

CONFIDENTIAL

DISCIPLINARY COMMITTEE [BENCH – I (2023-2024)]  
[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. – PPR/46/2016/DD/20/INF/2016/DC/1523/2021

In the matter of:

CA. Ambika Prasad Mohanty (M. No. 057820) Cuttack in Re: - .....Respondent

MEMBERS PRESENT: -

- i) CA. Aniket Sunil Talati, Presiding Officer
- ii) Shri. Jugal Kishore Mohapatra, IAS (Retd.) (Government Nominee)-  
Through Online Mode
- iii) Shri Prabhash Shankar, IRS (Retd.), (Government Nominee)
- iv) CA (Dr). Rajkumar Satyanarayan Adukia, Member
- v) CA. Gyan Chandra Misra, Member

DATE OF FINAL HEARING : 06-07-2023  
PLACE OF FINAL HEARING : New Delhi / Through VC

1- Brief background of the matter: -

Form- I dated 28<sup>th</sup> August 2014 was received from Shri Ranjan Kumar Meher, Asst. General Manager, Securities and Exchange Board of India (SEBI), Bhubaneswar (hereinafter referred to as “Informant”) containing various

allegations against **CA. Ambika Prasad Mohanty, (M. No. 057820)** Cuttack (hereinafter referred to as the "**Respondent**"). In absence of the formal complaint and on an overall examination of allegations, the matter was decided to be treated as "information" within the meaning of Rule 7 of the Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007.

2- **Charges in Brief:**

It is alleged against the Respondent that he in his Audit Report for financial year 2010-11 in respect of M/s Seashore Securities Ltd (Company) failed to report the following discrepancies: -

- i) The Company has not taken unsecured loans from any other Company or body corporate.
- ii) The Company has not accepted any deposits from the public to which the provisions of Section 58(a) and 58(AA) of the Companies Act, 1956 are applicable.
- iii) That the Company has granted unsecured loan to 13 Companies covered in the registered maintained under Section 301 of the Companies Act, 1956 and the total amount involved is Rs. 4.90 lakhs.
- iv) The Company has not given any guarantee for loans taken by others from banks or financial institutions, the terms and conditions whereof are prejudicial to the interest of the Company. Further that the Company had neither issued any debentures during the year nor there were any outstanding debentures as on 31<sup>st</sup> March 2010.

**On perusal of information, letter, written statement and additional documents on record, the Director (Discipline) has held Respondent prima facie guilty in respect of following two allegations as under:**

- (i) That the Respondent in his Audit Report has stated that the Company has not accepted any deposits from the public to which the provisions of the section 58(A) and 58(AA) of the Companies Act, 1956 are applicable, whereas Company had raised money through public issue of Preference shares.
- (ii) That the Respondent in his Audit Report has stated that the Company has

granted unsecured loans to 13 companies covered in the registered maintained under section 301 of the Companies Act, 1956 in which the total amount involved was Rs. 4890 lakhs whereas the Company has given advance to 17 companies/ corporate bodies & others to the tune of Rs. 63.18 crore.

3- Consideration of Director (Discipline) at the time of forming Prima Facie Opinion:

- 3.1 In respect of first allegation regarding acceptance of public deposits, though it was opined that preference share capital of the Company is not subject to be interpreted as deposits as per section 58A and 58(AA) as observed by the Informant, however, it is seen that the Company had issued cumulative redeemable preference shares to fifty person or more but it has failed to ensure listing of these shares with a recognized stock exchange which is prima facie in violation of section 73(1) of the Companies Act 1956 as the allotment of aforesaid shares were made to 28787 allottees. Since the Respondent has failed to report such non-compliance, he was held prima facie guilty of professional misconduct falling within the meaning of item (7) of Part- I of Second Schedule to the Chartered Accountants Act, 1949.

While holding him guilty, a reference of Sahara Case (in Sahara India Real Estate Corporation Limited & Ors. Vs. SEBI (Civil Appeal no. 9813 and 9833 of 2011) was given wherein the Hon'ble Supreme Court of India had observed following while examining the provision of Section 67 and Section 73 of the Companies Act 1956:

*"Section 67(1) deals with the offer of shares and debentures to the public and Section 67(2) deals with invitation to the public to subscribe for shares and debentures and how those expression is to be understood, when reference is made to the Act or in the articles of a company. The emphasis is Section 67(1) and (2) is on the "section of the public". Section 67(3) states that no offer or invitation shall be treated as made to the public, by virtue of subsections (1) and (2), that is to any section of the public, if the offer or invitation is not being calculated to result, directly or indirectly, in the shares or debentures becoming available for subscription or purchase by persons other than those receiving the offer or invitation or otherwise as being a domestic concern of the persons making and receiving the offer or invitations. Section 67(3) is therefore, as exception to Sections 67(1) and (2). If the circumstances mentioned in clause (a) and (b) of*

Section 67(3) are satisfied, then the offer/invitation would not be treated as being made to the public.

