



भारतीय सनदी लेखाकार संस्थान

(संसदीय अधिनियम द्वारा स्थापित)

THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA

(Set up by an Act of Parliament)

[DISCIPLINARY COMMITTEE [BENCH-I (2023-2024)]]

[Constituted under Section 21B of the Chartered Accountants Act, 1949]

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

In the matter of:

CA. Sharad Krishna Sharma, Joint Director, SFIO, MCA, New Delhi

-Vs-

CA. Naresh Tharad, (M. No. 051867), Kolkata

[PR-36/09-DD/46/2009/DC/100/2010/HC/2015]

MEMBERS PRESENT:

CA. Aniket Sunil Talati, Presiding Officer

Shri Prabhash Shankar, IRS (Retd.), (Government Nominee)

CA (Dr). Rajkumar Satyanarayan Adukia, Member – Through Online Mode

CA. Gyan Chandra Misra, Member- Through Online Mode

1. That vide findings dated 07-02-2023 under Rule 18(17) of the Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007, the Disciplinary Committee was inter-alia of the opinion that **CA. Naresh Tharad, (M. No. 051867)** (hereinafter referred to as the **Respondent**) was **GUILTY** of professional misconduct falling within the meaning of Item (7) of Part I of Second Schedule to the Chartered Accountants Act, 1949.

2. That pursuant to the said findings, an action under Section 21B(3) of the Chartered Accountants Act, 1949 was contemplated against the Respondent and a communication was addressed to him thereby granting him an opportunities of being heard in person / through video conferencing to make a written & verbal representation before the Committee on 9th June 2023.

3. The Committee noted that on the date of hearing i.e., 9th June 2023, the Respondent was present through video conferencing, and he confirmed receipt of the findings of the Committee. The Respondent thereafter made his verbal submission before the Committee on the findings.

As

CA. Naresh Tharad, (M. No. 051867), Kolkata



भारतीय सनदी लेखाकार संस्थान

(संसदीय अधिनियम द्वारा स्थापित)

THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA

(Set up by an Act of Parliament)

4. The Committee considered the reasoning as contained in findings holding the Respondent Guilty of professional misconduct vis-à-vis verbal and written submissions of the Respondent as made before the Committee.

5. Keeping in view the facts and circumstances of the case, material on record including verbal submissions of the Respondent on the findings of the Committee, the Committee is of the view that though the professional misconduct on the part of the Respondent is established, however, in view of the facts and circumstances of the case, the Committee ordered that the Respondent i.e., CA. Naresh Tharad, (M. No. 051867) be reprimanded.

On/

Sd/-

(CA. Aniket Sunil Talati)
PRESIDING OFFICER

Sd/-

(Shri Prabhash Shanakr, I.R.S. (RETD.))
GOVERNMENT NOMINEE

Sd/-

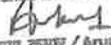
(CA (Dr). Rajkumar Satyanarayan Adukia)
MEMBER

Sd/-

(CA. Gyan Chandra Misra)
MEMBER

DATE: 27/07/2023
PLACE: NEW DELHI

सही प्रतिलिपि होने के लिए प्रमाणित
Certified to be true copy


अरुण कुमार / Arun Kumar
वरिष्ठ कार्यकारी अधिकारी / Sr. Executive Officer
अनुशासनमालक निदेशालय / Disciplinary Directorate
इंस्टिट्यूट ऑफ चार्टर्ड एकाउंटेंट्स ऑफ इंडिया
The Institute of Chartered Accountants of India
आईसीएआई भवन, मिनास नगर, शाहदरा, दिल्ली-110032
ICAI Bhawan, Vistwas Nagar, Shahdara, Delhi-110032

CONFIDENTIAL

DISCIPLINARY COMMITTEE [BENCH – I (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

Ref. No. PR/36/09/DD/46/09/DC/100/2010/HC/15

In the matter of:

The Joint Director, _
Serious Fraud Investigation Office (SFIO),
Ministry of Corporate Affairs,
2nd Floor, Paryavaran Bhawan,
CGO Complex, Lodhi Road,
NEW DELHI – 110 003

.....Complainant

Versus

CA. Naresh Kumar Tharad (M.No.051867),
34, Chittaranjan Avenue,
Jabakusum House, 1st Floor,
Kolkata – 700 012

.....Respondent

MEMBERS PRESENT:

CA. Aniket Sunil Talati, Presiding Officer
Shri Prabhash Shankar (Govt. Nominee), Member
CA. Gyan Chandra Misra, Member
CA. Priti Paras Savla, Member

DATE OF FINAL HEARING : 14.09.2022

PLACE OF FINAL HEARING : ICAI Kolkata Office

PARTIES PRESENT:

Representative of Complainant : Shri Bappaditya Nag, Sr. Public Prosecutor & Smt. Somaiya Ahluwalia, Prosecutor (Through VC)

Counsel of Respondent : CA. A. P. Singh

Am

BRIEF OF THE DISCIPLINARY PROCEEDINGS: -

1. On the day of hearing held on 15th June 2022, the Committee noted that neither the Complainant nor any complainant's representative was present. The Respondent along with his Counsel was present. The Counsel for the Respondent requested for de-novo hearing in the matter. On the same, the Committee decided to conduct a de-novo hearing in the matter. Thereafter, the Respondent was put on oath. The Respondent confirmed receipt of Prima Facie Opinion in the above matter and pleaded not guilty to the charges. With this, the hearing in the matter was partly heard & adjourned to a later date.
2. On the day of next hearing held on 14th September 2022, the Committee noted that Complainant's Representative were present. The Respondent was not present, but his Counsel was present in person. Both the Complainant's representative and the Counsel for the Respondent made their submissions on the charges. The Committee also posed questions to the Complainant's representative and the Counsel for the Respondent. After hearing the submissions of both the parties, the Committee decided to conclude the hearing in the above matter.
3. In respect of past hearing(s) held in the above matter, the Committee observed that the hearing in the above matter was already concluded on 25.11.2011 and the Report of Disciplinary Committee dated 10.02.2012 was sent to the Parties. Thereafter, the Respondent filed Writ Petition in the Hon'ble High Court of Delhi. The Hon'ble High Court of Delhi vide its order dated 20.01.2015 set aside the DC report and referred the matter to Disciplinary Committee to afford the Respondent an opportunity to be heard on the evidence and material already produced by the Director (Discipline). The operative part of the judgment of the Hon'ble High Court of Delhi is as under: -

"22. Accordingly, the impugned report is set aside, and the matter is remanded to the Disciplinary Committee to afford the petitioner an opportunity to be heard. The Disciplinary Committee would

schedule a hearing to afford the petitioner an opportunity to be heard on the evidence and material already produced by the Director (Discipline). The petitioner would also be granted an opportunity to present documents, if so required, before the Disciplinary Committee."

Accordingly, as per order of the Hon'ble High Court of Delhi and in order to provide the Respondent an opportunity of hearing based on the documents on record, the hearing in this matter have been re-fixed as under: -

Sl. No.	Date of Meeting	Status of the hearing
1.	20.08.2015	Meeting cancelled due to unavoidable circumstances.
2.	08.11.2015	The Complainant and Counsel for the Respondent were present, but due to paucity of time case was adjourned.
3.	28.12.2015	Adjourned at the request of the Respondent
4.	15.12.2016	Adjourned at the request of the Complainant
5.	10.01.2017	Meeting cancelled due to unavoidable circumstances
6.	28.04.2017	Adjourned at the request of the Complainant
7.	07.05.2018	Meeting cancelled due to unavoidable circumstances
8.	27.07.2018	Part heard and adjourned.
9.	27.08.2018	Part heard and adjourned.
10.	30.11.2018	Fixed and adjourned
11.	28.12.2018	Concluded but pending for re-hearing
12.	15.07.2019	Adjourned due to paucity of time
13.	26.08.2020	Part heard & adjourned
14.	18.11.2020	Part heard & adjourned
15.	21.12.2021	Adjourned due to paucity of time
16.	01.06.2022	Adjourned due to unavoidable circumstances
17.	15.06.2022	Part heard & Adjourned
18.	05.07.2022	Adjourned at the request of the Respondent's Counsel
19.	26.08.2022	Adjourned due to non-availability of the Respondent's Counsel

