

CONFIDENTIAL

DISCIPLINARY COMMITTEE [BENCH – II (2023-2024)]

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

Findings under Rule 18(17) and Order under Rule 19(2) of the Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007.

File No. [PR/99/2018-DD/131/2018-DC/1415/2021]

In the matter of:

**Ms. Punita Sood Sohal,**  
**Authorised Signatory,**  
**M/s Karvy Capital Limited,**  
702, Hallmark Business Plaza,  
Opp. Gurunanak Hospital,  
Bandra (E)  
**Mumbai – 400051**

.....Complainant

**Versus**

**CA. Manoj Sukanraj Mehta (M. No. 119789)**  
**M/s M S M & Co., Chartered Accountants,**  
Office No. 201,  
1044, Ashwini Commercial Centre,  
Hirabaug Chowk,  
Shukrawar Peth & Tilak Road,  
**Pune– 411002**

.....Respondent

**MEMBERS PRESENT:**

**CA. Ranjeet Kumar Agarwal, Presiding Officer (Present In person)**

**Smt. Rani S. Nair, Govt. Nominee (Present In person)**

**Shri Arun Kumar, Govt. Nominee (Present In person)**

**CA. Sanjay Kumar Agarwal, Member (Present In person)**

**DATE OF FINAL HEARING : 9<sup>th</sup> January 2024**

**DATE OF DECISION TAKEN : 23<sup>rd</sup> January 2024**

**PARTIES PRESENT:**

**Complainant:** Not Present

**Respondent:** CA. Manoj Sukanraj Mehta (Through Video Conferencing Mode)

**Counsel for Respondent:** CA. Sharad Vaze (Through Video Conferencing Mode)

**BACKGROUND OF THE CASE:**

1. The brief background of the case is that
  - a. M/s Vaishno Devi Dairy Products Limited (hereinafter referred to as the 'Company') had entered into a contract with the Complainant for issue of Non-Convertible Debentures (NCDs) for Rs. 52.50 crores on 13/01/2014.
  - b. The Company defaulted in the payment of the NCDs in December, 2015.
  - c. A demand recall notice was also issued to the Company in this regard on 10<sup>th</sup> March, 2016.
  - d. The instant complaint is on account of inappropriate disclosure regarding default in payment of NCD in the financials of the Company for the FYs 2015-16 and 2016-17 certified by the Respondent.

**CHARGES IN BRIEF:-**

2. The Committee noted that following charges were levelled against the Respondent: -

**F.Y. 2015-16**

- a) No provision was made for the payment of the coupon / interest due on the NCDs in the balance sheet. Also, the Auditor's Report did not disclose any default of Interest amount or principal payment of NCDs. Accordingly, the financials of the Company did not indicate a true picture of its liabilities.

**FY 2016-17**

- b) That the outstanding amount of NCDs were reduced from Rs. 52.50 crores as on 31<sup>st</sup> March 2016 to Rs. 50.57 crores as on 31<sup>st</sup> March 2017 wherein no repayment was ever made. Further, the amount of redemption premium

due on NCDs were not disclosed as accrued in the balance sheets of both FY 2015-16 and 2016-17.

3. The Committee noted that the Respondent in his reply at the stage of PFO had, inter-alia, mentioned as under:
- (i) That from the date of issue of NCDs, the Company was regularly paying interest till November, 2015 and also made the provision for interest on NCDs till March, 2016. The last instalment of interest on NCDs due for payment was provided in the books but due to severe financial crunch, the Company had requested the Complainant to grant the extension for payment. However, it was informed to the Respondent that the Complainant had not responded. Therefore, for F.Y 2015-16, the Respondent had not reported the default in interest payment.
  - (ii) That for the FY 2016-17, wherein the Company continued with the default, he had reported / qualified the same in his report.
  - (iii) The Respondent then stated that on comparison of the Balance sheets for the FY 2016-17 submitted by the Complainant with balance sheet audited by him, it was observed that the aforesaid qualification reported in his audit report was deleted in the report which was submitted by the Complainant.
  - (iv) Thereafter, on verification from the Company that its financial statements for the FY 2016-17 audited by the Respondent were also shared with the bankers from whom the credit facilities were obtained, he made enquiries with Bankers and requested them to share the audited reports submitted by the Company for FY 2016-17. It was confirmed by the bankers that the copies of the audit report in their possession did mention the aforesaid qualification.

