



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

[PR/ 207/14-DD/223/14-DC/1137/2019]

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.

File No.: PR/ 207/14-DD/223/14-DC/1137/2019

In the matter of:

The Superintendent of Police,
Central Bureau of Investigation,
Anti-Corruption Branch ,
3rd Floor, Shastri Bawan,
26, Haddows Road,
Chennai 600 006

.....Complainant

Versus

CA. T.R. Sarathy (M. No. 025982)
#241, TNHB Colony,
Tambaram Sanatorium,
Chennai 600 047

.....Respondent

Members present:

CA. Aniket Sunil Talati, Presiding Officer
Smt. Anita Kapur, Member (Govt. Nominee)
Dr. K Rajeswara Rao, Member (Govt. Nominee)
CA. Sushil Kumar Goyal, Member
CA. Piyush S Chhajed, Member

Date of Final Hearing: 12.04.2023 through Video Conferencing

Place of Hearing: New Delhi

Party Present:

(i) CA. T.R. Sarathy (M. No. 025982) – Respondent (appeared from his personal location)

1. That vide report dated 07.02.2023, the Disciplinary Committee was of the opinion that CA. T.R. Sarathy (M. No. 025982) was GUILTY of Professional Misconduct falling within the meaning of Clauses (2) and (7) of Part I of Second Schedule to the Chartered Accountants Act, 1949 as Respondent signed Balance Sheet and Profit & Loss Account of M/s. Swastik Enterprises (hereinafter referred to as 'the Concern') for the year ending on 31.03.2008 and 31.03.2009 without verification of the relevant documents and also signed a certificate dated 10th March 2010 listing the credit limits of the Concern with Punjab National Bank, Nungambakkaam, Chennai and certifying that M/s. Swastik Enterprises had no overdues as on that date. It was noted that the extant complaint was based on a criminal case (RC MA1, 2013 A 00035) registered on complaint of DGM, Canara Bank, Chennai for the commission of criminal offences against the then Chief Manager, Canara Bank (Guindy Branch), Shri S. Samraj (Proprietor, Swastik Enterprises) and others who entered into a criminal conspiracy and the Bank took over the liabilities of the Concern from PNB, Nungambakkam without adhering to the prescribed procedures. The said conspiracy had caused a wrongful loss of Rs. 18.35 crores to the Canara Bank (Guindy Branch).



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It was noted that Clause (2) and (7) of Part-I of the Second Schedule state as under:-

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-

(2) certifies or submits in his name, or in the name of his firm, a report of an examination of financial statements unless the examination of such statements and the related records has been made by him or by a partner or an employee in his firm or by another chartered accountant in practice

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

2. An action under Section 21B (3) of the Chartered Accountants Act, 1949 was contemplated against the Respondent and communication dated 27th March 2023 was addressed to him thereby granting him an opportunity of being heard in person and/or to make a written representation before the Committee on 12th April 2023 through video conferencing.

3. The Respondent appeared before the Committee on 12th April, 2023 through video conferencing and made his oral representations on the findings of the Disciplinary Committee. The Committee considered the oral as well as the written representation dated 31st March, 2023. The Respondent inter-alia submitted that the charge against him was with respect to two set of financials out of which he had signed one set of the financials well before the other CA and that the other CA was never called for even for clarification. As per him, the other CA had only taken printout of tally and signed. He argued that both the financials were exactly the same, so if he had been alleged to have not verified the facts and figures then how come that the other CA had checked it. The Respondent further submitted that the whole allegation against him was based on an unverified statement from an unqualified person who, as per him, seem to be the kingpin in the whole process. He, further, submitted that he was never asked to furnish any working paper or any other document prior to 2011 or 2015, when the floods destroyed many parts of Chennai including his office. The Respondent further contended that the forensic report also was in his favour in the sense that his signature was forged. Even the seal which was used in the certificate was quite different from the one which he used to sign the financials of 2008 and 2009.

