



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

[PR 142/17/DD/146/2017/DC-1428/2021]

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.

File No.: PR 142/17/DD/146/2017/DC-1428/2021

In the matter of:

**Shri K K V Varaprasad,
Assistant General Manager, UCO Bank,
UCO Bank Field Inspectorate,
13/22, Ground Floor,
K G Road, Bangalore,
Karnataka -560009**

.....Complainant

Versus

**CA. Bharath Kumar P Jain (M.NO. 228415)
Partner, M/s. BO & Co. LLP,
Chartered Accountants,
47/1, BOCO House
6th Main, Appu Roa Road
Near Rastrothana Parishat, Chamrajpete
Bengaluru-560 018**

.....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. Bharath Kumar P Jain – Respondent (appeared from his personal location)

1. That vide report dated 07.12.2022, the Disciplinary Committee was of the opinion that CA. Bharath Kumar P Jain (M. No. 228415) was GUILTY Professional misconduct falling within the meaning of Item (7) of Part I of the Second Schedule to the Chartered Accountants Act, 1949 for being a Concurrent Auditor of the Complainant Bank appointed for the period 01/10/2014 to 30/09/2016 and failed to report irregularities committed in the Jayanagar Branch of the Bank (0623) in relation to

- home loans and property loans that were sanctioned against fake ITRs and challan receipts. As per the Complainant, most of the challans were devoid of BSR code, Challan Serial Numbers and affixed fake rubber stamps or that Rental & Agricultural income were shown in the ITRs as other income



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without any supporting house or property documents and in a few cases income was inflated to get higher loan,

- home loan or property loans being sanctioned without certified copy of the sale deed and/or approved Building Plans or non-considering the qualified CIBIL reports of borrower's and also branch exceeding its lending powers

It was noted that Item (7) of Part-I of the Second Schedule states as under:-

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”

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 oral/ 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 representation on the findings of the Disciplinary Committee. The Committee considered the oral as well as the written representation dated 11th February, 2023. The Respondent inter-alia submitted that as regards detection of fraud, he argued that during three years of the fraud different officers, different inspectors of the Bank, different concurrent auditors and different statutory auditors handled and examined the records but none of them found any fraud in the branch during the said period. It was when an articled clerk in the statutory auditor's team saw a challan without proper details, in April 2016 that was just a cue and still the Statutory auditor issued a clean report. He submitted that it was the Respondent himself who laboured to examine all the cases thereafter and presented inputs to the inspecting team of the Complainant Bank to put in their report.

With respect to the allegation of non-reporting of loans sanctioned on the basis of fake ITR and fake tax challans, the Respondent argued that, the Complainant had not submitted any of the fabricated challans or fake ITRs before the Committee and that as per him, being concurrent auditor, he could not be held liable for verification of genuineness of the ITRs of the prospective borrowers. The Respondent argued that it is not necessary that on selectively verification of the alleged loans documents, he would have come across the Challans without BSR Code or Challan without Serial Numbers, hence, as per him, in such situation the observation that such verification would have raised an alarm on the part of the Respondent is a post facto observation.

The Respondent further stated that there was no financial loss to the bank on account of alleged fake ITRs, alleged fake tax challans, building approval plans, title deeds or qualified CIBIL Reports which were forming part/not forming part of the documentation. He argued that the Complainant had not substantiated about any loss incurred by the Bank as the borrowers repaid their loans fully.

Regarding the allegation about non-reporting of remaining discrepancies regarding home loan or property loans being sanctioned without supporting house or property documents and/or without certified copy of the sale deed and/or approved Building Plans or non-considering the qualified CIBIL reports of borrower's and also branch exceeding its lending powers, the Respondent again submitted various reasons justifying his action about non-observing the alleged discrepancy in each case.

