

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. : [PPR/P/1/2014-DD/23/INF/14-DC/557/2017]

In the matter of:

CA. Vijaykant Jagannath Kulkarni (M.No.039702)

M/s. V.J. Kulkarni & Associates,

A-102, Gyan Galaxy,

Bibwewadi Kondhwa Road,

Bibwewadi,

PUNE – 411 037

.....Respondent

MEMBERS PRESENT:

CA. (Dr.) Debashis Mitra, Presiding Officer (Present in person)

Mrs. Rani Nair, I.R.S. (Retd.), Government Nominee (Present in person)

Shri Arun Kumar, I.A.S.(Retd.), Government Nominee (Present in person)

CA. Cotha S Srinivas, Member (Present through Video Conferencing Mode)

DATE OF FINAL HEARING : 05.08.2022 (through physical/video conferencing mode)

PARTIES PRESENT :

Respondent : CA. Vijaykant Jagannath Kulkarni (Through Video Conferencing Mode)

Counsel For the Respondent: Mr. Sagar Tilak, Advocate (Through Video Conferencing Mode)

CHARGES IN BRIEF:-

1. The Committee noted that the Respondent was held Prima-Facie Guilty by the Director (Discipline) of Professional Misconduct falling within the meaning of Items (6), (7) and (9) of Part I of the Second Schedule to the Chartered Accountants Act, 1949, on the following charges with respect to audit of M/s New India Co-operative Bank Ltd. (hereinafter referred to as the "Bank") conducted by the Respondent firm for F.Y. 2010-11:

1.1 That net profit of the Bank has been overstated due to the transfer of Rs. 5.61 crore from the Investment Fluctuation Reserve (IFR) to the Profit & Loss Account above the line (Page A-5 of Prima-facie opinion),

1.2 That NPAs have been understated by:

a) Due to the transfer of Rs.4.60 crore from IFR (Investment Fluctuation Reserve) to BDDR (Bad and Doubtful Debt Reserves) and Rs.1 crore from BDDR to IFR. As a result, net BDDR was inflated by Rs.3.60 crore (page A-5 of Prima-facie opinion).

b) Due to the transfer of Rs.7.5 crore from the contingency reserve to BDDR without routing erosion in value of debt through Profit & Loss account (page A-5 of Prima-facie opinion).


BRIEF FACTS OF THE PROCEEDINGS:

2. On the day of the final hearing held on 05th August 2022, the Committee noted that the Respondent and his Counsel, Mr. Sagar Tilak, Advocate was present through Video Conferencing Mode. At the outset, the Committee enquired from the Respondent that since, the composition of the Committee had changed further from the previous hearing, as to whether he wished to have a de-novo hearing. On the same, the Respondent opted for a de-novo hearing. The Committee acceded to his request and started a fresh hearing in the matter.



3. The Respondent was administered on Oath. Thereafter, the Committee enquired from the Respondent as to whether he was aware of the charges. On the same, the Respondent replied in the affirmative and pleaded Not Guilty to the charges levelled against him. Thereafter, Counsel for the Respondent presented his line of defense by presenting the arguments. After considering all papers available on record and after detailed deliberations and recording the submissions, the Committee decided to conclude the matter.

FINDINGS OF THE COMMITTEE

4. The Committee noted that in present case, information is received from RBI (Reserve Bank Of India) vide letter 27th November 2013 alleging major differences in the assessment of net profit and Bad and Doubtful Debt Reserves (BDDR) provision by the RBI Inspection Report vis-a-vis that by Statutory Auditors with respect to Financial Year 2010-11.
5. The Committee noted that with regard to the **first charge**, the Respondent/ his Counsel in their written and oral submissions had inter-alia submitted as under:
 - a. That client bank, i.e. M/s New India Co-operative Bank Ltd. is a Multi-State Co-operative Bank. There are two statutes applicable to it, the first is the Banking Regulation Act (BRA) and the second is the Multi State Co-operative Societies Act (MSCSA).
 - b. Section 56 of the BRA provides amended provisions which are applicable to the Multi-State Co-operative Bank.
 - c. That the Informant ignored the fact that there are special formats prescribed for the Financial Statements for the Multi-State Co-operative Bank under section 56 of BRA. These formats are materially different than those that are applicable to other banks.
 - d. The format which is applicable in the client bank is the format which are modified format in part-III in line with Section 56 of BRA.
 - e. There is no distinction between "above the line" or "below the line" in the case of a Multi-State Co-operative Bank. The appropriations are shown directly in

the Balance Sheet by way of reduction from the balance of profits as per P & L Account (of last year) after the member's approval in the subsequent year (at the Annual General Meeting).