4. The Committee considered the oral as well as written representation of the Respondent and noted that in extant case the allegations clearly establish lacuna on the part of the Respondent in conduct of his duties. Regarding the first charge of signatures on Balance Sheet and Profit & Loss Account of M/s. Swastik Enterprises for the year ending on 31.03.2008 and 31.03.2009 without verification of the relevant documents, the Committee noted that the said allegation was evaluated on the basis of

- statement of Shri R Hariharan originally recorded before Inspector of Police, CBI, ACB, Chennai and thereafter before Ld. Metropolitan Magistrate, Egmore, Chennai wherein he stated that he took Mr. S. Samraj to the Respondent's office and after discussion, the Respondent signed the balance sheet and P&L statements as on 31.03.2008 & 31.03.2009 without real auditing for cash of Rs. 3000/-. It was noted that though the Respondent questioned on relying upon the said Statement but he never sought an opportunity from the Committee to cross-examine Mr. Hariharan.

- the fact that the Respondent had failed to produce his working papers in relation to alleged audits. It is noted that whereas before the Committee, he submitted that the same was destroyed in Chennai floods of 2015, when the working papers were sought by the Director (Discipline) before

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forming his Prima facie opinion vide letter dated 15th January, 2015 (D-2) followed by a reminder dated 5th May, 2015 (D-3), he then too failed to provide any working paper.

It was also noted that the Respondent had argued in context of facts that both set of financials were exactly the same and that it was him who had signed before the other auditor and thereafter the financials were fudged. However, on perusal of documents on record, it was amply evident that there were significant difference in the figures/parameters of both set of financials in each period and that the financials filed with the ITRs of the Concern were certified by Shri A. Srinivasan, other CA Further, it was noted that the Respondent never raised the issue of seeking any clarification from Shri A. Srinivasan, other CA.

5. Further, with respect to the second charge of issue of certificate dated 10th March 2010, the Committee perused the expert opinion report issued by the Central Forensic Science Laboratory dated 20th January 2015 which clearly reported similarity in the signature of the Respondent vis-à-vis the alleged certificate. Further, it was noted that the Respondent had failed to bring on record any document that show the action taken by him viz. F.I. R. lodged by him regarding misuse of his signature on the alleged certificate. Accordingly, the plea of the Respondent that the forensic report was in his favor lacks credibility. Regarding the plea that seal which was used in the Certificate was quite different, the Committee noted that the Respondent has failed to bring on record any evidence either before the Director (Discipline) or before the Bench to defend against the allegation in said context. Accordingly, the Committee held the Respondent guilty of Professional Misconduct falling within the meaning of Clause (7) of Part-I of Second Schedule to the Chartered Accountants Act, 1949.

6. Keeping in view, overall facts and submissions of the Respondent, the Committee noted that though the Respondent had raised several issues to defend the allegations raised against him but he either failed to bring in necessary documentary evidence viz the working papers in his defense or failed to context on the grounds raised by him though sufficient opportunity was given to him for the same.

7. The Committee thus viewed that the misconduct on the part of the Respondent has been held and established within the meaning of Clause (2) and (7) of Part-I of the Second Schedule to the Chartered Accountants Act, 1949 and keeping in view the facts and circumstances of the case as aforesaid, ordered that the name of the Respondent **CA. T.R. Sarathy (M. No. 025982)** be removed for a period of 2 (Two) months from the Register of members.

