

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-354/2018/DD/344/18/DC/1471/2021

IN THE MATTER OF:

**Shri Naveen Kumar,
House No. 565, Sector 22,
Pocket A,
GURUGRAM - 122 001**

.....Complainant

VERSUS

**CA. Harsha Chandra (M. No. 080489),
Partner, M/s. K C Khanna & Co.,
Chartered Accountants,
1st Floor, Archana Apartments,
12 Zone II, M P Nagar,
BHOPAL - 462 011**

.....Respondent

MEMBERS PRESENT

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

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

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

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

CA. Sridhar Muppala, Member (Present In person)

DATE OF FINAL HEARING : 16-10-2023

DATE OF JUDGEMENT : 31-10-2023

PARTIES PRESENT

Complainant : Not present

Respondent : CA. Harsha Chandra (Through Video Conferencing Mode)

Counsel for Respondent : CA. C. V. Sajan (Through Video Conferencing Mode)

BACKGROUND OF THE CASE

1. The Committee noted that the brief background of the case is that
- a. The M/s. Som Distilleries and Breweries Limited (“SDBL”) availed Unsecured Inter-Corporate Deposits (ICD) from M/s. Madhya Pradesh State Industrial Development Corporation (MPSIDC) totalling Rs. 700 Lakhs during the period 1998 to 2000 as under:

Date	Amount
24/11/1998	Rs. 100.00 Lacs
13/01/1999	Rs. 200.00 Lacs
09/08/1999	Rs. 100.00 Lacs
11/01/2000	Rs. 300.00 Lacs
Total	Rs. 700.00 Lacs

- b. The Respondent firm was the statutory auditor of M/s. Som Distilleries and Breweries Limited (“SDBL”) for the financial years 2002-03, 2011-12, 2012-13 and 2013-14. However, the present complaint relates to F.Y. 2011-12, 2012-13 and 2013-14 wherein the financials of SDBL reflected the following amounts:

FY ending	Outstanding in lacs	Relevant notes/ details provided by Respondent
31/03/2012	1,022.70	MPSIDC has recently crystallized its final liability at Rs. 791.20 Lacs against which the Company has made cumulative payments in FY 2010-2011 & FY 2011-12 aggregating to Rs. 75.00 Lacs
31/03/2013	1,022.70	The Unsecured ICD outstanding as at 31 st March 2013 has been Fully Paid-Off as on the date of signing of the Balance Sheet dated 8 th August 2013.
31/03/2014	Nil	The unsecured ICD outstanding as at 31 st March 2013 has been paid off during the year 2013-14.

- c. The present matter relates to improper disclosure of such ICD in the financials of SDBL.

- d. MPSIDC vide its letter dated 10th May, 2012 offered to settle for an OTS sum of Rs.774.08 lacs (Principal Rs.700 lacs plus Interest Rs.74.08 lac) along with recoverable expenses of Rs.17.12 lacs.

CHARGES IN BRIEF

2. The Committee noted that the Complainant vide his complaint dated 19th October, 2018 has levied the charge against the Respondent that there was a non-disclosure of facts related to Unsecured Inter-Corporate Deposits availed by M/s. Som Distilleries and Breweries Limited (SDBL) from M/s. Madhya Pradesh State Industrial Development Corporation (MPSIDC) in the financial statements of SDBL for the financial year 2011-12, 2012-13 and 2013-14.
3. The Committee noted that the Respondent in his reply at the stage of PFO had, inter-alia mentioned as under:
- a. The Complainant holds 38 shares of SDBL purchased by him in June-September 2018 quarter for about Rs.9000/- and the Complainant was fully aware of the current status of the litigation and filed the extant complaint after so many years with some ulterior motive/ intentions which cannot be other than malafide.
- b. That the Complainant has also made almost identical complaint against SDBL with the National Stock Exchange (NSE) wherein the share of the SDBL are listed and based on the SDBL's representation, the NSE had not considered it worth pursuing the matter.
- c. That the issues/ matters raised appear to be narration of a sequence of events since the year 1998 and a gap of several years over which the Complainant did not ostensibly have any grievance whatsoever.
- d. That the primary responsibility for the preparation and presentation of the financial statements is that of the management and not the statutory auditors.
- e. That to the best knowledge and belief of the Respondent, the accounts of the Company have all along been unanimously approved and adopted at each AGM and furnished to the ROC.

f. That there being no adverse comments by the shareholders, on the accounts, over the years, the matter of a complaint thereon, after a time lag of several years, appears to be motivated.