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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 while performing concurrent audit of Complainant's Bank Jayanagar Branch (0623) for the period 01/10/2014 to 30/09/2016. Regarding non-reporting about the Bank sanctioning home loans and property loans against fake ITRs, challan receipts(wherein most of the challans were stated to be devoid of BSR code, Challan Serial Numbers and affixed fake rubber stamps), fake CA firms and membership number on financials of the borrower, inflated income including agricultural income and other income, the Committee noted that identifying fake rubber stamp on ITRs or inflated returns being produced with loan documents could not be expected to be identified by a concurrent auditor. However, the Concurrent auditor is expected to be vigilant while conducting audit so that he may at least identify the cases of loans against ITR with no BSR Code or with no serial number on challans. It was noted that the Respondent had also been alleged for failure to report the gross irregularities committed by the branch officials by not creating EMTD/ MOTD, CERSAI/ PDIR etc. while sanctioning various loan proposals particularly Home Loans & Car Loans and also failed in verifying the CIBIL reports with respect to home loan as well as car loan or availability of PDCs (Post Dated Cheques). The Committee noted that considering the terms of his engagement, it is amply clear that he was expected to adopt substantive audit procedures to verify if loans being sanctioned were backed by proper documents viz. whether title deeds & supporting documents were obtained as per the legal opinion & valid EMTD was created, whether certified copy of the original title deed obtained and compared with original title deeds properties mortgaged to Bank, whether proper documents complete in all respects for each loan account was obtained, whether loans were sanctioned after generating the CIBIL report and considering the same, whether vehicle against which loan was given was sufficiently insured etc. However, it is also a fact that the Complainant had not substantiated about any loss incurred by the Bank on account of said gross irregularities. In the absence of information that such negligence has caused any loss to the Bank, considering overall facts and circumstances of the case, the Committee decided to take lenient view in the matter.

5. The Committee thus viewed that the misconduct on the part of the Respondent has been held and established within the meaning of Item (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 Respondent CA. Bharath Kumar P Jain (M. No. 228415) be Reprimanded.

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

Sd/-

[CA. Piyush S Chhajed]
Member

Date: 1st May, 2023
Place: New Delhi

सही प्रतिलिपि होने को लिए प्रमाणित
Certified to be true copy

बिना नाथ तिवारी / Bishwa Nath Tewari
कार्यकारी अधिकारी / Executive Officer
अनुशासनशास्त्रिक निदेशालय / Disciplinary Directorate
इंस्टीट्यूट ऑफ चार्टर्ड एकाउंटेंट्स ऑफ इंडिया
The Institute of Chartered Accountants of India
आईसीएआई भवन, विश्वास नगर, शाहजहाँ, दिल्ली-110022
ICAI Bhawan, Vishwas Nagar, Shahjahan, Delhi-110022

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 142/17/DD/146/2017/DC-1428/2021]

In the matter of:

Shri K K V Varaprasad,
Assistant General Manager, UCO Bank,
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CA. Bharath Kumar P Jain (M.NO. 228415)
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47/1, BOCO House
6th Main, Appu Roa Road
Near Rastrothana Parishat, Chamrajpete
Bengaluru-560 018

.....Respondent

Members Present:

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: 3rd November, 2022 through Video Conferencing

PARTIES PRESENT:

- (i) Sh. Nilesh S. Parate – the Complainant's representative
- (ii) CA. Bharath Kumar P. Jain - Respondent
- (iii) CA. C V Sajan – Counsel for Respondent

Rise

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 Item (7) of Part I of Second Schedule to the Chartered Accountants Act, 1949. The Committee on consideration of the same, concurred with the reasons given against the charge(s) and thus, agreed with the prima-facie opinion of the Director (Discipline) and added that if the Tax Challans were devoid of code or serial number, it would have raised suspicion of the Respondent who being the concurrent auditor was expected to follow up in respect of the same by way of cross verifying from OLTAS facility which was actually done by the statutory auditor with in the extant case.

The 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, it is alleged that the Respondent, being a Concurrent Auditor of the UCO Bank appointed for the period 01/10/2014 to 30/09/2016, had failed to report the following irregularities committed in the Jayanagar Branch of the Bank (0623) which came into light after a detailed investigation was conducted by the Bank Officials:-

- a) Bank sanctioned several home loans and property loans against fake ITRs and challan receipts. Most of the challans were devoid of BSR code, Challan Serial Numbers and affixed fake rubber stamps.