Sd/-

[CA. Aniket Sunil Talati]
Presiding Officer

Sd/-

[Smt. Anita Kapur]
Member (Govt. Nominee)

Sd/-

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

Sd/-

[CA. Sushil Kumar Goyal]
Member

Date: 1st May, 2023
Place: New Delhi

सही प्रतिलिपि होने के लिए प्रमाणित
Certified to be true copy

बिष्वा नाथ तिवारी / Bishwa Nath Tiwari
कार्यकारी अधिकारी / Executive Officer
अनुशासनसम्बन्धक निदेशालय / Disciplinary Directorate
इंस्टिट्यूट ऑफ चार्टर्ड एकाउंटेंट्स ऑफ इंडिया
The Institute of Chartered Accountants of India
आइसीएआई भवन, विश्वास नगर, शाहदरा, दिल्ली-110032
ICAI Bishwan, Vishwas Nagar, Shahdara, Delhi-110032

Sd/-

[CA. Piyush S Chhajed]
Member

CONFIDENTIAL

DISCIPLINARY COMMITTEE [BENCH – III (2022-23)]
[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/ 207/14-DD/223/14-DC/1137/2019]

In the matter of:

The Superintendent of Police,
Central Bureau of Investigation,
Anti-Corruption Branch,
3rd Floor, Shastri Bhavan,
No.26, Haddows Road,
Chennai 600 006

.....Complainant

Versus

CA. T.R. Sarathy (M.No.025982)
#241, TNHB Colony,
Tambaram Sanatorium,
Chennai 600 047

.....Respondent

MEMBERS PRESENT:

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

Date of Final Hearing: 26th December, 2022 through Video Conferencing

PARTIES PRESENT:

- i. Shri Robbi Mohan Rao – Complainant's representative
- ii. Shri B. Ramana Kumar, Advocate – Counsel for Respondent

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 Misconduct falling within within the meaning of Clause (2) and (7) of Part I of Second Schedule to the Chartered Accountants Act, 1949.

Clause (2) and (7) of Part I to the Second 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—*

...
“(2) certifies or submits in his name, or in the name of his firm, a report of an examination of financial statements unless the examination of such statements and the related records has been made by him or by a partner or an employee in his firm or by another chartered accountant in practice;”

...
“(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, Central Bureau of Investigation, Anti-Corruption Branch, Chennai has filed complaint based on a criminal case (RC MA1, 2013 A 00035) registered on complaint of Deputy General Manager, Canara Bank, Circle Office, Chennai for the commission of criminal offences against Shri D.R. Naik, the then Chief Manager, Canara Bank (Guindy Branch), Shri S. Samraj (Proprietor, Swastik Enterprises) and others. It is stated that Shri D.R. Naik entered into a criminal conspiracy with Sh. S Samraj, the Proprietor of M/s Swastik Enterprises (hereinafter referred to as ‘**the Concern**’) and took over the liabilities of the Concern from Punjab National Bank, Nungambakkam without adhering to the prescribed procedures. The said conspiracy had caused a wrongful loss of Rs. 18.35 crores to the Canara Bank (Guindy Branch). It has been further stated that the Concern had submitted its ITR 4 and financial statements as on 31.03.2008 and 31.03.2009 with the Income Tax Department,

audited by CA. A. Srinivasan. Based on the said financials, Punjab National Bank scaled down the limits of the Concern. In order to enhance the limits, Mr. S. Samraj entered into an agreement on 10.11.2009 with M/s Sagacious Financial Services Ltd. for aiding takeover of its facilities / enhancement of limits offering 2.5% of gross loan amount received. In turn, Sagacious Financial Services Ltd. entrusted the takeover/ enhancement assignment to CA. K.E. Devarajan on 18.11.2009 offering 80% of 2.50% of the gross loan amount received by the Concern. CA. K.E. Devarajan fudged balance sheets for the fiscal ending 31.03.2008 and 31.03.2009 by boosting vital parameters and instructed Mr. Samraj to get the signatures on them from some Chartered Accountants without conducting the factual audit of books. Investigation revealed that Mr. Samraj sought the help of his friend Mr. Hariharan who in turn took him to the Respondent and got the financials as audited without factual auditing of the books of the Concern in presence of Mr. R. Hariharan for which an amount of Rs. 3,000/- was collected by the Respondent. The Complainant has raised following allegations against the Respondent:

- i. the Respondent had signed the Balance Sheet and Profit and Loss Account of the Concern namely M/s Swastik Enterprises for the year ending on 31.03.2008 and 31.03.2009 without verification of the relevant documents.
- ii. the Respondent had given a false certificate that the Concern had no overdues to Punjab National Bank.

