

CONFIDENTIAL

DISCIPLINARY COMMITTEE BENCH – I (2023-2024)
[Constituted under Section 21B of the Chartered Accountants
(Amendment) 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.

File No. PR/129/2016/DD/190/2016/DC/1533/2022

In the matter of:

Mr. Purushottam Das Tulsyan,
136, Jodhpur Park,
Kolkata - 700068

...Complainant

Versus

CA. Atish Kumar Shaw (Mem No. 306098)
4A, Council House Street,
Kolkata – 700001

...Respondent

Members Present:

CA. Aniket Sunil Talati, Presiding Officer
Shir Jugal Kishore Mohapatra, IAS (Retd.) (Government Nominee)
(Through Online mode)
Shri Prabhaskar Shankar, IRS (Retd.), (Government Nominee)
CA. (Dr). Rajkumar Satyanarayan Adukia, Member (Through Online
mode)

Date of Final Hearing : 14th Sept 2023



Place of Final Hearing : New Delhi (Through Video Conferencing)

Parties Present (Through VC)

Respondent : CA. Atish Kumar Shaw

1- Brief Background of the matter: -

The Complainant was a shareholder and director of a Company namely M/s Basukinath Food Processors Limited (hereinafter referred to be as "Company") reportedly till 20.08.2013 after which he resigned from the Board of Directors. It is noted that as per the Order/ Judgement passed by Hon'ble High Court of Calcutta, a Scheme of Amalgamation was accepted, and 4 Companies were merged with the said Company. There was an impending dispute in the management of the Company on account of sustaining huge losses in Business. The Complainant has alleged that the management has siphoned off funds by showing false losses and expenses. The Company eroded its entire net worth and was registered under Sick Industrial Companies (Special Provision) Act, 1985 (SICA Act) with Board for Industrial & Financial Reconstruction (BIFR). It is reported by the Respondent that the Complainant has succumbed to his illness and expired on 13th September 2016.

The Respondent was appointed as the Statutory Auditor of the Company for the financial year 2014-15 consequent upon vacancy caused by resignation of M/s. Agarwal, Gupta Nokari & Associates who were Statutory Auditor of the Company till financial year 2013-14.

2- CHARGES IN BRIEF: -

In view of aforesaid background, the Complainant has alleged that the Respondent was negligent in the conduct of his professional



duties since the financial statements and audit report contained a number of mistakes & misstatements that were against the accounting and auditing standards prescribed by ICAI and the Companies Act. The Respondent was held prima facie guilty in respect of following two allegations:

1. Misstatement in CARO stating that the Company has not given any guarantee for loans taken by others, however, it is evident that the Company stood as a guarantor for loans taken by farmers from Axis Bank.
2. That the auditor has failed to report on non-provisioning of retirement benefits of employees in contravention to AS-15.

3- **BRIEF OF THE DISCIPLINARY PROCEEDINGS: -**

- 3.1 The Committee noted that during the previous hearing held on 06th July 2023, the hearing in the matter was adjourned on the request of the Respondent.
- 3.2 On the day of the final hearing held on 14th Sept 2023, the Committee noted that the Complainant was not present however, the Respondent appeared 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 whether 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 matter.

4. **SUBMISSION OF THE PARTIES AND FINDINGS OF THE COMMITTEE:**



Respondent inter alia made the following written and verbal submissions in his defense: -

- 4.1 That the Complainant has expired long back after filing the Complaint and that he has come to know that the Complainant was suffering from some severe diseases but presently he has no idea about the status of the Companies.
- 4.2 That only after a public notice dated 12th May 2016 given by the Complainant in a leading newspaper of Kolkata he came to know about the impending dispute in the management of the Company.
- 4.3 That the Complainant was a majority shareholder of the Company and that the said Company was a closely held Company and had some internal disputes for which the auditor was made a scapegoat.
- 4.4 That regarding guarantees given by the Company on loan taken by the farmers, he has very well written about the same in his audit report that the amount of interest earlier provided on the farmers loan which should have otherwise been not a liability relating to the Company, have been written back by the management. Also, that no such guarantee has been given by the Company in the year in which he has done the Audit (i.e., financial year 2014-15). Further, the Company has also disclosed about the same in its Notes to accounts that such interest was in the nature of contingent liabilities as the figure represented loans to farmers and interest thereof was payable by the farmers and the Company stood merely as a guarantor.
- 4.5 That regarding allegation pertaining to non-compliance of AS-15, the Complainant while filing this Complaint has not enclosed note no. 1 on significant accounting policies duly disclosing that the Company has not made any provisions for gratuity in contravention of AS-15 and that the amount of retirement benefits is accounted for on "Pay-as-you-go" basis. Thus, a proper disclosure was given by

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the Company as per his understanding. Further, at that point of time the Company eroded its entire net worth and was registered under the Sick Industrial Companies (Special Provision) Act, 1985 (SICA Act) with the Board for Industrial & Financial Reconstruction (BIFR) and the Company was having less than 50 employees.

5- **FINDINGS OF THE COMMITTEE: -**

As informed by the Respondent, the Committee noted that Complainant has demised. The Committee decided to proceed with the matter on the bases of representation made by the Respondent. Thereafter, the Committee pursued the detailed allegations and documents available on record. After considering the submissions of the Respondent and going through the documents available on record, the Committee decided to caution the member to be more careful with respect to CARO reporting wherein the disclosure is required not just for the current year but also for the accumulated guarantee. Based on the response receive and explanations provided, the Committee viewed that professional misconduct arise when there is a gross negligence, but in the present case since there were only some disclosure lapses, the Respondent was held **Not Guilty** of instant allegation. Further, with respect to allegation pertaining to non-compliance of AS-15, the Committee concurred with the response given by the Respondent about the non-applicability of AS-15 owing to Company having less than 50 employees. As such the Respondent was held **Not Guilty** of Professional Misconduct falling within the meaning of Items (7) of Part I of Second Schedule to the Chartered Accountants Act, 1949.

6. **CONCLUSION: -**

In view of the above noted facts and in the considered opinion of the Committee, the Committee held the Respondent **NOT GUILTY** of

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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 Jugal Kishore Mohapatra, I.A.S.
(RETD.) (Govt. Nominee),

Sd/-

Shri Prabhash Shankar
I.R.S. (RETD.), (Govt. Nominee)

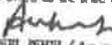
Sd/-

CA (Dr). Rajkumar Satyanarayan
Adukia, Member

DATE: 06-12-2023

PLACE: New Delhi

सही प्रतिमा की कपी, अंग्रेजी
Certified to be true copy


अरुण कुमार / Arun Kumar
वरिष्ठ कार्यकारी अधिकारी / Sr. Executive Officer
अनुशासनालय / Disciplinary Directorate
इंस्टीट्यूट ऑफ चार्टर्ड एकाउंटेंट्स ऑफ इंडिया
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