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- b) Rental & Agricultural income was shown in the ITRs as other income without any supporting house or property documents and in a few cases income was inflated to get higher loan amount sanctioned from the Bank.
- c) Branch had sanctioned & disbursed Rs. 300 Lakhs against ZLCC approval of Rs. 141 Lakhs to one customer of the Bank against fake ITRs and thus, violated instructions of higher authority and exceeded lending powers.
- d) Bank Branch had failed to obtain certified copy of the sale deed.
- e) Diversion of funds was observed and multiple home loans of Rs 2114.91 Lakhs were sanctioned to 7 borrowers against fake ITRs.
- f) Approved Building Plans were not obtained while sanctioning home loans, qualified CIBIL reports were not considered while sanctioning the loans.

Proceedings:

3. During the hearing held on 3rd November 2022, the Committee noted that the Complainant's representative and the Respondent along with his Counsel appeared before it from their respective location. Thereafter, they all gave declaration that there was nobody present except them in their respective rooms 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 Respondent if they want to make any further submissions in the matter other than that already available on record. The Counsel for the Respondent made submissions on certain aspects and thereafter 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 written submissions of the parties concerned, the Committee concluded hearing in the matter.

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Findings of the Committee:

4. At the outset, the Committee noted the plea of the Respondent that no documentary evidence was made available by the Complainant regarding discrepancies alleged against him. It was observed that the Complainant had submitted with the Complaint the list of irregularities surfaced in Special Investigation of Jayanagar Branch (0623) (C-3 to C-4) along with account-wise details in Annexure I – Observation on UCO Home Loan below Rs. 1.00 CR. (C-5 to C-34) containing details against 99 separate accounts, Annexure II – Observation on UCO Property Loan Below Rs. 1.00 CR. dated 27/06/2016 (C-35 to C-40) containing details against 16 separate accounts, Annexure II – Observation on UCO Property Loan above Rs. 1.00 CR. dated 30/05/2016 (C-41 to C-43) containing details against 5 separate accounts, Annexure I – Observation on UCO Home Loan above Rs. 1.00 CR. dated 30/05/2016 (C-44 to C-59) containing details against 49 separate accounts. Each such Annexure was duly signed by the two Senior Manager – Inspection which substantiated its claim and also provided Resolution of the Bank dated 19/09/2015 (C-2) for initiation of the extant complaint. The Committee viewed that the Complainant had adopted due procedure to take action on the facts given and as such Respondent's due accountability also arise for his role as concurrent auditor when the said loans were being sanctioned. It was also viewed that the said matters involved confidential/ personal information of each borrower which would in any way not be expected to be exclusively available with the complaint. Further, in case, if the Respondent had objections on the findings of its investigation, he had failed to bring on record any legal action taken by him against the said investigation. Therefore, the said plea of the Respondent for lack of evidence in respect of complaint was not maintainable.

5. As regards the allegation of non-reporting about the Bank sanctioning home loans and property loans against fake ITRs, challan receipts(wherein most of the challans were stated to be devoid of BSR code, Challan Serial Numbers and affixed fake rubber stamps), fake CA firms and membership number on financials of the borrower, inflated income including agricultural income and other income, it was noted that the

