



THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA
(Set up by an Act of Parliament)

Date of Pronouncement – 23.01.2024

PR-114/2016-DD/158/2016/DC/1389/2020

ORDER UNDER SECTION 21B(3) OF THE CHARTERED ACCOUNTANTS ACT, 1949 READ WITH RULE 19(1) OF THE CHARTERED ACCOUNTANTS (PROCEDURE OF INVESTIGATION OF PROFESSIONAL AND OTHER MISCONDUCT AND CONDUCT OF CASES) RULES, 2007 WITH REGARD TO PUNISHMENT.

File No.: [PR-114/2016-DD/158/2016/DC/1389/2020]

In the matter of:

Shri Pawan Kumar Goel,
M/s Nuchem Dyestuffs Pvt. Ltd.,
259, Industrial Area-A,
Ludhiana - 141001

.... Complainant

Versus

CA. Bhupendra Singh Narayan Singh Rajput (M. No. 106729)
M/s B.S. Rajput & Associates,
Chartered Accountants,
A309, Atma House,
Opp. Old RBI, Ashram Road,
Ahmedabad - 380009

.....Respondent

MEMBERS PRESENT:

- 1. CA. Ranjeet Kumar Agarwal, Presiding Officer (Present in person)**
- 2. Mrs. Rani Nair, I.R.S. (Retd.), Government Nominee (Present in person)**
- 3. Shri Arun Kumar, I.A.S. (Retd.), Government Nominee (Present in person)**
- 4. CA. Sanjay Kumar Agarwal, Member (Present in person)**

1. The Committee noted that the **M/s Nuchem Dye Stuff Pvt. Ltd.** had filed a complaint against the Respondent on charge that the Respondent had failed to repay the amount of loan to the Company despite sending notices and filing suit against him in Civil Court in Ludhiana. The Committee noted that at the time of formation of prima-facie opinion the Director (Discipline) further noted that the Respondent despite being the auditor of the Company was also indebted to the Company and the act of the Respondent is clearly in

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violation of guideline issued by Council Guidelines No.1-CA (7)/02/2008, dated 8th August, 2008.

2. The facts are brought before the Board of Discipline who on consideration of the same observed that since there is a violation of Council Guidelines No.1-CA(7)/02/2008, dated 8th August, 2008 as pointed out in the prima-facie opinion and that the Respondent had also become disqualified for being an auditor of the Company in the terms of the provisions of Section 141 of the Companies Act 2013.

3. The Board accordingly held the Respondent prima-facie guilty of Professional and Other Misconduct falling within the meaning of Item (7) of Part I and Item (1) of Part II of the Second Schedule and Item (2) of Part IV of the First Schedule to the Chartered Accountants Act, 1949 read with Section 22 of the said Act and decided to refer the matter to Disciplinary Committee to proceed under Chapter V of the Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007.

4. The Committee noted that the Respondent has been held guilty vide findings dated 14.12.2023 (Ref no. PR-114/2016-DD/158/2016/DC/1389/2020). The said findings holding him guilty were duly communicated to the Respondent. The findings of the Committee whereby the Respondent had been held guilty are as below:-

"FINDINGS OF THE COMMITTEE:

14. *The Committee noted that the Respondent in his submissions had inter-alia mentioned that the nature of the transaction was not for providing a loan to him, but his account was used only as a pass-through entity. The Committee, in this regard, on perusal of bank statements of the Respondent noted that the Respondent had received the amount of Rs. 1.20 crore in his account from the Company on 24th February 2015 and on the same day, this amount was transferred to M/s Vraj Sales. Similarly, M/s Janpath Estates Pvt. Ltd. transferred Rs. 1.20 crore to the Respondent's Account on 26th February 2015, which was transferred by him on the same day to M/s Vraj Sales.*

15. *The Committee noted that the Respondent in his defence submitted various documents containing admission of facts of a meeting held between the directors of the Company and the Vraj Sales by three persons who introduced Respondent to the Vraj Sales in their statement before the police authorities, complaint filed before police authorities, the statement of the directors of the Company before the Police*



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authorities, Register entries of Hotel Kanak, bank statement wherein amount from the Complainant was received and transferred to M/s Vraj Sales was shown etc.

16. The Committee, however, noted that the Respondent did not receive the amount as loan and he acted only as a mediator between the Company and M/s Vraj Sales Corporation and transferred such amount to M/s Vraj Sales Corporation on the same day is not tenable as he has failed to bring on record any document/agreement with the Company to support his contention that he had acted as a mediator only.