Brief Background of the matter

4. As per investigation report of the Complainant department, the Respondent was the Internal Auditor of M/s. DSQ Software Limited (hereinafter referred to as the "Company") since 1996. It is alleged that the Respondent has issued false certificates in respect of realization of application / allotment money on 30 lacs shares issued to M/s. New Vision Ltd., UK, realization of application / allotment money on allotment of preferential shares on swap basis

to Fortuna Technologies Inc., USA and related to physical verification of fixed assets of the Company.

3. **CHARGES IN BRIEF: -**

The Committee noted that the Respondent was held prima facie guilty with respect to following charges: -

- i) In first charge, it is alleged that the Respondent has issued a false certificate for realization of Allotment Money on 30 Lac shares issued to M/s. New Vision Ltd. UK.
- ii) In second allegation, it is alleged that the Respondent issued another false certificate for realization of allotment money on 1.70 Crore shares issued on swap basis to Fortuna Technologies Inc., USA for the purpose of acquisition of Fortuna Technologies, USA.
- iii) In third allegation, it is alleged that the Respondent gave a wrong physical verification report of fixed assets of the Company without careful examination of required evidence.

SUBMISSIONS OF THE PARTIES AND FINDINGS OF THE DISCIPLINARY COMMITTEE: -

4. It is noted that the Respondent pleaded not guilty to the charges leveled against him and opted to defend his case. The Respondent in his written and verbal submissions before the Disciplinary Committee has made detailed submissions in his defense. Apart from making his submissions on merits of the case, the Respondent has made the following preliminary submissions in his defense: -

- i) The Respondent submitted that essentially the disciplinary proceedings are quasi-criminal in nature inasmuch as member of the profession can have penal consequences which affect his right to practice the profession as also his honor. Therefore, the evidence should be of a character which should leave no reasonable doubt about the guilt of the professional / member, and this is a settled proposition of law as held by the Hon'ble Supreme Court in H.V. Panchaksharappa v. K.G. Eshwar, AIR (2000) SC 3344, the Court observed: -

Am

“.....a charge of professional misconduct is in the nature of a quasi-criminal charge. Such a charge requires to be proved in the manner of proving a criminal charge and the nature of proof required to prove it, is that of beyond a reasonable doubt.....”

The Respondent stated that in the instant matter, the Director (Disc) has primarily relied upon the unsubstantiated report of findings of Serious Fraud Investigation Office (SFIO). The Director relied upon the SFIO report and has arrived at the findings that the Respondent has issued incorrect certificate. The findings of the SFIO are not based on facts but are based on conjectures and surmises.

ii) It is a matter of record that reliance has been placed on the extract of the report submitted by SFIO, the authenticity of which is under great doubt. The reliance has been placed on the extract in a piecemeal manner without considering the full copy of the report. The Respondent states that in order to consider the report as a piece of evidence, it is imperative to examine the author(s)/maker(s) of the report on oath. In this connection, the reliance is placed on *Rajiv Arora v. Union of India and Ors. AIR 2009 SC 1100*; where the Hon'ble Supreme Court held that:

“.....effective cross-examination could have been done as regards the correctness or otherwise of the report, if the contents of them were proved. The principles analogous to the provisions of the Indian Evidence Act as also the principles of natural justice demand that the maker of the report should be examined.....”