- 5.1 The Committee noted that Counsel for the Respondent basically argued on the basis of legal framework and accounting provisions applicable to a Multi-state Co-operative Bank. He further argued on provisions of Section 62 and 63 of the Multi-State Co-operative Societies Act, 2002, mentioning that there is no distinction between 'above the line' or 'below the line' for a Multi-State Co-operative Bank and hence there is no prohibition on inter-se transfer of balances from one type of reserve to another, directly without routing through the Profit & Loss account.
- 5.2 The Committee noted that the Respondent/ his Counsel had mainly argued as per formats prescribed for the Balance Sheet and the Profit & Loss account, and that there is no separate provision for appropriation of the profits. The Committee noted that although the prescribed formats require to show the final balances on face of the Financial Statement, yet it does not prohibit appropriation of profits. Further, section 62 only defines net profit that can be distributed by way of bonus or dividend among the members. It does not mean that there is no distinction between 'above the line' and 'below the line' in the formats prescribed for a Multi-State Co-operative Bank.
- 5.3 The Committee also noted that the Respondent in his submissions given at prima-facie stage had mentioned (Point no. 6a on Page B-24 of Prima facie opinion) that Master Circular UBD BPD (PCB) MC. No. 12/16.20.000/2010-11 dated July 01 2010 is addressed to only all "Scheduled Commercial Banks" and not to "Scheduled Co-operative Banks". The Committee noted that Master Circular UBD BPD (PCB) MC. No. 12/16.20.000/2010-11 dated July 01, 2010 on Master Circular on Investments by Primary (Urban) Co-operative Banks is applicable in extant case because Section 56 (cciiia) of the Banking Regulation Act, 1949 primary Co-operative bank also.

5.4 The Committee noted Paragraph 17 of said circular lays down provisions relating to the creation and utilization of Investment Fluctuation reserve which states as follows:

17.1 *Banks should build up Investment Fluctuation (IFR) out of realized gains on sale of investment, and subject to available net profit of a minimum of 5 per cent of the investment portfolio by March, 2008. This minimum requirement should be computed with reference to investments in two categories, viz., Held for trading (HFT) and 'Available for sale (AFS). It will not be necessary to include investment under 'Held to Maturity' category for the purpose. However, Banks are free to build up a higher percentage of IFR up to 10 per cent of the portfolio depending on the size and composition of their portfolio, with the approval of their Board of Directors".*

17.2 *Banks should transfer maximum amount of the gains realized on sale of investment on securities to the IFR. Transfer to IFR shall be as an appropriation to Statutory Reserve.*

17.4 *Transfer from IFR to the Profit & Loss Account to meet depreciation requirement on investments would be a 'below the line'....."*

5.5 The Committee from the above noted that IFR should be created out of realized gains on the sale of investments. This transfer to IFR should be by way of appropriation of net profit as an appropriation to Statutory Reserve. Further, the amount from IFR should also be transferred to the Profit & Loss Account below the line in the Profit & Loss appropriation account. In view of the afore-stated explicit provisions, transferring amounts directly from the IFR account to the Profit & Loss Account above is a non-compliance of stated provisions of the master circular. Accordingly, the Committee observed that the Respondent not only failed to invite material departure from the generally accepted principles of audit but also failed to report material misstatements known to him appearing in financial statements. The Committee also noted that the Respondent also failed to exercise due diligence and was grossly negligent while discharging his professional duties and hence held him **GUILTY** of Professional Misconduct falling within the meaning of Items (6), (7) and (9) of Part I of the Second Schedule to the Chartered Accountants Act, 1949 with respect to this charge.