*“The first proviso to section 67(3) was inserted by the Companies (Amendment) Act 2000 w.e.f 13.12.2000, which clearly indicates, nothing contained in sub-section (3) of Section 67 shall apply in a case where the offer or invitation to subscribe for shares or debentures is made to fifty persons or more. Resultantly, if an offer of securities is made to fifty or more persons, it would be deemed to be a public issue, even if it is of domestic concern or proved that the shares or debentures are not available for subscription or purchase by persons other than those received the offer or invitation....*

*...that any share or debenture issue beyond forty-nine persons, would be a public issue attracting all the relevant provisions of the SEBI Act, regulations framed thereunder, the Companies Act, pertaining to the public issue.”*

*“Section 73(1) of the Companies Act, 1956 cast an obligation on every company intending to offer shares or debentures to the public to apply on a stock exchange for listing of its securities. Such companies have no option or choice but to list their securities on a recognized stock exchange once they invite subscription from over forty-nine investors from the public. If an unlisted company expresses its intention, by conduct or otherwise, to offer its securities to the public by the issue of a prospectus, the legal obligation to make an application on a recognized stock exchange for listing starts. Sub-section(1A) of Section 73 gives indication of what are the particulars to be stated in such a prospectus. The consequences of not applying for permission under sub-section (1) of Section 73 or not granting permission is clearly stipulated in sub-section (3) of Section 73. Obligation to refund the amount collected from the public with interest is also mandatory as per Section 73(2) of the Act”.*

It was noted from above Apex Court decision that it is mandatory to fulfil the conditions of Section 67(3) and 73 of the Companies Act 1956 in case the shares are issued to more than 49 investors. But here the Respondent has not brought on record any documentary evidence on basis of which he satisfied himself about such compliances while auditing books of M/s Seashore Securities Limited. Accordingly, it was opined that the Respondent has failed to report that the subject Company i.e., M/s Seashore Securities Limited had violated the provisions of Companies Act, 1956 and SEBI Act and therefore he was held prima facie guilty on the above allegation.

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3.2 In respect of second allegation it was seen that on comparing the list given by the Respondent with this list the parties given by SEBI, it was found that the following parties were not covered by the Respondent:

- 1 Seashore Medicine
- 2 Seashore Foundation
- 3 Seashore Films
- 4 Seashore Securities
- 5 Orissa Millennium Education Trust

It was seen from list of related parties that these parties are covered in the list of related parties. Hence defense of the Respondent of not requiring disclosure was not accepted. Accordingly, the Respondent was held prima facie guilty of professional misconduct falling within the meaning of item (7) of Part- I of Second Schedule to the Chartered Accountants Act, 1949.

4- **Brief of The Disciplinary Proceeding Held on 06-July -2023**

At the outset, the Committee noted that the Respondent was present through VC. Thereafter, the Respondent was put on oath and on being enquired as to whether he is aware of the charges levelled against him and if he pleads himself guilty or not, he replied that he is aware of the charges and pleaded himself not guilty. Thereafter, the Respondent made his brief submissions on the allegations. The Committee also posed questions to the Respondent. After hearing the submissions, the Committee decided to conclude the hearing in the above matter and the **judgement was kept reserved.**

5- **SUBMISSIONS OF THE RESPONDENT: -**

Respondent in his Written Statement and/ or through his verbal statements has submitted following:

- (i) That the reporting requirement under CARO 2003 was not requiring reporting on violation of section 73 (1) or 67 (3) of the Companies Act-1956. Therefore, considering misconduct in the present circumstances holding responsible for not finding the motive of management based on the number of shares being allotted will be unfair and unlawful.