iii). The Prime Facie Opinion is bad in law in as much as the Director has completely ignored the fact that the Statutory Auditor of the Company namely, M/s. Lovelock & Lewes, Chartered Accountants found no error in the physical verification report prepared by the Respondent. No doubts have been casted on the audit report of the Statutory Auditor and if that is so then there cannot be any plausible reason to doubt the veracity of the work of the Respondent.

iv) The Respondent is no longer the internal auditor of the Company and hence, is not in the position to procure or produce the documents / evidence in his defense. Moreover, the continuation of SFIO investigation in the year 2005 has no significance as the Respondent maintained the same stand before SFIO that the Respondent is handicapped without the



documents, and records which are with the Company, and he has no control over them. The Respondent also objected to the denial of the applicability of Rule 12 of the Chartered Accountants (Procedures of Investigation of Professional and Other Misconduct and Conduct of Cases) Rules, 2007.

v) SFIO had filed a criminal matter against the Respondent for exactly the same issues in the court of the Hon'ble ACMM, Egmore, Chennai. The Hon'ble Court Order states that the Complainant (SFIO) has not proved that the Respondent had issued Certificate, knowing to be false. The Respondent has been absolved and found to be not guilty in the court of the Hon'ble ACMM, Chennai. Further, no appeal was made by SFIO against such order.

4.1 It is felt that before dealing the matter on its merits, the objections raised by the Respondent are required to be dealt with. Accordingly, the same are dealt with as under: -

i) In respect of the submissions that the disciplinary proceedings are quasi-criminal in nature and the evidence should be of a character which leave no reasonable doubt about the guilt of the professional member, it is observed that it is held by various courts of laws that the disciplinary proceedings are quasi-judicial in nature. It is further noted that the opinion of the Director (Discipline) has been considered by the Disciplinary Committee and the Disciplinary Committee is of the view that the Respondent is prima facie guilty of the professional misconduct. Further, after the matter being referred to the Disciplinary Committee for further enquiry in the above matter, the Disciplinary Committee has provided reasonable opportunity of hearings to the Respondent. It is further informed that the Disciplinary Committee has examined matter based on the requirements of the various laws, Accounting Standards and Guidance Notes as applicable in case of issuance of certificates issued by the Respondent. The allegations as alleged in the above matter have been dealt with in accordance with the documents on record and keeping in view the minimum verification/ examination skills as expected from a professional like Chartered Accountants, based on applicable requirements, while issuing a certificate.

ii) In respect of second objection that the Complainant has not provided complete set of reports, it is mentioned that the extract of reports read with the statements on oath of the

Respondent and other documents provided sufficient information about the allegations against the Respondent. However, in respect of physical verification report, it is observed that though the physical verification report was not available at the time of formation of Prima Facie Opinion, yet it was the fact that the Respondent has not denied that he has not issued the certificate in respect of verification of fixed assets. Further, the Respondent also provided copy of certificate at the stage of hearing which was duly considered by this Committee while giving the decision in the respective allegation. Moreover, the Respondent has been provided reasonable opportunity to make his submissions with respect to the respective allegation. Hence, it cannot be stated that the Disciplinary Committee has not considered documents / evidence which were required to give a fair decision in the instant matter.

iii) In respect of the objection relating to the applicability of Rule 12 and non-availability of the documents to defend in the matter, it has been noted that the said matter pertains to the year 2000-01 and the investigations in the said matter by other agencies were going on since 2005. Since the subject matter had been under examination since 2005, the Respondent ought to have retained the working papers but he chose not to retain the same. Further, on the one hand, the Respondent submitted the documents relied upon by him for issuing the certificate and on the other hand he is asking for invoking of Rule 12 of the Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007. Hence, in view of the required documents in possession of the Respondent, it is observed that invoking of the Rule 12 at this stage is not appropriate. Further, it is observed that as per then applicable requirement of preserving working papers, it is observed that the Respondent was required to preserve his working papers for 10 years. Accordingly, the Respondent was required to maintain his working papers till 17th January 2010. The first notice to the Respondent in the above matter was issued on 16th April 2009. Hence, the notice to the Respondent for submission was sent to the Respondent within the time prescribed for maintaining the working papers. Accordingly, the plea raised by the Respondent for invoking Rule 12 is not maintainable.