(v) He had also made enquiries with the Company, and it also confirmed that it was in possession of an Audit Report issued on its financial statements for the Financial Year 2016-17 with qualifications.

4. The Director (Discipline) had, in his Prima Facie Opinion dated 11<sup>th</sup> November, 2020, noticed as under:

4.1 **FY 2015-16**

a. That the Respondent was aware of the default in the payment of interest on NCDs made by the Company during the FY 2015-16 and also about severe financial crunch in the Company and despite having the information of default in payment of interest due on NCDs made by the Company, the Respondent made a false statement / reporting in his audit report issued on the financials statements of the Company for the FY 2015-16.

4.2 **FY 2016-17**

a. That though the Respondent had disclosed the fact of default in payment of dues on the NCDs made by the Company in his audit report for the FY 2016-17 but interest due on NCDs had not been provided for in the financial statements of the Company.

b. In this regard, wherein the Company was only in the process of negotiating with the Complainant for one time settlement of NCD obligation, it is viewed that the amount of interest due on NCDs should have been disclosed / provided for in the financial statements of the Company for the FY 2016-17 to give the true and fair view of state of affairs of the Company as on the date of balance sheet but the Company failed to disclose the amount of due interest on NCDs in the financial statements of the Company for the FY 2016-17.

- c. Thus, the Respondent was held prima facie Guilty of Professional Misconduct falling within the meaning of Item (5), (6) & (7) of Part-I of the Second Schedule to the Chartered Accountants Act, 1949.
- d. It is also pertinent to mention here that though the Respondent, in his audit report on the financial statements of the Company for the FY 2016-17, has disclosed that a payment of Rs. 1.92 crores was made towards principal repayment of NCDs, however, the same cannot be located in the Cash flow Statement.
- e. The Respondent has also not submitted any documentary evidence on record to prove that such payment of Rs. 1.92 crores was made during the FY 2016-17 by the Company towards principal payment of NCDs. Thus, in the absence of any submissions / clarification and documentary evidences submitted by the Respondent, it was viewed that the Respondent was prima facie **Guilty** of Professional Misconduct falling within the meaning of item (5) , (6) and (7) of Part I of Second Schedule to the Chartered Accountants Act, 1949.
5. Accordingly, the 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, held the Respondent Prima-facie Guilty of Professional Misconduct falling within the meaning of Items (5), (6) and (7) of Part I the Second Schedule to the Chartered Accountants Act, 1949. The said items in the Schedule to the Act states as under:

***Item (5) of Part I of Second Schedule:***

"A chartered accountant in practice shall be deemed to be guilty of professional misconduct, if he-

*(5) fails to disclose a material fact known to him which is not disclosed in a financial statement, but disclosure of which is necessary in making such financial statement where he is concerned with that financial statement in a professional capacity;*

**Item (6) of Part I of the Second Schedule:**

*(6) Fails to report a material misstatement known to him to appear in a financial statement with which he is concerned in a professional capacity”*

