



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

[PR/101/2016-DD/133/2016-DC/1470/2021]

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

[PR/101/2016-DD/133/2016-DC/1470/2021]

**In the matter of:**

**Shri K.S. Kaushik, Deputy Director,  
SFIO, Ministry of Corporate Affairs,  
2<sup>nd</sup> Floor, Paryavaran Bhawan,  
CGO Complex, Lodhi Road  
NEW DELHI - 110 003**

.... Complainant

**-Vs-**

**CA. Ajai Kumar Singh (M.No.076383)  
M/s. Singh Ajai & Co.,  
320, 3<sup>rd</sup> Floor,  
Prince Complex, Hazratganj,  
LUCKNOW – 226 001**

.... Respondent

**MEMBERS PRESENT:**

1. Mrs. Rani Nair, I.R.S. (Retd.), Presiding Officer and Government Nominee (Present through Video Conferencing mode)
2. Shri Arun Kumar, I.A.S. (Retd.), Government Nominee (Present in person)
3. CA. Rajendra Kumar P, Member (Present in person)
4. CA. Cotha S Srinivas, Member (Present in person)

**DATE OF MEETING : 27.12.2022 (Through Physical/ Video Conferencing Mode)**

1. That vide findings under Rule 18 (17) of the Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007 dated 31<sup>st</sup> October 2022, the Disciplinary Committee was inter-alia of the opinion that **CA. Ajai Kumar Singh (M.No.076383), Lucknow** (hereinafter referred to as the **Respondent**) was **GUILTY** of professional misconduct falling within the meaning of Item (7) of Part I of the Second Schedule to the Chartered Accountant Act, 1949.

2. The Committee noted that the Respondent was present through Video Conferencing Mode. The Committee noted that the Respondent, in his submissions before it, mentioned that necessary

Shri K.S. Kaushik, Deputy Director, SFIO, MCA, New Delhi -Vs- CA. Ajai Kumar Singh, Lucknow



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details were disclosed by him in the Audit Report at Point no. 10, but that page was missing in the complaint filed by the Complainant Department. The Respondent submitted that his statement was recorded forcibly by the Complainant Department, and he was under the impression that the case was closed by SFIO at their end.

3. The Committee, while looking into the matter and the conduct of the Respondent, is of the opinion that the Respondent never raised this plea mentioned in para 2 above at the time of submission of his written statement at the prima-facie stage. The Committee also noted that the Respondent also accepted his mistake before SFIO.

4. The Committee also noted that the Respondent failed to bring any documentary evidence to establish a retraction of his statement given before SFIO. Hence, the Committee noted that, in the absence of reasonable steps taken by the Respondent to justify his stand, his submission cannot be accepted. The Committee on the merits of the case noted that the Respondent failed to report in his audit report about the preference shares that were redeemed in violation of Section 80 of the Companies Act, 1956 and this mistake was duly accepted by him before SFIO.

4. Accordingly, the Committee viewed that the ends of justice can be met if reasonable punishment is given to the Respondent to commensurate with his above professional misconduct.

5. Therefore, keeping in view the facts and circumstances of the case, the material on record, and the submissions of the Respondent before it, the Committee ordered that the name of the Respondent - CA. Ajai Kumar Singh (M.No.076383) of M/s. Singh Ajai & Co., Chartered Accountants, Lucknow, be removed from the Register of Members for a period of three months along with a fine of Rs 30,000 (Rupees Thirty Thousand only).

sd/-

(MRS. RANI NAIR, I.R.S. RETD.)

PRESIDING OFFICER & GOVERNMENT NOMINEE

sd/-

(SHRI ARUN KUMAR, I.A.S. RETD.)

GOVERNMENT NOMINEE

sd/-

(CA. RAJENDRA KUMAR P)

MEMBER

DATE: 11.02.2023

PLACE: NEW DELHI

sd/-

(CA. COTHA S SRINIVAS)

MEMBER

सही प्रतिलिपि होने के लिए प्रमाणित /  
Certified to be true copy

नीलम पुंडीर / Neelam Pundir  
कार्यकारी अधिकारी / Executive Officer  
अनुशासनात्मक निदेशालय / Disciplinary Directorate

Shri K.S. Kaushik, Deputy Director, SFIO, New Delhi vs CA. Ajai Kumar Singh, Lucknow

The Institute of Chartered Accountants of India  
आईसीएआई भवन, विश्वास नगर, शाहदरा, दिल्ली-110032  
ICAI Bhawan, Vishwas Nagar, Shaheed, Delhi-110032

**CONFIDENTIAL**

**DISCIPLINARY COMMITTEE [BENCH – II (2022-2023)]**

**[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/101/2016-DD/133/2016-DC/1470/2021]**

**In the matter of:**

**Shri K.S. Kaushik, Deputy Director,  
SFIO, Ministry of Corporate Affairs  
2<sup>nd</sup> Floor, Paryavaran Bhawan,  
CGO Complex, Lodhi Road,  
New Delhi – 110003**