iv. In respect of next objection that the matter filed by SFIO in the Court of the Hon'ble ACMM, Egmore, Chennai has already been decided in favor of the Respondent, it is observed that



the proceedings before the Court and the Disciplinary Committee are entirely different on account of the scope of the inquiry and moreover, the standard of proof before the Committee for inquiry and before the Court stand on different footing. The Committee felt that it is required to look into the professional and/or other misconduct of its member while conducting the inquiry in terms of the provisions of the Chartered Accountants Act, 1949.

- v) The Committee also did not find any discrepancy / irregularity in authorization of complaint in terms of the requirement of Rule 3 of the Chartered Accountants (Procedures of Investigation of Professional and Other Misconduct and Conduct of Cases) Rules, 2007.

After dealing with the objections as raised by the Respondent above, the Committee dealt with the allegations as under: -

5. In respect of first allegation relating to certificate of realization of allotment money, the Respondent denied that he has issued the certificates without proper examination. The Respondent stated that he has disclosed the material facts known to him under the normal circumstances and there were no material misstatements in the certificates issued by him. The Respondent stated that he had verified the following documents: -
- i) Notice of Extra-ordinary General Meeting dated 22.01.2000 for the EGM to be held on 21.02.2000, duly certified by the Managing Director.
 - ii) Copy of extracts from the minutes of the Extra-ordinary General Meeting held on 21.02.2000 approving issue of 30,00,000 equity shares, duly certified by the Managing Director.
 - iii) Copy of extracts from the minutes of the Board Meeting held on 20.05.2000 for the allotment of 30,00,000 equity shares, duly certified by the Managing Director.
 - iv) Copy of Bank Statement of Indusind Bank and correspondence evidencing receipt of the application money of Rs 29.40 Crores on 19.05.2000.
 - v) Copy of Legal opinion, given to him by the client that receipt of 10% of subscription amount on application is equivalent to receipt of allotment money, provided the balance money is agreed upon to be paid, as decided. The Opinion dated 29.02.2000 was given by Udewadia, Udeshi & Berjis, Mumbai.



5.1 It is submitted by the Respondent that he thoroughly verified the documents in respect of the allotment of 30 Lakhs equity shares as stated in his certificate dated 18.01.2001. It is pertinent to mention that the legal opinion dated 29.02.2000 was based on the query raised by the Company to the effect that whether 10% of subscription amount on application is equivalent to receipt of allotment money. However, the entire transaction took place only after 20.05.2000 when the board resolved to allot 30 Lakhs equity shares and when the Company realized the application/allotment money due on the allotment. Therefore, the Respondent verified the relevant transactional documents in relation to the said allotment which was also supported by legal opinion and bank statement.

5.2 The Complainant in his submissions stated that the Respondent, being the internal auditor of the Company, committed number of irregularities and issued a false certificate for receipt of allotment money on 30 lacs shares issued to M/s New Vision Ltd. U.K. The Complainant stated that SFIO conducted an investigation as mandated by the Government of India into the affairs of M/s DSQ Software Ltd. u/s 235 (1) Companies Act, 1956 and during investigation conducted by SFIO, professional misconducts on the part of Respondent was established. Thus, the finding of Director (Discipline), vide its order dated 04.05.2010, holding him prima-facie guilty is correct and based on the correct exposition of law and said order requires to be culminated into a final order by holding Respondent guilty of professional misconduct. The judgment relied upon by the Respondent is a matter of law and is of no avail to Respondent. It is also submitted by the Complainant that the Respondent did not examine the documents while discharging his duties and hence, had been guilty of professional misconduct.