17. Further, the Committee on perusal of records noted that the Respondent had accepted an amount of Rs. 1.20 crore in his firm's current account on 24th February 2015 from the Company and such amount received by him was duly shown and reflected in Schedule to his Firm's Balance sheet in financial years 2014-15 to 2018-19 under the head 'Sundry creditors for expenses' against the Company and is set off against amount given to partners of M/s Vraj Sales as under:

Sundry Creditors for Expenses	Amount
Nuchem Dyestuffs Pvt. Ltd.	1,20,00,000
Vraj Sales Corporation	(1,20,00,000)

18. The Committee noted that the Respondent had accepted that he had audited and signed the Balance Sheet of the Company for the year ended 31.03.2015 in the capacity of the statutory auditor of the Company and in the same Balance Sheet this amount has been shown as 'Short Term Loans & Advances'.

19. The Committee noted that the cheque issued by the Respondent as security money was presented on 18th April 2015 and returned unpaid due to insufficient funds. Further the two cheques no. 000147 and 000146 dated 23rd May 2015 and 1st June 2015 respectively amounting Rs. 25.00 lacs and Rs. 95.00 lacs issued by the Respondent after service of notice by the Complainant were also got dishonoured due to reason 'payment stopped by drawer' and 'insufficient funds' respectively.

20. The Committee hence noted that such disclosure clearly reflects that the Respondent was indebted to the Company. The Committee noted that the Respondent was a Chartered Accountant for the last 15 years and would be conversant with the guidelines of the Institute. Further, the fact, apparent from records, cannot be denied that, being a Chartered Accountant, the Respondent was indebted to the Company. His action prove his lack of due diligence with respect to adherence of provisions of Act in conduct of his professional duties. Further he has not returned the money till date which shows his casual approach and continued indebtedness. NF



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21. Even if the contention of the Respondent is accepted, it is apparent that, as an auditor he allowed the entity to route the transaction from his account even after knowing the consequences of the same. The Committee also noted that the reason provided by the Respondent for routing the funds from his account was also not acceptable because, as an auditor, the Respondent was not expected to promote such practices. The Committee observed that the Respondent had not only done wrong but also exceeded his mandate besides being the auditor of the Company.

22. The Committee as regards violation of section 141 of the Companies Act, 2013 and of the guidelines issued by the Council Guidelines no. 1-CA(7)/02/2008 noted that it is apparent the Respondent was indebted to the Company besides being an auditor of the Company for the financial year 2014-15.

23. The Committee noted that the Chapter X of Guidelines issued by the Council Guidelines No. 1-CA(7)/02/2008, dated 8th August, 2008 given as Appendix No. 34 of the Chartered Accountants Act, 1949 reads as follows:

"Appointment of an auditor when he is indebted to a concern

A member of the Institute in practice or a partner of a firm in practice or a firm shall not accept appointment as auditor of a concern while indebted to the concern or given any guarantee or provided any security in connection with the indebtedness of any third person to the concern, for limits fixed in the statute and in other cases for amount exceeding Rs. 10,000/-"

The Committee further noted that the Section 141 of Companies Act, 2013 which contains the provision relating to 'Eligibility, qualifications and disqualifications of auditors'. The sub section (3) (d) (ii) of Section 141 reads as follows:

"(3) The following persons shall not be eligible for appointment as an auditor of a company, namely:—

- (a).....*
- (b).....*
- (c).....*
- (d) a person who, or his relative or partner—*
 - (i)*

(ii) is indebted to the company, or its subsidiary, or its holding or associate company or a subsidiary of such holding company, in excess of such amount as may be prescribed; or

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*.....
....."*



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Further According to Provisions of Section 141(4) of the Companies Act, 2013, where a person appointed as auditor of the company incurs any of the disqualification mentioned in Section 141(3) of the Companies Act, 2013 after his appointment, he shall vacate his office as such auditor and such vacancy shall be deemed to be casual vacancy in the office of the auditor.

24. On perusal of the above provisions, the Committee noted that an auditor shall not accept appointment as auditor of a concern if he was indebted to the concern or has given any guarantee or provided any security in connection with the indebtedness of any third person to the concern, for limits fixed in the statute and in other cases for amount exceeding Rs. 5,00,000/-. In fact, he shall not be eligible for appointment as an auditor of a Company if he is indebted to the company, or its subsidiary, or its holding or associate company or a subsidiary of such holding company. Further, he shall vacate his office as auditor immediately and such vacancy shall be deemed to be a casual vacancy in the office. However, in the present case, the Respondent continues as a statutory auditor of the Company. In this way, the Respondent has clearly violated the provisions of Companies Act, 2013 and the Council Guidelines and is indebted to the Company for the aforesaid amount.

