in his audit report that the financial statements were prepared for the purpose of consolidation with the financial of the Parent Company i.e. RIL which were different from the generally accepted accounting principles (GAAP) in India to the extent of provisions of Exposure Draft on Guidance Note on Accounting for service concession agreement (SCA) for public to private issued by ICAI.

5.2 Further, it was noted that the Respondent had clearly brought on record the differences arising therefrom as discussed below:

a) *In case of IGAAP, the cost incurred for development of financial assets (being an annuity project) including actual interest paid was reflected under CWIP being capital cost incurred to be capitalized.*

During the year 15-16, difference in total cost was Rs.4,63,84,46,437/-, construction cost was 3,61,27,44,137/- and interest expense was 1,02,57,02,300/-.

b) *As per Exposure Draft of SCA Accounting, as illustrated at Page 18-31 (B-19 to B-22) in case of financial assets the Guidance Note allows recognition of construction cost and has construction revenue. Accordingly, on the construction cost of 361.27 Cr margin being accrued and the total amount of Rs. 404.32 Crores was recognized as Construction revenue.*

As per the SCA GN, interest income was also recognized as per model amounting to Rs. 99.53 Crore.

Both the construction revenue and interest income so accrued were taken as Income in the Statement of P&L (WPL)

c) *Actual construction cost incurred of Rs. 361.27 Crore and Interest expenses of Rs. 102.57 Crore was debited to SPL.*

d) *Other items in SPL as per SCA and IGAAP were the same. Thus, the resulting net incremental profit in SCA vis-a-vis IGAAP was Rs. 40.01 Crores, which was the difference in CWIP and Reserves for the year.*

From the above, it was noted the difference that appeared in the statement of Profit/Loss that was prepared for consolidation purposes vis a vis that prepared for standalone financial

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statements was indicated in the reconciliation sheet (B-109). The said difference was also indicated with the explanation in the working papers evidencing the conversion from IGAAP to the special report framework i.e methodology suggested by the Guidance Note on SCA. It was noted that under the said Guidance note is different from IGAAP only in respect of accounting policies in context of the construction income, interest income, construction cost and interest costs. Thus elements in the nature of construction and interest were being adjusted from both the aspects i.e. income as well as costs. The result arising therefrom was reflected in different figures of financial assets, CWIP and reserves and surplus.

5.3 Further, it was noted that the Respondent was not the statutory auditor of the consolidated financial statements of RIL. Further, he had clearly stated on the face of his audit report the accounting principles based on which the second set of financial statements were prepared by the management and audited by him. Considering the fact that said set was subject to '*Restriction on Distribution and Use*' if the said set was shared by the Company with NHA instead of its standalone financial statements of the SBEL, the Respondent could not be considered to have not performed his duty with diligence. It was noted that the Respondent had disclosed all necessary information in relation to purpose and financial reporting framework in his audit report. Thus, he had no intention to mislead the readers. Hence, the Respondent is prima facie not guilty of professional misconduct falling within the meaning of Item (7) of Part I of Second Schedule to the Chartered Accountants Act, 1949 for exercising due diligence in respect of impugned report.

Conclusion

6. Keeping in view, the facts and circumstances as discussed hereinabove, the Committee is of the considered view that the Respondent was held **NOT GUILTY** under Item (7) of Part I of the Second Schedule to the Chartered Accountants Act, 1949.

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7. Accordingly, in terms of Rule 19(2) of the Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007, the Committee passed order for closure of this case.

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

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


Sd/-
[CA. Vishal Doshi]
Member

Sd/-
[CA. Sushil Kumar Goyal]
Member

Date: 7th October, 2022

Place: New Delhi

सही प्रतिलिपि होने के लिए प्रमाणित
Certified to be true copy


बिषु नाथ तिवारी / Bishw Nath Tiwari
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