5.3 In respect of above allegation, on perusal of the Certificate dated 18th January, 2001 certified as under: -

"We, the Auditors of DSQ Software Limited (the Company) have verified the books of accounts and other records of the Company in respect of the preferential allotment of 30,00,000 Equity shares of Rs.10/- each at a premium of Rc.970/- per share on 20 May 2000, In terms of the shareholders' approval at the Extra Ordinary General Meeting held on 21 February 2000 and certify that:

Am

1. The above allotment has been made as per Shareholders' approval. The Company has realized the **Application/Allotment** money due on this allotment.
2. The Company has allotted the above equity shares, as per resolution passed under Section 81 1(A) of the Companies Act, 1956, to persons other than promoters. The allottee does not come under the definition "Promoters" as per clarification XIII issued by SEBI.
3. The allotment has been made in terms of the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 under Preferential allotment category as per Para 3-(1) (c.) as applicable on the date of allotment i.e., 20 May 2000 and as such these shares do not carry any lock in period and are freely tradable."

5.4 From the above, it was clear that the Respondent has certified that the Company has received application and allotment money due on the allotment. However, on perusal of the copy of the extract of the minutes of the Board Meeting of the Company held on 20th May 2000 for the allotment of aforesaid 30,00,000 equity shares, it is observed that the Company had received only the application money which is just 10% of total money due on the said shares. The relevant extract of the said minutes is read as under: -

"Allotment of additional 30,00,000 equity shares of Rs.10/- each at a premium of Rs.970/- per share on preferential / private placement basis:

*"RESOLVED THAT the Company do allot 30,00,000 equity shares of Rs 10/- each at a premium of Rs.970/-per share to New Vision Investment Limited, United Kingdom. These shares be issued on partly paid basis since **the Company has already received 10% of due amount as application money of Rs. 98/- per share i.e, Re 1/- towards Share Capital and Rs 97/- towards Share Premium** and these shares be issued in electronic form."*

Further, on perusal of the bank statement of IndusInd Bank, it is observed the same shows that total amount of Rs.29,59,07,500/- were received by the bank which indicates that only application money of Rs.29,40,00,000/- was received by the Company (30 lakhs shares X Rs.98). Though the Respondent brought on record copy of legal opinion in his defense yet the same does not support the submissions of the Respondent in view of the facts such as minutes of Board of Directors and amount of money reflected in bank statements as the same clearly indicates receipt of application money by the Company. Moreover, the legal opinion brought on record by the Respondent seeks Legal opinion on whether FII can pay only 10%

of issue price at application stage & remaining 90% at some time after allotment. It never states that receipt of 10% of subscription amount on application is equivalent to receipt of allotment money. Hence, from the above facts on record, it is evident that only application money was received by the Company and no allotment money was realized by the Company. In spite of documents reflecting receipt of application money only, the Respondent has certified that application / allotment money has been received by the Company and the same clearly indicates that the Respondent was grossly negligent while issuing the Certificate dated 18th January 2001. Therefore, the Respondent is held **Guilty** of Professional Misconduct falling within the meaning of Item (7) of Part I of Second Schedule to the Chartered Accountants Act, 1949.

6. In respect of second allegation relating to issuance of another certificate for allotment of 1.70 Crore shares for the purpose of acquisition to Fortuna Technologies, USA, it is observed that the Respondent in his Certificate dated 18.01.2001 has certified as under: -

"We, the auditors of DSQ Software Limited (the Company) have verified the books of accounts and other records of the Company in respect of the preferential allotment of 1,40,00,000 Equity shares of Rs. 10/- each at a premium of Rs.675/- per share on 12 January 2001, In terms of the shareholders' approval at the Extra-Ordinary General Meeting held on 11th December 2000 and certify that: -

1. The above allotments have been made In terms of Acquisition Agreement for acquisition of Fortuna Technologies Inc., California, USA as per Shareholders' approval and for consideration other than cash. The Company has realized the Application / Allotment money due on this allotment by way of consideration payable for this acquisition.

2. The Company has allotted the above equity shares, as per resolution passed under Section 81 1(A) of the Companies Act, 1956, to persons other than promoters. None of those allottees come under the definition Promoters' as per clarification XIII Issued by SEBI.