**Item (7) of Part I of the Second Schedule**

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

**SUBMISSIONS OF THE RESPONDENT ON THE PRIMA-FACIE OPINION**

6. The Committee noted that the Respondent in written submissions dated 8<sup>th</sup> March, 2021 had, inter-alia, mentioned as under:
- a. That the Company has made proper disclosures in the financial statements of the Company for the financial year 2015-16 related to NCDs outstanding and interest payable hence there is no need from the Respondent to qualify his report.
  - b. That the Respondent has given reference to Rejoinder dated 24<sup>th</sup> August, 2018 submitted by the Complainant wherein the Complainant specifically claims that the Respondent failed to disclose the default in interest payment for the financial year 2015-2016. Moreover, the Complainant contends that the Respondent had violated Clause 3 (viii) of the Companies Auditor Report Order, 2016.
  - c. In response to the above, the Respondent stated that said clause is correctly reported in the facts and circumstances of the case. This clause refers to repayment and NOT to payment. The word repayment implies paying back what is earlier received. Thus, it applies to repayment of principal amounts of loans from financial institution, banks, government or dues to debenture holders. The said clause does not apply to payment of interest.
  - d. That the Respondent in his Audit Report dated 01<sup>st</sup> September, 2017 in respect of Clause 3(viii) of CARO has categorically described a) the

- reasons for reduction in outstanding debenture from Rs 52.50 crores to Rs 50.57 crores. The reply to this clause also specifically states non-provision of interest for the entire year by the Management of the said Company.
- e. That in Form AOC-XBRL submitted to MCA portal duly countersigned by Company Secretary for the financial year 2016-17, the qualification given by him also appears on page 4 in Textual Information (7), however, after issuance of Audit Report by the Respondent to the Company, someone in the Company had played mischief with the Audit Report. The paragraph wherein the qualification as to debenture was given was clandestinely removed by the Company and the Audit Report without qualification was circulated to all stakeholders and he came to know of this only when he received the Complaint with covering letter from ICAI.
- f. The Respondent stated that he personally went to SBI and Nagar Urban Co-op Bank in Pune and both these banks have confirmed the existence of qualification in Audit Report and the said Company has also confirmed the existence of qualification in the audit report.
- g. Hence, there was no need for qualification for the financial year 2015-16 and there was adequate disclosure for 2016-17

**BRIEF FACTS OF THE PROCEEDINGS:**

7. The Committee noted that the instant case was fixed for hearing on following dates:

S. No.	Date	Status of Hearing
1.	07.11.2022	Part Heard and Adjourned
2.	28.07.2023	Adjourned on the request of Respondent and in absence of Complainant
3.	18.08.2023	Part Head and Adjourned
4.	17.10.2023	Adjourned on the request of the Respondent
5.	28.11.2023	Part Heard and adjourned
6.	09.01.2024	Concluded and Judgement Reserved
7.	23.01.2024	Final decision taken on the Case

8. On the day of the first hearing, held on 7<sup>th</sup> November, 2022, the Committee noted that the Respondent was present alongwith his Counsel CA. Sharad Vaze at ICAI Tower, BKC Mumbai. The Committee noted the Complainant was not present despite due notice to her in this regard.
- 8.1 The Respondent was administered on Oath. Thereafter, the Committee enquired from the Respondent as to whether he was aware of the charges. On the same, the Respondent replied in the affirmative and pleaded Not Guilty to the charges levelled against him.
- 8.2 Thereafter, looking into the fact that this was the first hearing, the Committee decided to adjourn the hearing to a future date. With this, the hearing in the matter was partly heard & adjourned.
9. On the day of the second hearing held on 28<sup>th</sup> July, 2023, the Committee noted that neither the Complainant was present nor any intimation had been received from her despite due service of notice. The Committee noted that the Respondent vide his email dated 23<sup>rd</sup> July, 2023 sought adjournment on medical grounds and requested to place the hearing on or after 18<sup>th</sup> August, 2023.
- 9.1 The Committee looking into the grounds of natural justice acceded to the adjournment request made by the Respondent, and accordingly, the case was adjourned at the request of the Respondent.
10. On the day of the third hearing held on 18<sup>th</sup> August, 2023, the Committee noted that neither the Complainant was present, nor any intimation had been received from her. The Committee further noted that the letter sent through Speed Post was received back with the remark "Moved".
- 10.1 Thereafter, the Committee enquired from the Respondent that since the composition of the Committee had changed further to the previous hearing, as to whether he wished to have a de-novo hearing. On the same, the

Respondent opted for a de-novo hearing. Accordingly, the Committee acceded to the request of the Respondent and started a fresh hearing in the matter.