**.....Complainant**

**Versus**

**CA. Ajai Kumar Singh (M. No. 076383)  
M/s Singh Ajai & Co.  
320, 3<sup>rd</sup> Floor,  
Prince Complex, Hazratganj  
Lucknow- 226001**

**..... Respondent**

**MEMBERS PRESENT:**

- 1. CA. (Dr.) Debashis Mitra, Presiding Officer (Present in person)**
- 2. Mrs. Rani Nair, I.R.S. (Retd.), Government Nominee (Present in person)**
- 3. Shri Arun Kumar, I.A.S. (Retd.), Government Nominee (Present through Video Conferencing)**
- 4. CA. Cotha S Srinivas, Member (Present through Video Conferencing)**

DATE OF FINAL HEARING: 19.09.2022 (Through Physical/ Video Conferencing Mode)

**PARTIES PRESENT:**

Counsel for Complainant Department : Sh. Chaman Sharma, Advocate  
Respondent : CA. Ajai Kumar Singh

**CHARGES IN BRIEF:-**

1. The Committee noted that in the present case the Director (Discipline) had held the Respondent Prima-facie Guilty of Professional Misconduct falling within the meaning of Items (5), (6) and (7) of Part I of the Second Schedule to the Chartered Accountants Act, 1949 on the charge that the Respondent in his Audit Report in respect to the auditee Company i.e. M/s Nixcil Pharmaceuticals Specialities Ltd. for the financial year 2008-09 failed to report that the Company had redeemed cumulative preference shares in violation of provisions of Section 80 of the Companies Act, 1956.

**BRIEF FACTS OF THE PROCEEDINGS:**

2. On the day of the final hearing held on 19<sup>th</sup> September 2022, the Committee noted that Panel Counsel of SFIO Sh. Chaman Sharma, Advocate was present on behalf of the Complainant Department, through Video Conferencing Mode. The Committee noted that the Respondent was also present through Video Conferencing Mode.
  - 2.1 The Respondent was administered on Oath. Thereafter, the Committee asked the Complainant Department to present the charges. Accordingly, the Complainant's Counsel Sh. Chaman Sharma, Advocate, presented the charges in detail. The Committee enquired from the Respondent as to whether he pleaded guilty to the charges or not. On the same, the Respondent pleaded Not Guilty to the charges levelled against him.

- 2.2 The Respondent presented his line of defense by presenting the arguments and the Committee posed certain questions to him to understand the issue involved and the role of the Respondent in the case. After consideration of the submissions of the Respondent vis-à-vis facts of the case, the Committee decided to conclude the hearing.

### **FINDINGS OF THE COMMITTEE**

3. The Committee noted that the Counsel for the Complainant mentioned that the Respondent during his statement given on an Oath before SFIO on 4<sup>th</sup> March 2013, admitted that M/s Nixil Pharmaceuticals Specialties Ltd. was in loss and had redeemed cumulative preference shares in year 2008-09 in violation of Section 80 of the Companies Act.
4. The Respondent in his submission before the Committee inter-alia submitted that violation of Section 80 with respect to redemption of preference shares was duly reported by him at Point no.10 of Annexure to the auditor's report, but that relevant page containing point 10 was missing in the complaint filed by the Complainant. The Respondent further submitted that the page enclosed in the complaint is different and does not bear his signature. Hence, according to him the page containing point no. 10 has been changed.
5. The Committee noted that the Respondent in his earlier submission dated 8<sup>th</sup> October 2016 at prima-facie stage in his written statement had never taken the above stand. He in that written statement had merely stated as under:
- a. That he conducted a Statutory Audit of M/s Nixcil Pharmaceuticals Specialities Ltd. for the financial Year 2008-09 based on the books of accounts / records furnished by the Company and all the information and explanations which, to the best of his knowledge and belief, were necessary for the purpose of his audit.
  - b. That he replied to the queries at SFIO, MCA, New Delhi and that there was no default made by the company during the financial year 2008-09.

- c. That during the financial year the Company redeemed cumulative preference Shares of Rs. 62,73,000/-. Though the Company incurred loss, yet the Company had sufficient Reserves of Rs. 5,07,82,250/-. Redemption of Rs. 62,73,000/- cumulative preference shares were made from fresh issue of Equity Shares worth Rs. 26,72,750/- and the balance out of Reserves.

The Committee noted that the plea taken by the Respondent at the time of hearing was an afterthought as he never raised similar objection at the prima-facie stage and the alleged page (mentioned at **D-4 of prima-facie opinion**) was submitted by the Respondent himself at additional documents stage. Hence the Committee decided not to accept the submission of the Respondent and decided to proceed on the merits of the case.

6. The Committee noted that it is apparent from records that M/s Nixcil Pharmaceuticals Ltd. during the Financial Year 2008-2009 had redeemed the following preference shares:
- a. 10% Redeemable Cumulative Preference share capital worth Rs. 22,22,000/-
  - b. 11% Redeemable Cumulative Preference Share Capital worth Rs. 40,51,000/-

Thus, the total preference share capital redeemed during the period was Rs.62,73,000/-(Rs. 22,22,000/- + Rs. 40,51,000/-). The Committee noted that said shares were redeemed partly by issue of fresh issue of Equity Shares worth Rs. 26,72,750/- and the balance from Reserves.

