

CONFIDENTIAL

DISCIPLINARY COMMITTEE [BENCH – III (2023-24)]

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

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

Ref. No. [PR/PI/179/2018/DD/203/2018/DC/1740/2023]

In the matter of:

**Sh. Neeraj Sharma,
Sr. Vice President,
National Spot Exchange Ltd.,
6th Floor, Chintamani Plaza,
Andheri Kurla Road, Andheri (East),
Mumbai – 400069**

...Complainant

Versus

**CA. PSC Nageswara Rao,
9-14-16, 5th Floor,
Balaji's Mangalagiri Chambers,
VIP Road, Siripuram,
Vishakhapatnam - 630003**

...Respondent

MEMBERS PRESENT:

**CA. Aniket Sunil Talati, Presiding Officer
Smt. Anita Kapur, Member (Govt. Nominee)
Dr. K. Rajeshwara Rao, member (Govt. Nominee)
CA. Piyush S. Chhajed, Member
CA. Sushil Kumar Goyal, Member**

Date of Final Hearing: 21st November, 2023 through Video Conferencing

PARTIES PRESENT:

- (i) Smt. Subra Singh – Authorised Representative of the Complainant
(ii) Adv. Sh. S.G. Gokhale – Counsel for the Complainant
(iii) CA. P S C Nageswara Rao – the Respondent
(iv) CA. CV Sajan – Counsel for the Respondent
((i) & (ii) appeared together while (iii) & (iv) appeared separately from personal location through video-conferencing)

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Charges in Brief:

1. The Committee noted that in the Prima Facie Opinion formed by Director (Discipline) in terms of Rule 9 of the Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007, the Respondent was held prima facie guilty of Professional Misconduct falling within the meaning of Item (5), (6), (7), (8) and (9) of Part I of Second Schedule to the Chartered Accountants Act, 1949. Item (5), (6), (7), (8) and (9) of Part I of Second Schedule state as under:-

Part I of Second Schedule:

Professional misconduct in relation to chartered accountants in practice

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

"(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"

"(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".

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

"(8) Fails to obtain sufficient information which is necessary for expression of an opinion or its exceptions are sufficiently material to negate the expression of an opinion".

"(9) Fails to invite attention to any material departure from the generally accepted procedure of audit applicable to the circumstances".

Brief background

2. In extant matter, the Complaint has emerged on account of settlement crisis in National Spot Exchange Ltd leading to closure of its operations on 31st July 2013. M/s NCS Sugars Ltd. (hereinafter referred to as 'NCSL ') was one of the 22 defaulters who defaulted in their obligations towards National Spot Exchange Limited (NSEL) and M/s Sai Samhita Storages Pvt. Ltd. (hereinafter referred to as 'SSPL') was its associate . It was stated that SSPL had traded on NSEL as client of NCSL.

It was stated that during the FY 2013-14, the Company had dealt with NSEL for transactions amounting to Rs.77.70 crores as BUY Turnover and Rs. 57.73 crores as SELL Turnover thus aggregating to Rs.135.43 crores of transactions. However, as per the Complainant, such transactions did not appear in the financial statements

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of the Company for the FY 2013-14 audited by the Respondent. The Complainant has raised the following allegations against the Respondent: -

- a. that the Respondent had expressed opinion without expressing qualification with respect to the transactions on National Spot Exchange Limited (NSEL) undertaken by the auditee Company, M/s Sai Samhita Pvt. Ltd. (SSPL), but not recorded in its financial statements as well as in the books of accounts for the financial year 2013-14.
- b. Non-accounting of expenses incurred in relation to transactions that took place on NSEL.
- c. Inappropriate reporting under CARO, 2003.

Proceedings:

3. During the hearing held on 21st November, 2023, the Committee noted that the Complainant's Authorised Representative as well as the Respondent along with their respective Counsel appeared before the Committee for the hearing through video conferencing. The Committee noted that matter was part-heard and thereafter, the Counsel for the Complainant had explained the charges alleged against the Respondent. Accordingly, the Committee asked the Counsel for the Respondent to make submissions on the matter. Both the authorized representative of the Complainant and the Counsel for Respondent were examined by the Committee on the submissions made before it.

Thereafter the Committee directed the Counsel of both the parties to submit their further submissions, if any, within 7 days from the date of hearing. Accordingly, hearing in the matter was concluded and decision on the matter was reserved.

- 3.1 On 21st December, 2023, the Committee considered the documents on record, oral and written submissions made by both parties, and upon consideration of the facts and circumstances of the case, decided the matter.

Findings of the Committee

4. In the extant matter, it was alleged that during the financial year 2013-14, SSPL had traded in aggregate Rs.135.43 Crores turnover being Rs.77.70 Crores as BUY turnover and Rs.57.73 Crores as SELL turnover on NSEL platform as client of M/s NCS Sugars Ltd. However, neither of the said transactions were reflected in the financial statements of SSPL nor any notes to accounts were provided in relation thereto (C-7) and accordingly it is alleged

- A. that the Respondent, being the statutory auditor of SSPL expressed opinion without qualification with respect to the transactions on NSEL undertaken by M/s Sai Samhita Storages Pvt. Ltd. (SSPL) and as such he failed to report with respect to violation of AS 2, AS 4, AS 9, AS 16, AS 18, AS 24 & AS 29 and accordingly there was also violation of the provisions of Standards on Auditing

SA 250, SA 320, SA 520 read with SA 330 & SA 550. It was also alleged against the Respondent that he was failed to draw attention to inadequate disclosure of contingent liabilities relating to NSEL which had a significant impact on the financial statements of the Company.