- 10.2 Thereafter, the Respondent Counsel presented his line of defence. The Committee posed certain questions to the Respondent to understand the issue involved and the role of the Respondent in the case. On consideration of the same, the Committee gave directions to the Respondent to submit his further submissions, to the extent not submitted earlier, within next 15 days.
- 10.3 The Committee further directed the Office to download the following from the ROC/MCA website:-
- a. Copy of Audit Report along with financial statements for financial year 2015-16 and 2016-17 of the Company i.e. M/s Vaishno Devi Dairy Products Limited

With the above, the matter was partly heard and adjourned.

11. On the day of the fourth hearing, held on 17<sup>th</sup> October, 2023, the Committee noted that the Respondent had sought adjournment vide his mail dated 29<sup>th</sup> September 2023 on grounds of non-availability of his Counsel. The Committee, on account of natural justice, acceded to the request of Respondent and granted him adjournment. Accordingly, the hearing in the matter was adjourned to a future date.
12. On the day of the fifth hearing held on 28<sup>th</sup> November, 2023, the Committee noted that the Complainant was not present, nor the notice was delivered at its end. The Committee noted that the Respondent along with his Counsel was present through video conferencing mode.
- 12.1 The Respondent's Counsel presented his line of defence, inter-alia, stating that the disclosures relating to default in payment on NCD's were duly disclosed by the Company in its financials for the financial year 2015-16 and 2016-17.

- 12.2 He further submitted that for the financial year 2016-17, he had properly qualified his report but on comparison of the Balance sheets for the FY 2016-17 submitted by the Complainant with balance sheet audited by him, it was observed by him that the aforesaid qualification reported in his audit report was deleted in the report which was submitted by the Company to the Complainant.
- 12.3 On a specific question to him that whether he had a set of original Balance Sheet with him, the Respondent replied in affirmative. Thereafter, the Committee gave directions to the Respondent to produce the original balance sheet physically for checking before the Office. Accordingly, the matter was partly-heard and adjourned.
13. On the day of the final hearing held on 9<sup>th</sup> January, 2024, the Committee noted that the Complainant was not present despite due delivery of notice upon him. The Committee noted that the Respondent along with his Counsel was present through video conferencing mode.
- 13.1 The Respondent's Counsel submitted his detailed submissions. He on the present status of the auditee Company mentioned that as per his information, the Complainant on behalf of the investors had filed a case against the Company and the matter is pending before NCLT.
- 13.2 The Committee, on consideration of the same, noted that there was a SEBI Order in the matter of complaint filed by the Complainant against the Company. The Committee, accordingly, gave direction to the office to check the following:
- (a) SEBI Order given in the matter of the Company.
  - (b) To compare balance sheet submitted by the Respondent at written statement stage with the balance sheet originally produced before the ICAI.
  - (c) To check whether the Respondent has qualified his report with regard to default in payments from original Balance Sheet.

The Committee also directed to the Respondent to submit any further documents he wanted to submit within next 7 days. With this, the hearing in the matter was concluded and judgment was reserved.

14. Thereafter, this matter was placed in meeting held on 23<sup>rd</sup> January, 2024 for consideration of the facts and arriving at a decision by the Committee. The Office presented the information desired by the Committee in its hearing held on 9<sup>th</sup> January 2024.

14.1 The Committee also noted that the Respondent vide his submissions dated 15<sup>th</sup> January, 2024 had, inter-alia, mentioned as under :

- a. That M/s Vaishno Devi Dairy Products Limited was a Company wholly owned by Mr. Nandkishore Atal and his wife. Following its transition into a public limited company, the said entity issued debentures. Notably, M/s Karvy Capital Ltd (the Complainant) was appointed as Debenture Trustee for this issue.
- b. That present status of the Company is with NCLT where an Insolvency Professional was appointed and the said Company had sought for Corporate Insolvency under the provisions of Insolvency & Bankruptcy Code 2016. The Respondent has also enclosed copy of Order passed by Hon'ble NCLT.