3. Those allotments have been made In terms of the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 under Preferential allotment category as per Para 3 (1) (c), read together with Para 13.3.1 In respect of Acquisition through Equity Swap basis. Hence, these shares do not carry any lock-In period and are freely tradable."

From the above, it is clear that the Respondent has confirmed that the allotment have been made for consideration **other than cash** and the Company has realized the Application

/ Allotment money due on the allotment by way of consideration payable for the acquisition of Fortuna Technologies Inc., California, USA. However, on being specifically examined on oath by the Complainant Department, the Respondent submitted that the relevant documentary evidences were examined by him and he was told that the transfer of shares of Fortuna Technologies, USA was under process. The Respondent did not see any physical share certificate of Fortuna Technologies, USA instead he has gone through the agreement executed between the Company and Fortuna Technologies, USA. The Respondent further admitted that he had been misrepresented by the Managing Director of the Company in the matter.

6.1. From the above, it is clear that the Respondent failed to verify the physical share certificates issued by M/s. Fortuna Technologies, USA for acquisition of it by the Company. The Respondent also failed to bring on record copy of physical share certificates to show that the same was available with the Company at the time of issuance of certificate. Since the Respondent has issued the certificate without verifying the relevant documents, the certificate issued by the Respondent appears to be misleading. In this regard, on perusal of the Guidance Note on Audit Reports and certificate for special purposes (As applicable at that time in 2001), it is observed that para 2.2 of the aforesaid Guidance Note states as under: -

“A reporting auditor should appreciate the difference between the term’s ‘certificate’ and ‘report’. A certificate is a written confirmation of the accuracy of the facts stated therein and does not involve any estimate or opinion. A report, on the other hand, is a formal statement usually made after an enquiry, examination or review of specified matters under report and includes the reporting auditor’s opinion thereon. Thus, when a reporting auditor issues a certificate, he is responsible for the factual accuracy of what is stated therein. On the other hand, when a reporting auditor gives a report, he is responsible for ensuring that the report is based on factual data, that his opinion is in due accordance with facts, and that it is arrived at by the application of due care and skill.”

6.2 From the above, it is noted that a certificate must reflect factual accuracy of the facts as stated therein and it does not involve any estimate or opinion or assurance of compliance of facts stated in the certificate at a future date. In the instant matter, the Respondent failed to establish that at the time of issuance of the impugned certificate, share certificates were issued by M/s. Fortuna Technologies Inc., USA in the name of the Company and it does not

Ans

represent sham transactions. Therefore, the Respondent is held **Guilty** of Professional Misconduct falling within the meaning of Item (7) of Part I of Second Schedule to the Chartered Accountants Act, 1949.

7. As regard the next allegation relating to giving a wrong physical verification report of fixed assets of the Company without careful examination of required evidence, the Respondent stated that copy of the physical verification reports and copy of the statement of the statutory auditors confirmed that they found the report of the Respondent to be appropriate. The Respondent stated that CA N. Ramesh Rajan of Lovelock & Lewis being the signing partner for the statutory audit report for the year ended 31st December 2000, was summoned and examined by SFIO. CA. N. Ramesh Rajan had confirmed that he found the work of the Respondent to be appropriate.

7.1 In respect of allegation, it is observed that the Respondent in his physical verification report has certified as under: -

"We have conducted a physical verification of fixed assets of the Company with regard to the following assets: -

- 1. Plant & Machinery,- Hardware /Software/ Air Conditioner*
- 2. Motor Vehicles*
- 3. Furniture & Fixtures and Office Equipments.*

The verification was conducted based on the fixed asset register, books and records produced and explanations given by the Management.

During the physical verification we relied on the technical specifications furnished and explanations given to us by the systems personnel of the Company. We believe that the technical specifications do confirm with the kind of software and as mentioned in the records furnished to us and explanations given to us.