Proceedings:

3. During the hearing held on 26th December 2022, the Committee noted that the Complainant's representative and the Counsel for the Respondent were present before it for the hearing. Thereafter, they both gave a declaration that there was nobody 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 part heard and that both the parties had submitted documents as sought during previous hearing(s).

Accordingly, the Complainant was asked by the Committee to present the allegations raised against the Respondent. The Counsel for the Respondent made his submissions on the allegations and was examined by the Committee on the facts of the case. The Committee, thereafter, examined the Complainant in the matter.

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

Findings of the Committee:

4. The Committee observed that in the entire episode, certain allegations have been reported on the conduct of CA. K.E. Devarajan also for which a separate case was registered (PR-206/2014-DD/222/14) wherein the Respondent was held guilty on the matter. Further, the Committee noted that certain preliminary objections have been raised by the Respondent in the matter which have been dealt as under:

(i) It is noted that as per the Complainant the complaint is null and void ab-intio. In context of Rule 3(2), he submitted that the Joint Director and Head of Zone, CBI, who authorised to file the Complaint was not holding equivalent post as prescribed under the said Rule. Similar objections have been raised against the Complainant. It was noted by the Committee that the in the instant matter, the authority to file complaint was given by the then Head of Zone, CBI Chennai Zone, Chennai (C-2) which was of the level equivalent in authority to that of Joint Secretary in Central/ State Government. Further, the Complaint was filed by Superintendent Of Police, CBI, ACB, Chennai which meet the requirement of authority of Under-Secretary in Central/ State Government. Hence, objection of the Respondent with respect to Rule 3(2) was ruled out by the Committee as non-maintainable.

(ii) It is noted that the Respondent has submitted the proceedings before the Director (Discipline) to be void ab-initio based on argument that the Complaint was not filed in accordance with Rule 3(2) of the Chartered Accountants (Procedure of Investigations of Professional and other misconduct and conduct of cases) Rules 2007. The Committee

noted in view of the discussion laid in paragraph 4(i) above that the Complaint was duly filed in terms of the Rules, 2007 hence the said objection is also not sustainable.

(iii) The Respondent further raised the objection that the proceedings before the Disciplinary Committee is time barred. He argued that as per Rule 18(6) of CA Rules, 2007, the Disciplinary Committee should fix a date, hour and a place of hearing which shall not ordinarily be later than 45 days from the date of receipt of prima facie opinion. As per him, the date of prima facie opinion of the Director (Discipline) is 17th December, 2018 and no hearing was fixed till the time of 45 days had expired. It was noted that the said prima facie opinion of the Director(Discipline) as accepted by the Committee was issued vide letter dated 28th Feb, 2020 immediately after which COVID 19 pandemic had occurred on account of which its first hearing fixed on 3rd April 2020 could not be held. It was also noted that Rule 18(6) of the Chartered Accountants (Procedure of Investigations of Professional and other Misconduct and Conduct of cases) Rules, 2007 reads as reproduced under:

Rule 18(6)

The Presiding Officer of the Committee shall fix a date, hour and place of hearing, which shall not ordinarily be later than 45 days from the date of receipt of prima facie opinion and the committee shall cause a notice to be sent of such date, hour and place to the Director, respondent and complainant and require them to appear before it in person to make oral submissions, if any.

It is viewed that aforesaid Rule is a directory provision. It is submitted that the said Rule nowhere stipulates that if this limitation of 45 days is not complied with, the matter before the Disciplinary Committee becomes non-actionable. Since no negative consequences are provided for, as per settled law, this provision has to be treated as directory and not mandatory. In any case, it was also noted that the Committee had regularly been fixing hearings in the matter since January 2021. Thus, the said objection of the Respondent was ruled out.