14.2 Accordingly, keeping in view the facts and circumstances of the case, the material on record and the submissions of the parties, the Committee passed its judgment.

#### **FINDINGS OF THE COMMITTEE**

15. The Committee noted that the present case relates to inappropriate disclosure regarding default in payment of NCD in the financials of the Company i.e., M/s Vaishno Devi Dairy Products Limited for the FYs 2015-16 and 2016-17 certified by the Respondent.

**F.Y. 2015-16**

16. The Committee noted that the Director (Discipline) in the prima-facie opinion held the Respondent guilty on the ground of his non-reporting of default in repayment of interest on NCD's.

16.1 The Committee noted that the Respondent in his reporting had, with respect to 'default in repayment of financial dues', has disclosed the following:

***“On the basis of explanation and information given to me and based on the examination of books of accounts, the Company has not defaulted in repayment of dues to a financial institution or bank or debenture holders at the balance sheet date”. (emphasis added)***

16.2 The Committee in this regard noted that Paragraph 3 (viii) of the Companies (Auditor's Report) Order (CARO) 2016 states as under:-

**Repayment of Loan [Clause 3 (viii)]**

***“Whether the company has defaulted in repayment of loans and borrowing to a financial institution, banks, government or dues to debenture holders. If yes, the period and the amount of default to be reported.”***

16.3 From the above provision, the Committee noted that the said clause refers to repayment and not to payment. The word repayment implies paying back what is earlier received. Thus, it applies to repayment of principal amounts of loans from financial institution, banks, government or dues to debenture holders. Accordingly, the Committee viewed that if there is any default in repayment of loans and borrowings, the auditor is required to report the same alongwith the period and the amount of default in his report.

16.4 The Committee noted that the said clause does not apply to payment of interest. Further, Interest payable on Non-Convertible Debentures amounting

to INR 3,53,57,625 has been shown under the heading 'Other Current Liabilities' which is as under:-

NOTE 7 - OTHER CURRENT LIABILITIES

Particulars	(Amount in Rs.)	
	As at 31st March 2017	As at 31st March 2016
Other Payables		
Creditors on account of Purchase of Fixed Assets	7,01,76,999	7,17,60,471
Advances Received from Debtors	2,87,26,410	1,22,89,552
Other Payables	3,81,026	
Interest payable on Non Convertible Debentures		3,53,57,625
Total	9,92,84,435	11,94,07,648

16.5 The Committee noted that since the interest amount and outstanding Balance of NCDs were correctly mentioned in the Balance Sheet. Therefore, the Respondent is not required to qualify his audit report for the financial year 2015-16.

16.6 Accordingly, the Committee holds the Respondent **Not Guilty** of Professional Misconduct falling within the meaning of Item (5), (6) & (7) of Part-I of the Second Schedule to the Chartered Accountants Act, 1949 in relation to disclosure in his audit report issued on the financial statements of the Company for the FY 2015-16.

**F.Y. 2016-17**

17. The Committee noted that in respect of financial year 2016-17, two sets of audit reports are coming on record. First set is brought on record by the complainant, whereby he claimed that no qualification was made by the Respondent in his audit report. Whereas the Respondent had brought on second set of audit reports wherein the qualification was part of the audit report.

- 17.1 The Committee from comparison of both sets observed that in the set brought on record by the Respondent, he has given qualification in relation to requirement under provisions of Paragraph 3 (viii) of the Companies (Auditor's Report) Order (CARO) 2016 'default in repayment of financial dues' for the FY 2016-17 in his audit report. The Committee noted that relevant extracts of 3 (viii) of the Companies (Auditor's Report) Order (CARO) 2016 for the financial year 2016-17 is as under:-

*"On the basis of explanation and information given to me and based on the examination of books of accounts, the company has not defaulted in repayment of dues to a financial institution or bank as at the balance sheet date except as follows:*