6. The Committee noted that the Respondent/ his Counsel, in their written and oral submissions, with regards to both legs of the **second charge** had, inter-alia, submitted as under:
- a. That the MSC Bank does not prohibit reserve to reserve transfer. Even the format in part-III also, does not ever require disclosing the reserve-to-reserve movement. As per Part III, the closing balance standing in the reserve bank had to be disclosed under item 11.
 - b. The Bank, in the instant case, has also taken approval from the shareholders for transfer from one reserve to other.
 - c. That the presentation letter from the bank explains the reserve from contingency to BDR reserves or from IIFR to BDR.
 - d. That the note given by the Board of Directors to the Managing Director and the approval to that effect has been taken in the AGM from all the shareholders.
 - e. Therefore, there is no disclosure of no accounting treatment which has not been approved by the shareholders and, ultimately, the stakeholder or the shareholders are very well aware of the fact that such reserves are permissible.
- 6.1 The Committee noted that in the first leg of this charge Rs.4.60 crores were transferred from IFR (Investment Fluctuation Reserve) to BDDR (Bad and Doubtful Debt Reserves) and also Rs.1 crore from BDDR to IFR. As a result, net BDDR was inflated by Rs.3.60 crores.
- 6.2 The Committee as regards the transfer from the IFR, observed the Paragraph 17.4 and 17.6 of Master Circular UBD BPD (PCB) MC. No. 12/16.20.000/2010-11 dated July 1 2010 which indicates that the IFR can only be utilized to meet the depreciation requirement on investment in the securities. The said paras read as under: -

"17.4 Transfer from IFR to the Profit & Loss Account to meet depreciation requirement on investments would be a 'below the line' extraordinary item".

"17.6 Banks may utilise the amount held in IFR to meet, in future, the depreciation requirement on investment in securities"

The Committee noted that in extant case, IFR has been utilized for bad and doubtful debt reserve (BDDR), which cannot be treated as reserve against depreciation of investment in securities. Hence, the stated transfer was not in line with the requirements of the Master Circular. The Committee further observed the permission obtained from the shareholders regarding the transfer from one reserve to another is in contradiction with disclosure requirements of the law and hence reliance on the same by the Respondent is not justified as he was required to adhere to generally accepted practice and give his independent opinion. Accordingly, the Committee observed that the Respondent not only failed to invite material departure from generally accepted principles of audit but also failed to report material misstatements known to him appearing in financial statements. The Committee noted that the Respondent also failed to exercise due diligence and was grossly negligent while discharging his professional duties and hence held him **GUILTY** of Professional Misconduct falling within the meaning of Items (6), (7) and (9) of Part I of the Second Schedule to the Chartered Accountants Act, 1949 with respect to first leg of this charge.

6.3 The Committee as regards the second leg of the charge relating to the transfer of Rs.7.5 crore from the contingency reserve to BDDR without routing erosion in value of debt through the Profit & Loss account, viewed that any erosion in value of debt is loss, which should be routed through Profit & Loss Account and any such loss being made good by transferring the amount from contingency reserve is not acceptable accounting practice.

6.4 The Committee viewed that Contingency Reserves are normally created out of its net profits in any year for meeting unforeseen losses. The Committee noted that the Informant (RBI) mentioned in the complaint the amount so transferred to BDDR was used for purposes other than the mandated one. The Committee accordingly noted that the Bank had not adopted correct accounting practices by

making a provision (BDDR) out of the reserve fund (appropriated item). Accordingly, the Committee observed that the Respondent not only failed to invite material departure from generally accepted principles of audit but also failed to report material misstatements known to him appearing in financial statements. The Committee noted that the Respondent also failed to exercise due diligence and was grossly negligent while discharging his professional duties and hence held him **GUILTY** of Professional Misconduct falling within the meaning of Items (6), (7) and (9) of Part I of the Second Schedule to the Chartered Accountants Act, 1949 with respect to second leg of this charge also.

CONCLUSION

7. In view of the above findings stated in the above para's vis a vis material on record, the Committee, in its considered opinion, holds the Respondent **GUILTY** of Professional Misconduct falling within the meaning of Items (6), (7) and (9) of Part I of the Second Schedule to the Chartered Accountants Act, 1949 on both charges.

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

sd/-
(MRS. RANI NAIR, I.R.S. (RETD.))
GOVERNMENT NOMINEE

sd/-
(SHRI ARUN KUMAR, I.A.S. (RETD.))
GOVERNMENT NOMINEE

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

DATE: 06.01.2023
PLACE: NEW DELHI

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

नीलम पुंडीर / Neelam Pundir
कार्यकारी अधिकारी / Executive Officer
अनुशासनात्मक निदेशालय / Disciplinary Directorate
इंस्टीट्यूट ऑफ चार्टर्ड एकाउंटेंट्स ऑफ इंडिया
The Institute of Chartered Accountants of India
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THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA
(Set up by an Act of Parliament)

[PPR/P/1/2014-DD/23/INF/14-DC/557/2017]

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.