4. The Director (Discipline) had in his Prima Facie Opinion dated 7th January 2021 noted that the allegation pertains to three financial years 2011-12, 2012-13 & 2013-2014. However, the Respondent was held prima-facie guilty with respect to Financial Year 2012-13 and 2013-14 only.

4.1 As regards F.Y. 2011-12 the Director (Discipline) hold the Respondent Not Guilty. He in his prima-facie opinion noted that there was dispute between both parties regarding the outstanding amount and settlement amount under OTS. Further, the Respondent in his CARO reporting mentioned that

"The inter-corporate deposit obtained from the Madhya Pradesh Industrial Development Corporation Ltd. (MPSIDC), a state level financial institution is outstanding. As per the explanations given to us, there are differences of opinion on certain matters between the Management of the Company and MPSIDC. We are therefore unable to comment on the requirements under this para".

The Director (Discipline) noted that the Complainant failed to bring on record as to how the amount of ICD shown in the Balance Sheet is materially misstated, specifically in the case where both the parties are claiming different amount of outstanding. Accordingly, the Respondent was held prima-facie Not Guilty for F.Y. 2011-12.

4.2 With respect to Financial year 2012-13, it is noted by the Director (Discipline) that

a. The Hon'ble High Court of Delhi admitted the Company Petition No.198 of 2008 of MPSIDC seeking winding up of SDBL. The Hon'ble High Court of Delhi vide its order dated 3rd May 2013 appointed a provisional liquidator for the Company subject to certain conditions. The aforesaid order of the

Single bench of Hon'ble High Court of Delhi was accepted by the Divisional bench of the Hon'ble High Court of Delhi also.

- b. Thereafter, the SDBL approached the hon'ble Supreme Court of India. The hon'ble Supreme Court of India, vide its interim order dated 19th June 2013 put a stay on the above order.
- c. The Respondent in his report dated 8th August 2013 and under CARO reporting mentioned that the unsecured inter-corporate deposit outstanding as on 31st March 2013 has been fully paid off as on the date of signing of the Balance Sheet.
- d. The Respondent did not bring on record any documentary evidence to support his contention that the outstanding amount was fully settled and closed. In view of the above facts, information regarding full settlement of ICD by the SDBL in Notes to Accounts and by the Respondent under CARO reporting appears to be misleading.
- e. Accordingly, the Respondent was held Prima-facie guilty by the Director (Discipline).

4.3 With respect to 2013-14, it is noted by the Director (Discipline) that

- a. that the Respondent in his report dated 30th May 2014 and under CARO reporting mentioned that the unsecured inter-corporate deposit outstanding as on 31st March 2013 had been fully paid off as on the date of signing of Balance Sheet and there were no amounts outstanding.
- b. However, it is seen that as regard the outstanding liability towards ICD, there was no convincing evidence / document on record to show that the SDBL was required to pay any extra amount in addition to the amount of Rs.7.60 Cr which was already paid during the financial year 2013-14.
- c. The Respondent remained silent on treatment of the balance amount in the financial statements of the Company i.e. amount of difference between admitted liability + interest thereon minus payment already made to the MPSIDC (approximately Rs.262 lacs) which was 1.58% of total size of the Balance Sheet and 12.91% of Net Profit of the Company for the financial year 2013-14.

- d. Accordingly, it is viewed that the amount was material and the Respondent was required to point out the non-adjustment of the difference amount in the books of account of the Company.
- e. Accordingly, the Respondent was held Prima-facie guilty by the Director (Discipline).
- f. It was further observed by the Director (Discipline) that Hon'ble High Court of Madhya Pradesh, vide its order dated 9th April 2014 gives right to the MPSIDC to claim the outstanding amount of ICDs as per their OTS scheme of 2007 and amount of bounced cheque. Though there was no document on record to show that MPSIDC has ever issued notices to the Company for payment of extra amount other than admitted liability, however, on perusal of the provisions of AS-29 on "Provisions, Contingent Liabilities and Contingent Assets", it is noted that the Company was required to disclose information about contingent liability. Thus, the Respondent should have pointed out in the audit report that the Company has not given disclosure in respect of contingent liability arising out of the Judgement of the Supreme Court of India and Madhya Pradesh High Court and about non-treatment of differential amount in the financial statements of the Company, but the Respondent failed to point out the same in his audit report.
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 (6) and (7) of Part I of Second Schedule to the Chartered Accountants Act, 1949. The said items in the Schedule to the Act states as under:

Item (6) of Part I of Second Schedule

"A Chartered Accountant in practice shall be deemed to be guilty of professional misconduct if he-

(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 Second Schedule

“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”

SUBMISSIONS OF THE RESPONDENT ON THE PRIMA-FACIE OPINION

6. The Committee noted that the Respondent in his Written Submissions dated 18th September 2021 had submitted as under:
- a. The first observation made by Director (Discipline) was an appropriate summation of the effect of both the orders of Hon'ble Delhi High Court dated 3rd May, 2013 and that of the Hon'ble Supreme Court dated 19th June, 2013.
 - b. That the opinion formed by the Director (Discipline) finding fault with disclosure made by SDBL was arbitrary. It is worthwhile to point out that the audit opinion in debate was made on 8th August 2013 based on facts and circumstances as on that date. It is apprehended that the PFO made on 7th January 2021 was on hindsight in the background of incidents and developments post 8th Aug 2013 mentioned in the complaint.
 - c. The third observation by the Director (Discipline) that the Respondent did not bring on record any documentary evidence to support his contention that outstanding amount was fully settled and closed, was without understanding the intent and meaning of the comments made in the CARO. Therefore, it is an opinion that suffered from serious error of judgment.
 - d. That the entire amount of Rs. 1022.70 lakhs had been written off and that the Note in the Balance sheet of SDBL for FY 2013-14 was mischievous. It also contained an allegation regarding not providing details of Rs. 262.23 lakhs, being the difference between the ICD book liability as at 31st March 2013 and the amount paid during 2013-14 was Rs. 760.47 lakhs. There is also mention of allegation regarding not providing contingent liabilities in respect of 35 criminal cases against SDBL for bounced cheques.

- e. The other observation by Director (Discipline) was that the Respondent as auditor was required to verify the documentary evidence regarding final settlement of outstanding amount of ICDs and also required to verify No outstanding Certificate from MPSIDC before giving information under CARO Reporting about no amounts outstanding to any financial institution. However, there was no such requirement for the purpose of reporting on Point 4 (xi) in CARO Report.
- f. In view of the above, there was no case of not exercising due diligence was made out against the Respondent in the PFO. Therefore, there was no merit in holding the Respondent prima facie guilty of professional misconduct in respect of audits of SDBL for the FYs 2012-13 and 2013-14.

BRIEF FACTS OF THE PROCEEDINGS

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

S. No.	Dates	Status of Hearing
1	12.05.2023	Part heard and adjourned.
2	16.10.2023	Concluded. Judgement Reserved
3.	31.10.2023	Final decision taken on the case

8. On the day of the first hearing, held on 12th May 2023, the Committee noted that the Respondent and his counsel CA. C.V. Sajan were present through video conferencing mode. The Committee further noted that neither the Complainant was present, nor any intimation was received from his side. The Respondent was administered on Oath. Thereafter, the Committee enquired from the Respondent as to whether he was aware of the charges. On the same, the Respondent replied in the affirmative and pleaded Not Guilty to the charges levelled against him. Thereafter, 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 and adjourned.
9. On the date of the second and final hearing, held on 16th October 2023, the Committee noted that, the Respondent along with his Counsel CA C.V. Sajan was

present through Video Conferencing Mode. The Committee further noted that the Complainant was not present, and the notice sent to him was returned. The Committee noted that the contact number given by the Complainant in the notice pertained to some other person. The Respondent Counsel stated that the Complainant had no locus standi in the matter and they didn't even know about the identity of the Complainant. Accordingly, the Committee, decided to proceed with the case ex-parte the Complainant.

9.1 Thereafter, the Respondent was asked to make his submissions. The Respondent/ his Counsel in his submissions had inter-alia submitted as under:

- a. That the matter under the said complaint relates to audit of the Company for the Financial Years 2012-13 & 2013-14 conducted by the Respondent.
- b. That the Company has made the disclosure that the unsecured inter corporate deposits are fully paid off however in his CARO report, he did not mention the word fully paid off.
- c. That the Hon'ble Supreme Court vide its order made it clear that MPSIDC will accept the amount without prejudice to all its rights and contention and since outstanding liability towards ICD as on 31st March, 2010 was duly shown in the balance sheet, question of showing contingent liability does not arise at all.
- d. Further, there was nothing on record to show that SDBL, i.e., the Company Som Distilleries, was directed to pay an amount more than admitted liability plus interest thereof.
- e. However, it is observed that while giving the information regarding full payment of ICD in notes to accounts, the SDBL should have also given information about the appointment of the official liquidator for the winding up of the Company by the Hon'ble High Court of Delhi subject to certain conditions, subsequent stay on appointment of the official liquidator by Supreme Court.
- f. From a very precautionary note, the Company should have disclosed that is a matter of dispute. However, if that disclosure was not made it did not amount to any misstatement on the part of the auditor because a Chartered Accountant is held guilty of professional misconduct if there is a material misstatement and that material misstatement has to be determined with reference to the Standards.