CONCLUSION

25. In view of the above observations, considering the submissions of the Respondent and documents on record, the Committee held the Respondent **GUILTY** of Professional Misconduct falling within the meaning of Item (7) of Part I and Item (1) of Part II of the Second Schedule, and Item (2) of Part IV of the First Schedule to the Chartered Accountants Act, 1949."

5. After communication of the aforesaid findings of the Committee dated 14.12.2023, the Respondent was called by the Committee to appear before it on 09.01.2024 and to make his submissions / representations under Rule 19(1) of the Chartered Accountants (Procedures of Investigation of Professional and Other Misconduct and Conduct of Cases) Rules, 2007 on quantum of punishment. The Respondent appeared on 09.01.2024 and submitted his representations with regard to quantum of punishment as under:-

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- He was not indebted to the Company but he was only a pass through entity for helping the Company for their loan proposal to be cleared through M/s Vraj Sales.
 - That even before the complaint was lodged, he resigned as an auditor of the Complainant Company. The other company in identical circumstances had also given cheque of Rs. 12000000/- for which there was no complaint.
 - There is no evidence to establish that he sought loan for his use from the Complainant Company.
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- d. The Complainant even before the police authority had not stated that the Company had given loan to the Respondent rather, he had stated that the amount was given for investment purposes to be placed with M/s Vraj Sales Corporation.
- e. If an auditor assists its client in the conduct of their business interest, it cannot be considered as bringing disrepute to the profession or to the institute. Rather, it is a matter of regard for a client but at least not bringing disrepute.

6. After careful consideration of the facts and circumstances, material on record and submissions of the Respondent before it as well his submissions made on 09.1.2024, the Committee decided that **name of the Respondent, i.e. CA. Bhupendra Singh Narayan Singh Rajput (M. No. 106729) be removed from the Register of members for a period of 06(Six) Months along with a fine of Rs.25,000/- (Rupees Twenty-Five Thousand Only) to be submitted within 90 days of receipt of this order. The punishment regarding removal of name shall run concurrently with the punishment given to the Respondent in case no. PPR 565/19-DD/42/INF/2019/DC/1411/2020.**

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: 23.01.2024
PLACE: New Delhi

सही प्रतिलिपि होने के लिए प्रमाणित
Certified to be true copy
Nitika Gupta
सीए नीतिका गुप्ता / CA. Nitika Gupta
सहायक निदेशक / Assistant Director
अनुशासनात्मक निदेशालय / Disciplinary Directorate
इंस्टिट्यूट ऑफ चार्टर्ड एकाउंटेंट्स ऑफ इंडिया
The Institute of Chartered Accountants of India
आईसीएआई भवन, विास नगर, शाहदरा, दिल्ली-110032
ICAI Bhawan, Vistwas Nagar, Shahdara, Delhi-110032

DISCIPLINARY COMMITTEE [BENCH – II (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.

File No.: [PR-114/2016-DD/158/2016/DC/1389/2020]

In the matter of:

Shri Pawan Kumar Goel,

M/s Nuchem Dyestuffs Pvt. Ltd.,
259, Industrial Area-A,
Ludhiana - 141001

.... Complainant

Versus

CA. Bhupendra Singh Rajput (M. No. 106729)

M/s B.S. Rajput & Associates,
Chartered Accountants,
309, Atma House,
Opp. Old RBI, Ashram Road,
Ahmedabad - 380009

.....Respondent

MEMBERS PRESENT: (In person)

Mrs. Rani Nair, I.R.S. (Retd.), Government Nominee & Presiding Officer

Shri Arun Kumar, I.A.S. (Retd.), Government Nominee

CA. Sanjay Kumar Agarwal, Member

DATE OF FINAL HEARING : 18.08.2023

PARTIES PRESENT

AR of Complainant : Shri Rajesh Gupta (In person)
Respondent : CA Bhupendra Singh Rajput (In Person)
Counsel for Respondent : CA Deepak Shah (In Person)

BACKGROUND OF THE CASE:-

1. The brief background of the case is that the Respondent was auditor of the Company i.e. M/s Nuchem Dye Stuff Pvt. Ltd. (hereinafter referred to as "Company") for several years. Further in the Annual general meeting of the

Company held on 30.9.2014 the Respondent was appointed as statutory auditor for five years. According to the Complainant, there were cordial relations between the Respondent and the directors of the Company. According to the Complainant, the Respondent expressed the need for sum of Rs. 2,40,00,000/-. The Complainant transferred the amount through RTGS on 24th February 2015 as Rs. 1,20,00,000 by the Company and balance amount by M/s Janpath Estates Pvt. Ltd. (Sister Company).