[PPR/P/1/2014-DD/23/INF/14-DC/557/2017]

In the matter of:

CA. Vijaykant Jagannath Kulkarni (M.No.039702) in Re:

M/s. V.J. Kulkarni & Associates,
A-102, Gyan Galaxy,
Bibwewadi Kondhwa Road,
Bibwewadi,
PUNE – 411 037

.....Respondent

MEMBERS PRESENT:

1. CA. Ranjeet Kumar Agarwal, 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 in person)
4. CA. Sanjay Kumar Agarwal, Member (Present in person)
5. CA. Sridhar Muppala, Member (Present through video conferencing mode)

DATE OF MEETING : 28.03.2023 (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 06th January 2023, the Disciplinary Committee was, inter-alia, of the opinion that **CA. Vijaykant Jagannath Kulkarni (M.No.039702)**, (hereinafter referred to as the **Respondent**), was **GUILTY** of professional misconduct falling within the meaning of Items (6), (7), and (9) of Part I of the Second Schedule to the Chartered Accountants Act, 1949.
2. The Committee noted that the instant matter pertains to the audit of M/s New India Co-operative Bank Ltd. (hereinafter referred to as the **"Bank"**) conducted by the Respondent for the F.Y. 2010-11. The Committee noted that the charges against the Respondent are as follows:
 - (i). That net profit of the Bank has been overstated due to the transfer of Rs. 5.61 crore from the Investment Fluctuation Reserve (IFR) to the Profit & Loss Account above the line.



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- (ii). That NPAs have been understated by:
- a) Due to the transfer of Rs.4.60 crore from IFR (Investment Fluctuation Reserve) to BDDR (Bad and Doubtful Debt Reserves) and Rs.1 crore from BDDR to IFR. As a result, net BDDR was inflated by Rs.3.60 crore (page A-5 of Prima-facie opinion).
 - b) Due to the transfer of Rs.7.5 crore from the contingency reserve to BDDR without routing erosion in value of debt through Profit & Loss account (page A-5 of Prima-facie opinion).
3. The Committee noted that the Respondent was present through Video Conferencing Mode. and in his submissions before it, he mentioned that the present case has been ongoing for more than 10 years and has created a loss of professional reputation and opportunity at the peak of his carrier. He added that he has been practicing for more than 36 years and that his record is blotless. The Respondent submitted that the present case is based on information from an inspection report by the RBI. The Respondent added that no prejudice is caused to the depositor, the stakeholder, the revenue authority or the borrowers. He further mentioned that the present case is based on the net profit of the Bank to the Profit & Loss Account above the line or below the line and the true and fair view that was given by him was based on industry practice followed by other banks.
4. It was also argued by the Respondent that the treatment adopted by him was based on industry practice followed by other banks, and as far as materiality is concerned, the same is less than 3 percent. He added that the RBI had not levied any penalty or taken any productive action against the bank.
5. The Committee, while considering documents and submissions of the Respondent on record, noted that the present case is based on the crediting of amounts in the Profit & Loss Account above the line which, as per the circular issued by the RBI, should be credited below the line. The Committee further noted that the Respondent did not consider adherence to the RBI circular issued prior to issuing the audit report and that the Respondent relied upon the prevailing Law and industry practice rather than the circular issued by the RBI.
6. The Committee, while taking note of the submission of the Respondent, was satisfied that there was no malafide intention on the part of the Respondent.



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7. Accordingly, the Committee, looking into the charges *vis-a-vis* submissions of the Respondent, was of the view that the ends of justice shall be met if punishment including a fine is imposed on the Respondent.
8. 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 Respondent CA. Vijaykant Jagannath Kulkarni (M.No.039702), be reprimanded along with a fine of Rs.1,00,000/- (Rupees One Lakh Only).

sd/-

(CA. RANJEET KUMAR AGARWAL)
PRESIDING OFFICER

sd/-

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

sd/-

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

sd/-

(CA. SANJAY KUMAR AGARWAL)
MEMBER

sd/-

(CA. SRIDHAR MUPPALA)
MEMBER

DATE: 13th MAY, 2023

PLACE: NEW DELHI

सही प्रतिलिपि होने के लिए प्रमाणित
Certified to be true copy
Shri Arun Kumar
सीए नीतिका गुप्ता / CA. Niteeka Gupta
सहायक निदेशक / Assistant Director
अनुशासनात्मक निदेशालय / Disciplinary Directorate
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