(iv) The Respondent further argued that the Complainant did not have locus standi to file the complaint against him. It is viewed that the Complainant Department being an agency of the Central government had conducted investigation in the matter and it was from

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its investigation that the role of the Respondent in the entire episode was surfaced. Accordingly, if the complaint has been filed by the Complainant, representing the Complainant Department, based on its investigation then locus standi of the Complainant could not be questioned.

In view of the discussion held in preceding paragraphs (i) to (iv) above, it is viewed that none of the preliminary objections raised by the Respondent are sustainable. Accordingly, the Committee decided to proceed on merits.

5. With respect to the **first charge**, that the Respondent had signed the Balance Sheet and Profit and Loss Account of the Concern namely M/s Swastik Enterprises for the year ending on 31.03.2008 and 31.03.2009 without verification of the relevant documents, the Committee noted that as per records produced before it there were two sets of financial statements for the said period – one signed by CA. A Srinivasan which was submitted to Income Tax Department vide ITR4 and ITR – 5 for the financial year ending on 31.03.2008 and 31.03.2009 and other signed by the Respondent which was used for obtaining enhanced limits from Canara Bank.

5.1 The Committee noted that the Respondent in his written submissions affirmed to have signed both the financials. He further submitted as under

(i) that there is ongoing CBI enquiry and the examination of various witness was still in progress and thus the proceedings before the Committee be kept in abeyance till conclusion of the preliminary investigation by CBI. The enquiry of the ICAI is on a totally different footing i.e. the conduct of the member rather than the unearthing the conspiracy of the accused in the fraud and the loss which was occurred to the Bank. No findings of this Committee on the member should have any adverse bearing on the investigation.

(ii) Regarding financials for the year ending 31.03.2008, the Respondent submitted to be the only Statutory auditor and Tax auditor for the period. However, as per him, the income tax returns were filed by another auditor. He submitted that, for the said year,

the financials were identical in all respects except the presentation of few of the items in the liabilities side of the balance sheet. The profit and loss account signed by Respondent was same one which had been filed with the income tax department in the returns filed. He stated that the income tax return alongwith the computation of taxable income was signed by the other auditor as he was technologically challenged and could not file the return electronically.

(iii) Regarding financials for year ending on 31.03.2009, the Respondent stated that the audit was completed and he signed the financials on 12.09.2009 whereas the other set of financials were signed on the last day i.e. 30.09.2009 for 31.03.2009 and income tax return was filed. He contended to have conducted audit of the period with his auditor's report for the year with a profit of Rs. 38 lakhs. However, as per him, the said figure was altered and the altered tally accounts were shown to the other auditor for verification. The altered Profit and Loss account had only Rs. 24 lakhs as the profit. Further, he pointed out that the financials signed by the other auditor were undated and system printout from the Tally software. As per him, it was after he had signed the financials, the books of accounts were altered and the signature obtained thereafter. The income tax return was also filed with the so called 'revised financials' which actually showed a lower profit figure than the one signed by him. However, for the purpose of the bank loan, the audited and correct financials were submitted.

(iv) The Respondent stated that financials of 2008 were used as an alibi against him. He had signed the Tax audit report, but Form 3CB which was signed by Respondent was not brought on record which also proved the point that the financials with the lower profit was the one filed before the income tax department for the year ending 31/03/2009 with hastily prepared financials directly from the tally package. Further, same method of signing from the tally package was not adopted by the other auditor in 2008, since the audited accounts signed by Respondent were directly adopted by the other auditor.

(v) He argued that the charge that the balance sheets were fudged for the fiscal ended 31.3.2008 and 31.3.2009 was not him, as the financials which were filed with the

Income Tax Department under the signature of the other auditor was same as signed by him. The figures stated therein were not different but identical.