- 1.1 The Respondent issued the cheque no. 000397 dated 21.02.2015 for Rs. 1,20,00,000/- drawn on Bank of Baroda, Ahmedabad to return the loan however the same was returned with comments "fund not sufficient" on its presentation on 18th April 2015. Further the two cheques no. 000147 and 000146 dated 23rd May 2015 and 1st June 2015 respectively amounting Rs. 25.00 lacs and Rs. 95.00 lacs issued by the Respondent after service of notice by the Complainant were also got dishonoured. Thereafter the Complainant has got issued notice to the Respondent under section 138 of the Negotiable Instruments Act, 1881 followed by suit lodged in Civil Court in Ludhiana.
- 1.2 The Respondent however in his defence had stated that that the nature of the transaction was not for providing a loan to him, but his account was used only as a pass-through entity.

CHARGES IN BRIEF: -

2. The Committee noted that the charge against the Respondent is that he failed to repay the aforesaid amount of loan to the Company despite sending notices and filing suit against him in Civil Court in Ludhiana.
3. The Committee noted that the Respondent in his reply at the stage of PFO had, inter-alia, mentioned as under:
 - a. That the directors of the Company asked him to help them in funding of their project. Accordingly, he introduced them to Mr. Rajeshbhai Patel, Mr. Dharmeshbhai Patel, Mr. Sanjay Bahia Patel and Mr. Indrajit Ramlakhan

Part of M/s Vraj Sales Corporation having their registered office at Astha Trade Com at Ahmedabad

- b. That first meeting between them was held on 23rd February 2015 at their office at M/s Vraj Sales Corporation, Ahmedabad and in that meeting they finalized the terms and conditions of loan. In addition it was decided that the Company will give 1% refundable security deposit of project loan amount from each Company to Vraj Sales Corporation.
 - c. The Directors of the Company conveyed to him that they would transfer amount of security deposit in his account and thereafter he would transfer the same in account of M/s Vraj Sales Corporation. It was also assured to him that since the amount was refundable, hence, when the Respondent would get the amount back from M/s Vraj Sales Corporation, then the same would be returned to the Company.
 - d. He accordingly, in good faith, gave his consent for the aforesaid request.
 - e. He had not done any fraud or committed any fraud with the Company. He acted only as mediator and all the terms and conditions were finalized by the directors of the Company with other parties.
4. The Director (Discipline) had, in his Prima-facie opinion, noticed that the defence of the Respondent seems to be not acceptable as there seems no reason as to why a person who is Chartered Accountant by profession shall allow to route entry of Rs. 2.40 crores from his bank account when he is aware of the consequences of the same. Even if the same is treated as a pass through transaction, still the act of the Respondent by allowing his bank account to be used for such circular transaction is a conduct which brings disrepute to the profession. In view of the aforesaid discussion, it is clear that the Respondent has obtained a loan and thereafter defaulted in the repayment of the same and due to which various cases are pending between the parties. The Respondent, being the auditor of the Company should have avoided such transaction with the Company and even if the same has been done, it should have been returned back.
5. The Director (Discipline) further noted that the Respondent has not denied the statement of the Complainant that the amount of loan was reflected under the

head short term loans and advances in the Balance Sheet of the Company as on 31.03.2015. Looking into the fact, that the Respondent in books of accounts was indebted to the Company and was also the auditor of the Company, the act of the Respondent is clearly in violation of guideline issued by Council Guidelines No.1-CA (7)/02/2008, dated 8th August, 2008. Since, this is not the subject matter of the allegation by the Complainant which mainly relates to non-payment of loan taken/bouncing of cheques issued hence not considered.