7. The Committee noted that Section 80 of Companies Act, 1956 "Power to issue redeemable preference shares" states

*(1) Subject to the provisions of this section, a company limited by shares may, if so authorised by its articles, issue preference shares which are, or at the option of the company are to be liable, to be redeemed:*

*Provided that-*



- (a) no such shares shall be redeemed except out of profits of the company which would otherwise be available for dividend or out of the proceeds of a fresh issue of shares made for the purposes of the redemption;
- (b) no such shares shall be redeemed unless they are fully paid;
- (c) the premium, if any, payable on redemption shall have been provided for out of the profits of the company or out of the company [security premium account], before the shares are redeemed;
- (d) where any such shares are redeemed otherwise than out of the proceeds of a fresh issue, there shall, out of profits which would otherwise have been available for dividend, be transferred to a reserve fund, to be called [the capital redemption reserve account], a sum equal to the nominal amount of the shares redeemed; and the provisions of this Act relating to the reduction of the share capital of a company shall, except as provided in this section, apply as if [the capital redemption reserve account] were paid-up share capital of the company.
- (2) Subject to the provisions of this section, the redemption of preference shares thereunder may be effected on such terms and in such manner as may be provided by the articles of the company.
- (3) The redemption of preference shares under this section by a company shall not be taken as reducing the amount of its authorised share capital.
- (4) Wherein pursuance of this section, a company has redeemed or is about to redeem any preference shares, it shall have power to issue shares up to the nominal amount of the shares redeemed or to be redeemed as if those shares had never been issued; and accordingly the share capital of the company shall not, for the purpose of calculating the fees payable under [section 611], be deemed to be increased by the issue of shares in pursuance of this sub-section:

*Provided that, where new shares are issued before the redemption of the old shares, the new shares shall not, so far as relates to stamp duty, be deemed to have been issued in pursuance of this sub-section unless the old shares are redeemed within one month after the issue of the new shares.*

- (5) ....
- (5A)....
- (6).....”



8. The Committee noted that as per the aforesaid provisions of Section 80, the redemption can be either out of profits otherwise available for dividend or out of fresh issue. The Committee noted that redemption of preference share capital to the extent of Rs.26,72,750/- out of fresh issue of shares was in line with the requirement of Section 80 of the Companies Act, 1956.

However, as regards redemption of balance preference share capital from reserves, the Committee noted that the only component in Schedule 2: Reserves & Surplus was the Securities Premium Account and that too is never available for distribution of dividend as stated above in para. Hence, there were no profits, which were otherwise available for dividend, from which the redemption could be made.

The Committee further noted that when shares are redeemed out of profits then an amount equivalent to such profits used should be transferred to the capital redemption reserve account. However, no such entry is found in books of accounts. Thus, the preference shares were redeemed in violation of Section 80 of Companies Act, 1956 which the Respondent failed to report in his Audit Report.

9. Accordingly, the Committee noted that the Respondent being auditor of the Company, ought to have reported the said non-compliance done by the Company in his audit report. The Committee also noted that the Respondent accepted the mistake of violation of section 80 by the Company before the SFIO. Hence, the Committee was of considered view that the violation was required to be reported by the Respondent in his audit report by way of specific disclosure on this count which the Respondent had failed to do. Accordingly, looking into the lack of due diligence, the Committee hold the Respondent **GUILTY** of Professional Misconduct falling within the meaning of Item (7) of Part I of the Second Schedule to the Chartered Accountants Act, 1949.
10. The Committee further noted that the amount utilized from reserves in redemption of preference shares was only Rs. 36.00 lacs and the same is not





material when compared with the size of the Balance Sheet of Rs.152.39 crores. Hence, the Committee decided to exonerate the Respondent from Professional Misconduct falling within the meaning of Item (5) and (6) of Part I of the Second Schedule to the Chartered Accountants Act, 1949.

## CONCLUSION

11. In view of the above findings, the Committee in its considered opinion hold the Respondent is **GUILTY** of Professional Misconduct falling within the meaning of Item (7) of Part I of the Second Schedule to the Chartered Accountants Act, 1949.

sd/-  
(CA. (Dr.) DEBASHIS MITRA)  
PRESIDING OFFICER

sd/-  
(SMT RANI NAIR,IRS (RETD.)  
GOVERNMENT NOMINEE


sd/-  
(SHRI ARUN KUMAR, IAS (RETD.)  
GOVERNMENT NOMINEE

sd/-  
(CA. COTHA S. SRINIVAS)  
MEMBER

DATE : 31.10.2022

PLACE : NEW DELHI

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अरुण कुमार / Arun Kumar  
कार्यकारी अधिकारी / Executive Officer  
अनुशासनात्मक निदेशालय / Disciplinary Directorate  
इंस्टिट्यूट ऑफ चार्टर्ड एकाउंटेंट्स ऑफ इंडिया  
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