We have verified the physical presence of software in tape form with markings on it with technical specifications with regard to physical purchases made. With regard to purchase of software through internet, the existence presence of software was identified with the computer system in which the same has been loaded and adequately confirmed with the document produced in this regard."

7.2 From the above, it is noted that the Respondent had conducted physical verification of fixed assets including software and issued certificate in this regard. It is also noted that for physical

As

verification of software, he relied upon the technical specification furnished to him by the systems personnel of the Company. Further, it appears that the Respondent has verified the physical existence of the software from tape available with the Company. In this regard, it is observed that the Respondent on being examined on oath by the Complainant submitted that for being satisfied about the physical availability of the software, he had seen the financial bills for purchase of software and that there were financial entries in the books of accounts which does not seem to be a valid ground for acceptance as verification of financial bills does not necessarily imply physical existence of the assets (software/program) as it is only an evidence for the accounting of the asset in the books of the account of the entity. In these circumstances, it is observed that he should have taken an expert's opinion before filing physical verification report.

7.3 In respect of above allegation, on perusal of the Guidance Note on Audit Reports and certificate for special purposes (As applicable at that time in 2001), it is observed that para 4.2 of the aforesaid Guidance Note states as under: -

A reporting auditor is not an expert on purely technical matters and as such, when he is required to report on or certify such matters (e.g., composition or quality of a product) which are of paramount importance and constitute the very basis of the figures contained in the statement, he should state his limitations clearly in the report or certificate. At the same time, he should indicate the extent to which he has been able to exercise his own professional skill and judgment with regard to the matter being reported upon. For instance, he may state that, for the purpose of forming his opinion, he has relied upon a certificate from technical experts. He should, of course, satisfy himself about the technical qualifications of the expert, and subject the expert's certificate to a reasonable review.

The aforesaid guidance notes in para no.5.2 (c) further states that *"If the report or certificate is subject to any limitations in scope, such limitations should be clearly mentioned."*

7.5 From the above, it is apparent that the Respondent was not expert for verifying the physical existence of the software. Accordingly, he should have mentioned his limitation of not being expert of verification of physical existence of software. Further, the Respondent in his statement before the Complainant Department stated that he has only verified the financial

Ar

bills for purchase of software and entries made in the books of accounts. It appears that the Respondent has only relied upon the explanation given by the technical personnel of the Company and does not appear to take any opinion or report of any independent technical expert to identify the physical existence of the software. Keeping in view the above, it appears that the Respondent has issued the certificate for verification of physical existence of fixed assets including software without verifying the existence of the same and he just relied upon the explanation given by the Company own personal rather than taking independent expert opinion or mentioning his limitation with respect to examination of physical existence of software. In view of the above, it may be stated that the Respondent was grossly negligent in performing his professional duties. Accordingly, he is held **Guilty** of Professional Misconduct falling within the meaning of Item (7) of Part I of Second Schedule to the Chartered Accountants Act, 1949.

Conclusion: -

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

Sd/-
(CA. ANIKET SUNIL TALATI)
PRESIDING OFFICER

Sd/-
(SHRI PRABHASH SHANKAR, I.R.S. (RETD.))
GOVERNMENT NOMINEE

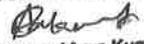
Sd/-
(CA. GYAN CHANDRA MISRA)
MEMBER

Sd/-
(CA. PRITI PARAS SAVLA)
MEMBER

Date: 07/02/2023

Place: New Delhi

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


अरुण कुमार / Arun Kumar
कार्यकारी अधिकारी / Executive Officer
अनुशासनिक निदेशालय / Disciplinary Directorate
इंस्टीट्यूट ऑफ चार्टर्ड एकाउंटेंट्स ऑफ इंडिया
The Institute of Chartered Accountants of India
आईसीएआई भवन, प्लॉट नंबर, शाहदरा, दिल्ली-110032
ICAI Bhawan, Plot No. 1, Shaheed Nagar, Shuhdra, Delhi-110032