- B. It was also alleged that the following transactions had taken place during the financial year 2013-14 on behalf of the Company SSPL, by NCS Sugars Ltd. (being Member Broker of NSEL). It had paid to the NSEL towards the following heads of expenses (as stated in Table below) but the same were not accounted for in the books of accounts of SSPL (C-11):

Particulars of payments made as expense by NCS Sugars Ltd.	Amount (Rs.)
Membership Renewal fee	25,000
Transactions Charges	2,74,792
Warehouse receipt transfer charges	23,49,024
Penalties for fund shortage	15,04,512
Penalty for fund shortages	1,000
Penalty for UCC	450
Total	41,54,778

- C. It was also alleged against the Respondent that as per the provisions of CARO, 2003, it was necessary to report on the issue of fraud by the Company or on the Company having taken place during the year but the Respondent while reporting under CARO, 2003, had not referred to any fraud committed by the management of the Company during the year.
5. The Committee noted that the Respondent in his defence before the Director (Discipline) inter alia submitted that SSPL had not traded any BUY or SELL transactions through NCS Sugars Ltd. on NSEL platform, so such transactions did not qualify for accounting as per AS-9. Also, that there were no direct or indirect transactions between SSPL and NCS Sugars Ltd. The Respondent contended that SSPL had no transactions with NSEL directly or through NCS Sugars Ltd. It was submitted that post closure of NSEL Operations, there is a litigation between NSEL and NCS Sugars Ltd., neither SSPL nor its directors were involved in it. The claim of Rs. 58.85 crores made by NSEL against NCS Sugars Ltd. was the liability of NCS Sugars Ltd. alone on account of transactions undertaken by it with NSEL and not on behalf of SSPL. Further, the Respondent brought on record a settlement agreement dated 21st January 2014 between NSEL and NCS Sugars Ltd. as well as annual report of NCS Sugars Ltd. for the financial year 2013-14. It was pointed out that as per the said settlement agreement between NCS Sugars Ltd. and NSEL

and its directors, the parties have mutually agreed for settlement at Rs. 50 crores against the amount of Rs. 58.85 crores based on which it was contended that the liability of alleged transactions was that of NCS Sugars Ltd. which is undisputed.

- 5.1 The Complainant in his rejoinder submitted that the Settlement Agreement submitted by the Respondent, was with reference to off-market trade whereas the Complaint was about online trade on the Exchange Platform. It was further pointed out that the annual report of NCS Ltd. 2013-14 specify that NCS Sugar Ltd. and SSPL were under the same management - that Sh. N. Nageswara Rao, Director of SSPL was also MD of NCS Sugar Ltd. The auditor of both the companies were also same which establishes the close nexus between the member and client which is an additional and important reason to investigate against the Respondent. The Complainant also informed NCS Sugars Ltd. had failed to honour the Settlement Agreement and that thereafter NSEL had obtained Arbitration Award against NCS Sugars Ltd. copy of which was submitted by it.
- 5.2 On perusal of Settlement Agreement dated 21st January 2014 as well as Arbitration Award issued by Kerala High Court, the Committee noted that the subject matter of both the documents was the alleged transactions and that the litigation in relation to the same was being pursued between NCS Sugar and NSEL. In other words, SSPL was not the party to the litigation. In the absence of SSPL being party to the litigation, the allegations of extant matter against the Respondent does not sustain. When SSPL is not being litigated for sale purchase transactions, the Respondent, being statutory auditor, could not be alleged to have failed to express qualified opinion in the matter for non-recognition of those transaction and related effects. It was viewed that extant matter pertains to FY 2013-14, when there was Settlement Agreement between NCS Sugar and NSEL, in relation to alleged BUY and SELL transactions on NSEL platform. So, the extant allegations against the Respondent are not sustainable. Accordingly, the Respondent is **Not Guilty** for Professional Misconduct falling within the meaning of Item (5), (6), (7), (8) and (9) of Part I of Second Schedule to the Chartered Accountants Act, 1949.

Conclusion:

6. Thus, in conclusion, in the considered opinion of the Committee, the Respondent is **Not Guilty** of professional misconduct falling within the meaning of Item (5), (6), (7), (8) and (9) of Part I of the Second Schedule to the Chartered Accountants Act, 1949.

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7. 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.

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Sd/-
[CA. Aniket Sunil Talati]
Presiding Officer

Sd/-
[Smt. Anita Kapur]
Member (Govt. Nominee)

Sd/-
[Dr. K. Rajeswara Rao]
Member (Govt. Nominee)

Sd/-
[CA. Sushil Kumar Goyal]
Member

Sd/-
[CA. Piyush S. Chhajed]
Member

Date: 22nd January, 2024
Place: New Delhi

सही प्रतिस्तिपि होने का प्रमाण
Certified to be true copy

मीनू गुप्ता / Meenu Gupta
वरिष्ठ कार्यकारी अधिकारी / Sr. Executive Officer
अन्यासात्मक विदेशालय / Disciplinary Directorate
इंस्टिट्यूट ऑफ चार्टर्ड एकाउंटेंट्स ऑफ इंडिया
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