(vi) The Respondent further tried to refute statement of Sh. Hariharan (witness in criminal case) relied upon by investigating agency stating that Sh. Hariharan was not a Chartered Accountant, leave alone a graduate or a school pass. As per him, the said individual was a Class XI fail. As per him, the Committee could not accept such statement without verifying the veracity of the said statement. He argued that the said statement was not supported with any evidence which should be set aside and his arguments be considered which were backed up by facts and evidence.

(vii) However, as per him, all the working papers relating to the audit were destroyed in Chennai floods of Dec 2015. He stated his inability in providing any concrete evidence in form of audit working papers to show that he had conducted audit since his office was completely under water during the 2015 Chennai floods and that all the records, furniture, computers and files were completely gutted and destroyed.

5.2 The Committee noted that the Complainant denied the submissions of the Respondent and stated the CBI, ACB, Chennai (investigating agency) has completed the investigation and filed the Final Report u/s. 173 of Cr.P.C., in the Hon'ble Court of XI Addl Special Judge for CBI Cases, Chennai on 16.09.2014. He contended that there were major disparities in the financials of M/s Swastik Enterprises as on 31.03.2009 in the Balance Sheets signed by Shri A. Srinivasan and Shri T. R. Sarathy as under:

Amount in crores

S No.	Key Parameters	Furnished in the balance sheet by Shri A. Srinivasan	Furnished in the balance sheet by Shri T.R. Sarathy (A-5)	Variance between the figures of two auditors
1.	Sales	19.90	29.90	+10.00
2.	Capital	4.61	7.58	+2.97
3.	Loans and Liabilities	13.86	11.79	-2.07
4.	Sundry Creditors	0.91	0.70	-0.21

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5.	Net Profit	0.24	0.38	+0.14
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Thus, as per the Complainant, there was a large variance in the vital parameters of the balance sheet signed by the Respondent which was required for sanctioning of loan by banks.

Further, the Committee noted that the Complainant had brought on record statement of Shri R Hariharan dated 13.01.2014 recorded before Inspector of Police, CBI, ACB, Chennai wherein he stated that Mr. S. Samraj, proprietor of the Concern, who was his friend has requested him that since his auditor was out of station, he needed signature of any auditor on his balance sheet and P&L account as on 31.03.2008 and 2009 for submission to bank. He further stated that he took Mr. S. Samraj to the Respondent's office and after discussion, the Respondent signed the balance sheet and P&L statements as on 31.03.2008 & 31.03.2009 without real auditing for cash of Rs. 3000/- It was noted that in order to support the said statement the Complainant also brought on record statement of said witness Shri R Hariharan dated 05.07.2014 recorded under Section 164 Cr.P.C. before Ld. Metropolitan Magistrate, Egmore, Chennai wherein the said witness corroborated his previously recorded statement and stated that "Shri Samraj again came to my office and said that his company auditor had gone out of station and requested me to obtain signature of any one auditor in his business income balance sheet and Profit & Loss account statements, as it is urgently required for the Bank. Further, he said that he would not submit it to the Income tax Office. As he was repeatedly pressurizing me, I introduced him to an auditor by name Shri T.R. Sarathy, who was known to me. Further, I told Shri Samraj that the office of Sarathy is situated in North Boag Road, CIT Nagar and he (Samraj) himself directly can go and meet him. Since Shri Samraj invited me to accompany him, I went along with him in his car to CIT Nagar. Went to CIT Nagar and introduced Shri Sarathy to Shri Samraj. Without actually verifying, the auditor Sarathy signed the Balance Sheet and the Profit-Loss account statement for the financial years 31.3.2008 and 31.3.2009, as if he has checked them. For this, Shri Samraj gave Rs. 3,000/- to Auditor Sarathy...."