*During the financial year 2016-17, the company has paid Rs. 5,46,37,124/- to the Debenture Holders out of which Rs. 3,53,57.625/- was debited towards interest payable for the financial year 2015-16 and the balance Rs. 1,92,79.499/- was debited towards principal repayment towards Non-Convertible Debentures (NCD). The company is not in position to fulfil the commitment towards NCD holders, hence the Company is in the process of negotiating with the Karvy Capitals Ltd for one time settlement of NCD obligation. Further, since the Company is not in a position to pay interest on NCD, the same is not provided for in the Financial Year 2016-17 (emphasis added)*

- 17.2 The Committee noted that in the previous year i.e. 2015-16 the Company had recognised the interest on accrual basis and was duly shown under the head "Other Current liabilities", however in the current year i.e. 2016-17, the Company had not recognised the interest liability. The Committee noted that the Respondent had duly qualified his report with respect to non-recognition of the liability of interest on NCDs and had disclosed the fact of default in payment of dues on the NCDs made by the Company in his audit report for the Financial Year 2016-17.

- 17.3 The Committee noted that as regards the genuineness of the set brought on record by the Respondent, he has brought on record copy of letter dated 05<sup>th</sup> June, 2018 wherein the Company itself confirmed that the Respondent have qualified the report with reference to default in interest and principle repayment of NCDs in respect of financial year 2016-17.
- 17.4 The Committee also observed that the Respondent has audited the financial statements of the Company as on 01<sup>st</sup> September, 2017 and the aforesaid AOC -4 for Financial Year 2016-17 was filed with MCA in the year 2020. The Committee further noted that said AOC 4 was certified by CS Vishal Thawani as certifying professional. The Committee further observed from the documents enclosed with AOC-4 that the above qualification was duly reflecting in the audit report.
- 17.5 As regards the SEBI Order available on public domain, the Committee noted that SEBI observed that the Complainant had violated the provisions of Regulation 3(a) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003 and accordingly, vide its Order dated 27<sup>th</sup> April 2022, the SEBI imposed penalty of Rs. 20.00 lacs on the Complainant because it is observed by SEBI that there were violations of provisions of PFUTP Regulations 2003.
- 17.6 The Committee, in absence of any submissions from the Complainant and in view of the defence submitted by the Respondent, opined that the Respondent had duly qualified the audit report and had made proper compliance of 3 (viii) of the Companies (Auditor's Report) Order (CARO) 2016. Accordingly, the Committee holds the Respondent **Not Guilty** of Professional Misconduct falling within the meaning of Item (5), (6) & (7) of Part-I of the Second Schedule to the Chartered Accountants Act, 1949 in relation to disclosure in his audit report issued on the financial statements of the Company for the Financial Year 2016-17.

**CONCLUSION**

18. In view of the findings stated in the above paragraphs vis-a-vis material on record, the Committee, in its considered opinion, holds the Respondent **NOT GUILTY** of Professional Misconduct falling within the meaning of Item Items (5), (6) and (7) of Part I of the Second Schedule to the Chartered Accountants Act, 1949.

**ORDER**

19. Accordingly, in terms of Rule 19 (2) of the Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007, the Committee passes Order for closure of this case against the Respondent.

Sd/-

(CA. RANJEET KUMAR AGARWAL)  
PRESIDING OFFICER

Sd/-

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

Sd/-

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

Sd/-

(CA. SANJAY KUMAR AGARWAL)  
MEMBER

DATE:07/02/2024

PLACE:NEW DELHI

सही प्रतिलिपि होने के लिए प्रमाणित/  
Certified to be true copy  
सी.प. चेतना गुप्ता / CA. Chetna Gupta  
उप सचिव / Deputy Secretary  
अनुशासनालयक निदेशालय / Disciplinary Directorate  
इंस्टीट्यूट ऑफ चार्टर्ड एकाउंटेंट्स ऑफ इंडिया  
The Institute Chartered Accountants of India  
आईसीएआई भवन, विश्वास नगर, शाहदरा, दिल्ली-110032  
ICAI Bhawan, Vishwas Nagar, Shahdra, Delhi-110032