- g. That at the time of reporting the balance sheet, the Respondent did not observe any judgemental error because he thought that the Supreme Court had already done away with the appointment of the liquidator.
- h. Further, if there was any merit in the point of the liquidator appointment, then the Supreme Court would not have stayed it and also, out of total liability in the Court the SDBL had paid 7.60 crores so, reasonable amount has been settled.
- i. So, therefore, there was no point to assume that this Company would be facing liquidation and the Respondent will have to disclose all these things.
- j. That the total liability was 10.22 crore as on 31st March, 2013 and 7.60 crore was paid and the balance amount which represented interest payable was shifted to expense payable because the payment was according to the instructions of the Supreme Court Order.
- k. The break-up of expense payable is also given in the grouping of balance sheet wherein amount of Rs. 2.62 crores (approx.) was also included in the interest payable under the head "Expenses payable".

9.2 The Committee posed certain questions to him to understand the issue involved and the role of the Respondent in the case. Thereafter, the Committee, looking into the Respondent's submissions against the charges levelled, recorded his plea and accordingly concluded the hearing by reserving its judgement.

10. Thereafter, this matter was placed in hearing held on 31st October 2023 for consideration of the facts and arriving at a decision by the Committee. The Committee noted that the above case was concluded on 16th October, 2023. After consideration of the same, vis-à-vis facts of the case and documents/ submissions on record, the Committee passed its judgement.

FINDINGS OF THE COMMITTEE

11. The Committee noted that the charge against the Respondent was of non-disclosure of facts related to Unsecured Inter-Corporate Deposits availed by M/s. Som Distilleries and Breweries Limited (SDBL) from M/s. Madhya Pradesh State Industrial Development Corporation (MPSIDC) in financial statements of SDBL for the financial years 2011-12, 2012-13 & 2013-14. However, the Respondent was

held not guilty for financial year 2011-12 at the stage of PFO itself. For subsequent years, the Respondent denied all the allegations against him.

12. The Committee noted that the Complainant had no locus standi in the matter and the Respondent didn't even know about the identity of the Complainant. Further, the Complainant is not traceable and there is a mismatch even in his signatures in Form I vis-a-vis Rejoinder sent by him at the prima-facie stage.
13. The Committee noted that the MPSIDC filed the petition with Hon'ble High Court of Delhi under Section 439 read with Section 433(e) and 434 of the Companies Act, 1956 seeking winding up of the Company. The Hon'ble High Court of Delhi admitted the petition and vide its order dated 3rd May 2013 appointed a provisional liquidator for the Company subject to certain conditions. However this order was challenged by the Company (SDBL) before Hon'ble Supreme Court and the Supreme Court vide its interim order dated 19th June 2013 stay the liquidation on the grounds that the SDBL will pay its admitted liability as shown in the Balance Sheet as on 31st March 2010 minus amount already paid to the MPSIDC.
14. The Committee noted that as per the audited financial statements of the Company for the year ending 31.03.2010 the total liability was Rs 1022.70 lacs. The Committee further noted that during the proceedings before the Hon'ble Supreme Court observed that *"It has been brought to our notice that at a certain stage when the petition for winding up of the petitioner Company was pending before the learned Company Judge of the Delhi High Court, an offer was made on behalf of the respondent for a settlement of dues payable by the petitioner to the respondent at Rs.7,52,66,667/-"*
15. The Committee noted in the said order of Hon'ble Supreme Court that it is also coming that
"An amount of Rs.7,60,00,000/- by way of two demand drafts has been handed over by the learned senior counsel for the petitioner to the counsel for the respondent in Court today.

We make it clear that the respondent will accept the amount without prejudice to all its rights and contentions."