6. On review of the information/ documents available on record, it was viewed that the extant charge pertain to certification of the financials of the firm by the Respondent for two years ending on 31.03.2008 and 31.03.2009 without conducting audit for the same. It is noted that the Respondent has argued in context of facts that it was him who had signed before the other auditor and thereafter the financials were fudged and that the Statement of Hariharan could not be relied upon in the matter as it had been recorded before Inspector of Police which could not be considered as evidence under the law. However, it is also noted that when the Respondent was asked to produce his working papers in relation to said audit, the Respondent stated that the same was destroyed in Chennai floods of 2015. The Committee noted that firstly there were significant difference in the figures of both the periods as discussed below:

Upon comparison, the following observations have been made:

(i) **Balance Sheets as on 31.03.2008**

Amount in crores

S No.	Key Parameters	Furnished in the balance sheet by Shri A. Srinivasan	Furnished in the balance sheet by Shri T.R. Sarathy (A-5)	Variance between the figures of two auditors
1.	Sales	19.90	29.90	+10.00
2.	Capital	4.73	7.58	+2.85
3.	Unsecured loans	2.52	-	-2.52
4.	Advances from customers	0.33	-	-0.33

It is clear that the unsecured loans and advances from customers had been omitted and the capital has been increased by the same amount. Thus, as argued by the Respondent that the figures of the year ending on 31.03.2008 were same is not at all correct because the change in these three parameters was also a substantial change.

Financials ending on 31.03.2009

Amount in crores

S No.	Key Parameters	Furnished in the balance	Furnished in the balance	Variance between the
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		sheet by Shri A. Srinivasan	sheet by Shri T.R. Sarathy (A-5)	figures of two auditors
1.	Sales	19.90	29.90	+10.00
2.	Capital	4.61	7.58	+2.97
3.	Loans and Liabilities	13.86	11.79	-2.07
4.	Sundry Creditors	0.91	0.70	-0.21
5.	Net Profit	0.24	0.38	+0.14

Similarly, there was substantial difference in various parameters of the period ending on 31.03.2009.

6.1 Further, it is noted that the Respondent had argued that his working papers were destroyed in December 2015 Chennai floods. An opportunity was given to the Respondent by the Committee to submit the evidence that the Respondent's official records were destroyed in Dec 2015 Floods. It was noted that the Respondent had provided his member card of the Institute to show his address and various newspaper clippings to indicate that flood had affected the area. However, no further evidence was provided by any piece of document that indicate that all his records, furniture and records were submerged in flood water. Moreover, it was noted that the said working papers were even sought by the Director (Discipline) before forming his Prima facie opinion on the matter vide letter dated 15th January, 2015 (D-2) followed by a reminder dated 5th May, 2015 (D-3) i.e. before the said flood. It was noted that the Respondent had failed to provide his working papers for alleged audits at that point of time too. It was viewed that such a plea of destruction of relevant papers had been raised only before the Committee when on account of non-production of working papers before the Director (Discipline) it was observed by him that the Respondent had failed to clarify whether the books of accounts were verified by him or not before signing the financial statements. Accordingly, it was viewed that such a defence of the Respondent was an afterthought to defend his matter. The Respondent had never brought on record his working papers either before or after the Chennai flood which had occurred in December 2015.

6.2 Further, it was noted that the Complainant has brought on record copy of ITR-IV and ITR-V filed (C-155) for the S Samraj wherein the financials of the Firm certified by the auditor - CA A Srinivasan were attached. It was noted that the Complainant has also brought on record a separate communication held between the Complainant Department and Income Tax Department dated 4th Feb 2014 wherein it was confirmed that the financials of firm supplied with Income tax return of the assessee were signed by CA A Srinivasan were attached.

In view of the discussion held above, it was viewed that the arguments of the Respondent that he was the tax auditor and that he conducted audit is doubtful.