Respondent had submitted that checking the authenticity of documents like ITRs, challans, etc. tantamount to a huge extension of scope of concurrent audit and was not practical to check especially in cases where checking genuineness of ITRs required login credentials of borrowers. Similar argument was put forth in context of other alleged fake documents. He further argued that filing fake ITR/ Tax challans/ financials/ income related documents with a Bank was a criminal act and as concurrent auditor he could not be expected to detect the same in the normal course of his duties. As per him, documents submitted by borrowers as part of loan applications were third party documents, the veracity of which was not required to be verified by a concurrent auditor, as part of his duty. As per him, there were no such stipulations in the terms of his appointment. He also pointed out that records suggest that there was a pattern in the fraud played by the perpetrators and such fraud was not possible without the consent of the sanctioning authority. He submitted that no fraud was detected before FY 15-16. In fact, during the statutory audit of FY 2015-16, one audit staff of statutory auditor accidentally stumbled upon a tax paid challan which looked not genuine at the sight in the first week of April 2016. However, the statutory auditor could not form any concrete view on the fraud, hence he neither reported about any fraud nor made any adverse observations against the branch functioning or on its credit appraisal/ sanctions in its statutory audit report dated 11/04/2016.

5.1 On perusal of documents available on record and considering the submissions made by both parties, the Committee viewed that verification of documents based on which loans were being sanctioned is an underlying responsibility of a concurrent auditor. It was viewed that if the Respondent firm had even selectively verified the documents concerned they would have come across Challans without BSR Code and Challan Serial Numbers. It was viewed that identifying fake rubber stamp on ITRs or verifying the genuineness of ITR returns being produced with loan documents when login credentials of the borrower were not available could not be expected to be identified by a concurrent auditor. However, Challans without BSR Code and serial number should have raised an alarm on the part of the Respondent to be more vigilant

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while conducting audit. It was noted that the Respondent had claimed that it was not practical for him to check especially in cases where checking genuineness of ITRs required login credentials of borrowers, it was viewed that such defense though apparently seemed logical, yet, checking the authenticity of the said documents of borrowers was not impossible. It was viewed that when a statutory auditor could get the first thread of the unscrupulous practice of sanctioning loans by simply checking authenticity of challans on OLTAS, the same was also possible for the concurrent auditor whose scope of work was much wider as far as checking the population of routine Bank transactions was concerned. It was viewed that if the Respondent would have adopted such verification practice in checking correctness/ existence of challans doubt would have arisen in his mind to check authenticity of ITRs and other supporting documents too when he would have already found that challans filed with loan documents were fake. The Committee viewed that if the statutory auditor of the Bank could find and ascertain said irregularities within limited time period of audit, the concurrent auditor was in a better position to raise the said irregularities at an initial stage which would have protected the interest of various stakeholders as well as that of the Complainant Bank. The Committee, accordingly, viewed that the Respondent did not exercise due care and professional skepticism for ascertaining the process followed to sanction the loans which caused huge loss to the Complainant Bank. Accordingly, with respect to the said leg of the charge the Respondent was held **Guilty** of professional misconduct falling within meaning of Item (7) Part I of Second Schedule to Chartered Accountant Act 1949.

6. With respect to non-reporting of remaining discrepancies regarding home loan or property loans being sanctioned without supporting house or property documents and/or without certified copy of the sale deed and/or approved Building Plans or non-considering the qualified CIBIL reports of borrower's and also branch exceeding its lending powers, it was noted that the Respondent had submitted that his job was not to question either the loan decisions taken by a branch head or the documents that were considered for sanctioning loans when borrowers eligibility criterion were duly examined

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in appraisal note and sanction letter. As per him, being the concurrent auditor, he was not expected to conduct investigation about the loan documents as there was no such stipulation in the terms of his appointment. Further, he argued that there were no material omissions on the part of the verification of loan documentation as the alleged loans were sufficiently secured by the mortgages placed against them.

6.1 At the outset, the Committee observed that as per engagement letter dated 16th November, 2015 (**W-23 to W-28**) issued to Respondent firm by the Complainant Bank, its appointment terms, interalia, state as follows:-

"10. Whenever you come across any serious irregularity or transactions involving malafides, corrupt practices and gross indiscipline or anything susceptible to fraud, you have to draw a Flash/ Special Report immediately and forward a copy thereof to the concerned Zonal Manger, Circle Head, Field Inspectorate and Inspection Department, Head Office (in case of EL & VL banches), pending submission of regular concurrent audit report.