16. Hence, the Committee observed that the SDBL had deposited two cheques amounting Rs. 7.60 crores to the MPSIDC during the Financial Year 2013-14. Further, as per the orders of Hon'ble Supreme Court, the MPSIDC as the payment of Rs. 7.60 crores had been accepted by MPSIDC at the intervention of the Hon'ble Supreme Court, which makes clear that for SDBL the payment was towards discharge of liability. The Committee noted at that particular time the liability of the Company was discharged because any further liability can accrue only after the fresh order of the Hon'ble Supreme Court as it left it to MPSIDC to pursue its rights further.
17. As regards the reporting of the Respondent in F.Y. 2012-13 signed on 8th August 2013, the Committee noted that the Respondent under CARO reporting mentioned that:
- “the unsecured inter corporate deposit obtained earlier was outstanding as on date of the Balance Sheet. However, as per information given to us, the Company has discharged this liability before the date of this report (Refer Note no.5 to the Accounts)”*
18. The Committee noted that the Respondent in his reporting had not stated that the liability was fully discharged or closed or fully paid off or fully settled. The Committee noted that with the pronouncement of the order of the Hon'ble Supreme Court on 19th June, 2013, the default was limited to Rs. 760.00 lakhs. Once it was paid, the use of the words “discharged” in audit report was neither a misfit nor misleading. This was not a misleading comment because any further liability on SDBL towards MPSIDC would have accrued only after a fresh court order to that effect, as the Hon'ble Supreme Court had left it to MPSIDC to pursue its rights further.
19. The Committee noted that the disclosure of the Respondent was not a misstatement. Accordingly, the Committee while holds the Respondent is **NOT GUILTY** of Professional Misconduct falling within the meaning of Items (6) & (7) of Part I of the Second Schedule to the Chartered Accountants Act, 1949 with respect to reporting for the F.Y. 2012-13. The Committee at the same time advises the Respondent to include the actual position in his reporting.

20. As regards financial Year 2013-14, the Committee noted that the Respondent was held prima-facie guilty by the Director (Discipline) for non-disclosure of contingent liability and for non- disclosure of the balance amount in the financial statements of the Company i.e. amount of difference between admitted liability + interest thereon minus payment already made to the MPSIDC (approximately Rs.262 lacs).
21. The Committee noted that the admitted liability was Rs. 7.60 crore which was paid during the financial year 2013-14 and properly shown in the financial statements. Further, it is noted that the difference between admitted liability + interest thereon minus payment already made to the MPSIDC was approximately Rs.262 lacs. The Committee noted that during the hearing the figure of Rs 262 lacs was properly shown by the Respondent as merged under the expenses payable under grouping of the balance sheet wherein amount of Rs. 2.62 crores (approx.) was included in the interest payable under the head "Expenses payable".
22. As regards contingent liability is concerned, the Committee noted that as per AS-29, the definition of contingent liability is as under:

"A contingent liability is:

- (a) *a possible obligation that arises from past events and the existence of which will be confirmed only by the occurrence or non-occurrence of one or more uncertain future events not wholly within the control of the enterprise; or*
- (b) *a present obligation that arises from past events but is not recognised because:*
- (i) *it is not probable that an outflow of resources embodying economic benefits will be required to settle the obligation; or*
- (ii) *a reliable estimate of the amount of the obligation cannot be made."*

23. On perusal of above definition, the Committee noted that the possible obligation arises from the past event which will be confirmed only by the occurrence or non-occurrence of uncertain events not wholly within the control of the enterprises has to be shown as contingent liability.

24. Since the Supreme Court has put a stay on the liquidation and the outstanding liability towards ICD as on 31st March 2013 was duly shown in the Balance Sheet,

the question of showing contingent liability does not arise at all. Further, since the interest payable was shown in expenses payable, hence there was no requirement to create a separate provision for contingent liabilities.

25. However, in the present case the Company has paid its admitted liability, and the differential amount has also been properly disclosed in the financial statement. Hence no requirement to disclose contingent liability. Accordingly, the Committee holds the Respondent is **NOT GUILTY** of Professional Misconduct falling within the meaning of Items (6) & (7) of Part I of the Second Schedule to the Chartered Accountants Act, 1949 with respect to reporting for the F.Y. 2013-14 too.

CONCLUSION

26. In view of the above findings stated in above para's vis a vis material on record, the Committee, in its considered opinion, holds the Respondent is **NOT GUILTY** of Professional Misconduct falling within the meaning of Items (6) and (7) of Part I of the Second Schedule to the Chartered Accountants Act, 1949.
27. 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

Sd/-

(CA. SRIDHAR MUPPALA)
MEMBER

DATE:07.02.2024

PLACE:NEW DELHI

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

सी. चेतना गुप्ता / CA. Chetna Gupta
उप सचिव / Deputy Secretary
अनुशासन विभाग / Disciplinary Directorate
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