

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. [PR 208/19/DD/284/2019/DC-1508/2021]

In the matter of:

Shri Raghavendra L Naidu
Chief Executive Officer,
The Belgaum Industrial Co-operative Bank Ltd,
5 Uday, Dr. S P M Road,
Belagavi – 590 001
.....Complainant

Versus

CA. Sanju Dalmia (M.No.205088)
CA. Manoj Kumar (M.No.205956)
CA. Ashok Dalmia (M.No.206257) of
M/s Ashok Manoj & Co. (FRN. 007798S),
Chartered Accountants,
115, 3rd Floor, Shreyans Plaza,
Nagarthpet,
Bangalore – 560 002
.....Respondents

Members Present:

Smt. Anita Kapur, Presiding Officer & Member (Govt. Nominee)
Dr. K Rajeswara Rao, Member (Govt. Nominee)
CA. Vishal Doshi, Member
CA. Sushil Kumar Goyal, Member

Date of Final Hearing: 3rd November, 2022 through Video Conferencing

Parties Present:

- (i) Shri Raghavendra L. Naidu – the Complainant's Representative**
- (ii) CA Sanju Dalmia – Respondent No. 1**
- (iii) CA Manoj Kumar – Respondent No. 2**
- (iv) CA. Ashok Dalmia – Respondent No. 3**



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 Respondents were held *prima facie* guilty of Professional Misconduct falling within within the meaning of Item (7) of Part I of Second Schedule to the Chartered Accountants Act, 1949.

The said Item to the Schedule states 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 Respondents

2. In the extant case, the Complainant stated that the Respondent firm was Statutory Auditor of The Belgaum Industrial Co-operative Bank Ltd, Belgaum (hereinafter referred to as the “**Complainant Bank**”) for the Financial Year 2011-12. The Complainant alleged that in respect of fixed deposit, the Respondent firm failed to identify excess amount of Rs.2,97,565/- paid to particular accounts of Khade Bazar Branch during the said Financial year which caused financial loss to the Complainant Bank.

Further, it had also been alleged against the Respondent firm for (i) non-reporting of the Complainant Bank not following the conditions and procedures in respect of One Time Settlement scheme (hereinafter referred to as the “OTS”) and discount in ROI being given to the customers, and (ii) that the Respondent firm failed to direct or suggest to the Complainant Bank regarding implementation and usage of CCTV cameras and alarm facility effectively in the bank.

It was stated that had the Respondent firm being the Statutory Auditor of Bank for the FY 2011-12 reported the stated matters on time, the Complainant Bank would have not suffered huge financial loss.

Proceedings

3. During the meeting held on 3rd November 2022, the Committee noted that the Complainant as well as all the Respondents appeared through videoconferencing

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before it for hearing. Thereafter, they gave declaration that there was nobody present except them in their respective room from where they were appearing and that they would neither record nor store the proceedings of the Committee in any form.

The Committee noted that the matter was substantially heard during the last hearing and that matter could not be concluded due to change in constitution of the Bench. The Committee, thereafter, asked the Complainant as well as the Respondents if they want to make any further submissions in the matter other than that already available on record. Both the parties submitted that the submissions already made be considered to conclude on the matter.

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. At the outset, the Committee noted the Complainant in his complaint had raised three allegations against the Respondent as discussed in paragraph (2) above out of which the Director (Discipline) in his prima facie opinion dated 10th June, 2021 had held the Respondent prima facie guilty only in respect of first charge relating to fixed deposits excess payment and exonerated the Respondent of the remaining two allegations. Accordingly, the Committee held the enquiry on the date of hearing on said one allegation only as discussed above.

5. With respect to the said charge, the Respondents inter-alia submitted that the scope of the Statutory Audit was only to submit the financial statements along with Long Form Audit Report (LFAR) for FY 2011-12. They were not informed about the appointment of any internal auditor by the Bank to check and verify the accuracy of day to day transactions on 100% checking basis. He further argued that the total receipts of the Bank during FY 2011-12 amounted Rs. 64 crores approximately and that the total number of deposit accounts ledgers was 33014.

5.1 As per them, there was a fraudulent Gold Loan Scam in the Complainant Bank during the subsequent financial years i.e. FY 2013-14 and FY 2014-15. The basis of extant proceedings was the enquiry report dated 25/05/2018 wherein the fake gold loan scam was identified. The enquiry was conducted by the Joint Registrar of Co-op Societies (Urban Bank Cell), Bangalore. The said enquiry report was finalized without taking views of the Respondent in the matters reported against him and was closed unilaterally. They argued that nowhere in the said enquiry report, was fake gold loan scam attributed for FY 2011-12, for which the enquiry was conducted and that they had preferred an appeal against the findings of the said enquiry report.

5.2 In terms of materiality of the allegation made against them vis-a-vis total transactions audited, it was argued that the allegation made involved excess amount paid of Rs.2,97,565/- only which constituted .04% of balance sheet size (amounting Rs. 6981.27 lakhs), .05% of total amount of deposits held (amounting Rs. 5,365.34 lakhs) and it pertained to one account out of 33,014 deposits account held by the Bank. The Respondents argued that being statutory auditor(s) they had verified the deposit account on test check basis only and that the said transaction involved was not material to held them liable for professional misconduct.

5.3 The Committee observed considering the materiality of the amount involved in the allegation made against the Respondent, the Respondent could not be held professional misconduct. It was viewed that a statutory auditor verifies the data and information on test basis to determine accuracy and reliability of financial statements. Such audit is not conducted with preconceived notion to detect any fraud. Hence, considering the fact that the transaction involved immaterial amount, the matter did not warrant an action of professional misconduct against the Respondents. Thus, on an overall examination of the facts and documents placed on record, the Committee viewed that Respondents were NOT GUILTY with respect to the charge alleged against them.

Conclusion:

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

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


Sd/-
[Dr. K. Rajeswara Rao]
Member (Govt. Nominee)

Sd/-
[CA. Vishal Doshi]
Member

Sd/-
[CA. Sushil Kumar Goyal]
Member

Date: 7th December, 2022
Place: New Delhi

सही प्रतिलिपि होने के लिए प्रमाणित
Certified to be true copy


बिषा नाथ तिवारी / Bishwa Nath Thwari
कार्यकारी अधिकारी / Executive Officer
अनुशासनात्मक निदेशालय / Disciplinary Directorate
इंस्टीट्यूट ऑफ चार्टर्ड एकाउंटेंट्स ऑफ इंडिया
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