6.3 It is noted that the Complainant has also brought on record the Statement of Mr. Hariharan who submitted that the financials required to be submitted to the Bank were signed by the Respondent without conducting audit was even stated before Ld. Metropolitan Magistrate, Egmore, Chennai under Section 164 Cr.P.C. It was noted that the Respondent never sought an opportunity from the Committee to cross-examine Mr. Hariharan. Hence, it was viewed that the said Statement was conclusive evidence of the fact that the Respondent had signed the financial statements without verification of records. Accordingly, it is viewed that in extant matter the Respondent had certified the financials under his signature without examining the related records and thus failed to exercise due diligence in performing his professional duties. Hence, the Respondent is held guilty of Professional Misconduct falling within the meaning of Clauses (2) and (7) of Part-I of Second Schedule to the Chartered Accountants Act, 1949 in respect of this charge.

7. With regard to the **Second Charge** that the Respondent had signed a certificate dated 10th March 2010 certifying the credit limits of the Concern with Punjab National Bank, Nungambakkaam, Chennai that the Concern had no overdues as on that date (C-325 to C-327), it is noted that the Respondent has denied to have signed the said document stating that his signature on the said certificate was forged one. He

submitted that the seal which was used in the impugned certificate was different from the one which Respondent use to sign the financials for 2008 and 2009. Further, as per him, loan would never be given by any bank merely based on a certificate of a CA, as it involves property of various values and complexities and that the bank would never rely on his certificate only but also obtain legal opinion from the panelled lawyers and other documents such as encumbrance certificate etc. The Respondent also referred to forensic report and stated that the same was in his favour.

7.1 The Committee noted that the Complainant Department has brought on record copy of expert opinion report from the Central Forensic Science Laboratory dated 20th January 2015. It is noted that the the Respondent was emphasizing on the part of the report which was not relevant for the alleged certificate. For the said certificate, the forensic report had clearly reported similarity in the signature of the Respondent vis a vis the alleged certificate. Further, it was noted that the Respondent had failed to bring on record any document that show the action taken by him viz. F.I. R. lodged by him regarding misuse of his signature on the alleged certificate. . Hence, the Respondent is held guilty of Professional Misconduct falling within the meaning of Clause (7) of Part-I of Second Schedule to the Chartered Accountants Act, 1949 in respect of this charge too.

8. The Committee noted that the Respondent has pleaded to keep the proceedings of the matter in abeyance since parallel proceedings on similar facts and evidences were pending before XI Additional Civil & Sessions Court. The Committee viewed that the proceedings before it and the Court were independent of each other. In the extant case, the enquiry of the Committee was limited to assessing the conduct of the Respondent for the allegations made in context of his professional duties whereas CBI proceedings before the Court was in context of unearthing the conspiracy of various accused in the fraud and the loss which was occurred to the Bank. Hence, the scope of the two proceedings is completely different and independent. Accordingly, pending proceedings before one authority is not a justified ground to keep the proceedings of

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the extant matter in abeyance. Accordingly, it is held that in extant case the Respondent had failed to perform his professional duties diligently and held Guilty of professional misconduct.

Conclusion:-

9. Thus in conclusion, in the considered opinion of the Committee, the Respondent is **GUILTY** of Professional Misconduct falling within the meaning of Clauses (2) and (7) of Part-I of Second Schedule to the Chartered Accountants Act, 1949.

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

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

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

Sd/-
[CA. Vishal Doshi]
Member
Date: 7th February, 2023
Place: New Delhi

Sd/-
[CA. Sushil Kumar Goyal]
Member

Jyotika
प्रमाणित सत्य प्रतिलिपि / Certified true copy

सीए. ज्योतिका ग्रोवर / CA. Jyotika Grover
सहायक सचिव / Assistant Secretary
अनुशासनात्मक निदेशालय / Disciplinary Directorate
इंस्टिट्यूट ऑफ चार्टर्ड एकाउंटेंट्स ऑफ इंडिया
The Institute of Chartered Accountants of India
आईसीएआई भवन, विश्वास नगर, शाहदरा, दिल्ली-110032
ICAI Bhawan, Vishwas Nagar, Shahdra, Delhi-110032