However, in case of detection of fraudulent transactions involving malafides, corrupt practices and gross indiscipline or anything susceptible to fraud, the same should not be included in regular report but should be immediately reported by a special report to the controlling offices and the Branch Manager (unless the Branch Manager is himself suspected to be involved). A copy of the report should also be sent to Inspection Department, Head Office in case of EL & VL branches. (W-24)"

....
"23. You have to carry out Physical verification of the properties mortgaged to the bank of at least 25% of the properties mortgaged every quarter (by rotation). (W-25)"

....
"26. You should verify all advances related documents; including insurance policies & obtaining of Post Dated Cheques (PDCs) wherever applicable sanctioned/ disbursed during the month as per terms of sanction and issue a certificate after verification. (W-25) "

Further, from the format of concurrent audit reports submitted by the Respondent firm, it was noted that amongst others, it had also undertaken to verify the following:

"REPORT ON ACCOUNTS WHERE EQUITABLE MORTGAGE FORMALITIES AND ROC FORMALITIES ARE NOT FOLLOWED PROPERLY/PENDING"

...

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(The Concurrent auditor will verify all the advance related documents, including obtention of PDCs, wherever applicable, sanctioned/ disbursed during the month as per terms of sanction and submit the certificate as per Annexure II)

- Verify whether legal opinion is obtained from empanelled advocate as per Bank's format regarding clear title and its marketability
- Verify whether the procedure as per H O Guidelines is followed for verification of title deeds.
- Verify whether title deeds & supporting documents are obtained as per the legal opinion & valid EMTD is created.
- Whether recital in EMTD register is properly filled in, signed and witnessed.
- Whether letter of confirmation obtained from the mortgagor one/two days after deposit of title deed.
- Whether certified copy of the original title deed obtained and compared with original title deeds properties mortgaged to Bank (Cir: No. CHO/Law/03/2010-11 dated 28.08.2011).
- Verify whether documents are verified by Law Officer or Advocate.
- ... (D-56 to D-57)"

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Sr. No.	Check list	Observations of Auditors
1.	Verify whether proper documents have been obtained, Complete in all respects for each advance accounts	
2	..	
	..	
9	Verify that in all loan sanctioned during the month, CIBIL Report has been generated & kept with loan documents	
10		
12	Report whether authority for pre disbursement has been obtained from concerned authority	

From the above, it was clear that the Respondent, being concurrent auditor, had undertaken to check/ verify the loan transactions including its documentation with respect to title deeds, CIBIL reports and other related documents. Accordingly, he was required to adopt substantive audit procedures to verify if loans being sanctioned were

backed by proper documents. It was viewed that considering the terms of his appointment as well as the content of the concurrent audit reports being submitted by him, he could not escape from his professional responsibility by stating that he was not in position to question the documents when borrowers eligibility criterion were duly examined in appraisal note and sanction letter. It was viewed that as per terms of his appointment, he was required to conduct audit independently rather than relying on the work done by the staff of the Bank. In fact, he was duty bound to report if the observed discrepancies was rectified otherwise he was required to report them at various levels. It was also observed that the Respondent had accepted the said lapses stating that they were minor lapses but it was viewed that omission of such lapses also form platform for the fraud to be perpetuated.

7. Thus, in light of above, the Committee was of the considered view that the Respondent had not carried out duties assigned to him being concurrent auditor of UCO Bank, Jayanagar Branch (0623) and for the said laxity, the Committee was of the view that the Respondent is Guilty of Professional Misconduct.

Conclusion:-

8. Thus in conclusion, in the considered opinion of the Committee, the Respondent is **GUILTY** of Professional misconduct Item (7) of Part I of the Second Schedule to the Chartered Accountants Act, 1949.

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

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बिना नाथ तिवारी / Bishwa Nath Tiwari
कार्यकारी अधिकारी / Executive Officer
अनुशासनात्मक निदेशालय / Disciplinary Directorate
इंस्टिट्यूट ऑफ चार्टर्ड एकाउंटेंट्स ऑफ इंडिया

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