- (ii) That there was no circumstance to prompt him to probe into the matter and investigate the intention of the management. The number of shares being allotted did not make him investigate violation of section 58A and or 58AA or section 67 for that matter.
- (iii) That the learned Director discipline has relied on the Honorable Apex Court's observation in case of Sahara India Real estate's Corporation Limited and Ors. Vrs. SEBI (Civil Appeal No 9813 and 9833 of 2011) which was passed on 31/08/2012, whereas their report was issued on 06/09/2011. Therefore, consideration of the position of law decided on later date is practically not possible.
- (iv) That item (7) of Part-I of Second Schedule to the Chartered Accountants Act-1949, requires holding a member guilty of professional misconduct under situation where the member has failed to act honestly and reasonably in addition to the fact where he is found to have failed in his duty.
- (v) That professional misconduct on the part of a person practicing a technical profession cannot fairly or reasonably be found merely on a finding of a bare non-performance of a duty or some default in performing it. The charge is not one of inefficiency but of misconduct. Imputation of certain mental condition is always involved. The test must always be whether in addition to the failure to do the duty, there has also been a failure to act honestly and reasonably. (S. Ganesan vs. A.K. Joscelyne - Page 39 of Vol. III of the Disciplinary Cases and pages 43-56 of July 1956 issue of the Institute's Journal - Judgment delivered on 19th April 1956).
- (vi) That misconduct implies failure to act honestly and reasonably either according to the ordinary and natural standard or according to the standard of a particular profession. (Registrar of Companies, Bihar vs. M.N. Basu - Page 323 of Vol. IV of the Disciplinary Cases and pages 523-526 of June 1963 issue of the Institute's Journal-Judgment delivered on 7th December 1962).
- (vii) That the Learned Director (Discipline) has held him prima facie guilty of professional misconduct for non-submission of extract of Register maintained by the company u/s 301 and that he was unable to rely on his submission due to lack of evidence. The fact remains that he had submitted the list of parties as received from the Company in soft form, which inadvertently presented as extract of register without any intention of misleading learned Director.
- (viii) That Companies (Auditor's Report) Order, 2003 issued by the Central Government in terms of Sub-section (4A) of section 227 of the Companies

Act, 1956 requires that the auditors have to report on loans taken from/granted to Companies, Firms or other Parties entered in the register u/s. 301 of the Companies Act, 1956. Accordingly, 13 Companies only were considered for reporting since rest concerns were neither Companies nor firms.

## **6- FINDINGS OF THE COMMITTEES**

- 6.1 On perusal of first allegation pertaining to non-reporting of violation of section 73(1), the Committee observed that the basis of holding Respondent guilty at Prima Facie Stage was the Judgement of Hon'ble Supreme court in the case of Sahara India Real Estates Corporation Limited and Ors. Versus. SEBI (Civil Appeal No 9813 and 9833 of 2011). It was observed that the interpretation of section 67 (3) and Section 73(1) by the Supreme Court came on 31<sup>st</sup> August 2012, whereas the audit report was issued by the Respondent prior to passing of such judgement i.e., on 6<sup>th</sup> Sept 2011, hence the Committee viewed that in such case the benefit needs to be extended to the Respondent since he cannot be expected look at the case from hind side. Accordingly, the Committee in respect of instant allegation decided to hold Respondent **Not Guilty** of professional misconduct falling under item (7) of Part I of the Second Schedule of the Chartered Accountant Act, 1949.
- 6.2 In respect of second allegation pertaining to non-reporting in respect of 5 entities from whom loan and advances were taken by the Company, the Committees considered the verbal submission of Respondent stating that he found such 5 entities as neither Companies nor firms therefore he did not consider those reportable under CARO 2003. The Committee observed that the said entities were in the nature of trust and/ or proprietorship concern and that though there may be an error of perception while the Respondent was required to make adequate disclosures in his audit report, however, it cannot be said that he has not acted honestly and reasonable based on his considered opinion or perception about no reporting on certain entities. The Committee observed that in present case the Respondent has done full disclosure in respect of 13 entities whereas other 5 entities were not reported since they were regarded as non-reportable under CARO, 2003. Accordingly, the Committee decided to hold Respondent **Not Guilty** of professional misconduct falling under item (7) of Part I of the Second Schedule of the Chartered Accountant Act, 1949.

**Conclusion: -**

Thus, in the considered opinion of the Committee, the Respondent is **NOT GUILTY** of Professional Misconduct falling within the meaning of Item (7) of Part I of Second Schedule to the Chartered Accountants Act, 1949. Committee also passed order for closure of the matter.

Sd/-

(CA. Aniket Sunil Talati)  
PRESIDING OFFICER

Sd/-

Sh. Jugal Kishore Mohapatra, IAS (Retd.) (SHRI Prabhash Shankar, I.R.S. (Retd.))  
GOVERNMENT NOMINEE

Sd/-

GOVERNMENT NOMINEE

Sd/-

CA (Dr). Rajkumar Satyanarayan Adukia  
MEMBER

Sd/-

(CA. Gyan Chandra Misra)  
MEMBER

DATE: 08.02.2024

PLACE: NEW DELHI

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

*Nisha Sharma*  
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