6. Yet since this issue has come to light, at the stage of prima-facie opinion, the facts are brought before the Board of Discipline who on consideration of the same observed that since there is a violation of Council Guidelines No.1-CA(7)/02/2008, dated 8th August, 2008 as pointed out in the prima-facie opinion and that the Respondent had also become disqualified for being an auditor of the Company in the terms of the provisions of Section 141 of the Companies Act 2013. The Board accordingly held the Respondent prima-facie **GUILTY** of Professional and Other Misconduct falling within the meaning of Item (7) of Part I and Item (1) of Part II of the Second Schedule and Item (2) of Part IV of the First Schedule to the Chartered Accountants Act, 1949 read with Section 22 of the said Act and decided to refer the matter to Disciplinary Committee to proceed under Chapter V of the Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007.
7. The Board also directed the Directorate to initiate separate "Information" case against the Respondent. Thereafter, in terms of the directions given by the Board of Discipline, the separate case was 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 and the same is being dealt separately vide file Ref. No. PPR-565/2019-DD/42/INF/2019/DC/1411/2020.

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This part of the report is based on the information provided by the Respondent in his submissions prima facie Guilty by the Board of Discipline states as under

Clause (2) of Part IV of Second Schedule

"A member of the Institute, whether in practice or not, shall be deemed to be guilty of professional misconduct, if he-

(2) in the opinion of the Council, brings disrepute to the profession or the Institute as a result of his action whether or not related to his professional work"

Clause (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."

Clause (1) of Part II of Second Schedule:

"A member of the Institute, whether in practice or not, shall be deemed to be guilty of professional misconduct, if he-

(1) contravenes any of the provisions of this Act or the regulations made thereunder or any guidelines issued by the Council"

9. The Committee noted that the Respondent in his submissions dated 14th December 2020 after Prima Facie Opinion had, inter-alia, mentioned as under:

a. The Respondent reiterated his earlier submissions that he was acting only as a pass-through entity and he was not beneficiary of the sum paid as advance by the client and after receipt of sum from client he has immediately paid the said sum to M/s Vraj Sales as agreed between him, the directors of the Company, Complainant and M/s Vraj Sales.

- b. The three persons who introduced him to partners of M/s Vraj Sales has admitted the fact of such meeting in the statement given to police authorities which prove that the client wanted loan, they met M/s Vraj Sales and negotiated the terms.
- c. The said M/s Vraj Sales failed to arrange finance to the Complainant and accordingly the Complainant wanted his money back however on contacting M/s Vraj Sales threatened him of dire consequences and thereafter partners of M/s Vraj Sales were absconding.
- d. That he had also filed a complaint in this regard to the concerned police station and when no action was taken by the Inspector, then he filed a Special Criminal Application in the year 2016 to Hon'ble, High Court of Gujrat, wherein the High Court, vide its order dated 3rd May, 2016 directed the concerned Police Inspector to make the investigation and also lodged FIR. The enquiry in the matter was initiated by concerned police officer.
- e. That thereafter he made a complaint to PM Office dated 4th December 2016 and 15th March, 2017 requesting them to transfer his complaint to Commissioner of Police, Ahmedabad. He also complained to Home Ministry and the complaint was forwarded to Commissioner of Police vide FIR no.46/2018 dated 12th April 2018.
- f. That M/s Vraj Sales is arranging loans for other clients which is also mentioned in the FIR filed by him.
- g. M/s Vraj Sales also received the sum from Respondent on behalf of other client viz. M/s Girivar Hotels and Resorts Pvt. Ltd. which is also fortified by the agreement signed by the partners of Vraj Sales wherein they have acknowledged having received the sum and for failure to arrange loan, they have given back part money and for part amount they gave papers for property belonging to them in discharge of their dues to said M/s Girivar Hotels and Resorts Pvt. Ltd.
- h. It has been further stated that the statements dated 21st November 2018 of the Directors of the Company including the Complainant were taken before the Police Inspector, Ahmedabad wherein they gave the contradictory statement and never claimed that the money had given as 'Loan' to the Respondent rather considered as the money given to the Respondent for investing in a Financial Investment Plan on behalf of the Company.




- i. That the record obtained by police authorities from Hotel Kanak proves that the directors of the Company came to Ahmedabad from Ludhiana on 22nd February 2015 and left for Ludhiana on 24th February 2015.
- j. That the Company's sister concern M/s Janpath Estates Pvt. Ltd. has not filed any complaint against him still he has mentioned the same in his police complaint against the M/s Vraj Sales.
- k. Even though in the resolution dated 28th December 2014, it is mentioned that *'the board of directors have decided to accept the request of Mr B.S. Rajput....and to give him unsecured loan'* no such request made to them is put on record. If resolution was passed on 28th December 2014, the loan could not have been disbursed on 24th February 2015 whereas meeting with Vraj Sales was on 23rd February 2015 and payment made on 24th February 2015 is immediate which shows nexus between payments made for availing finance and not as loan to Respondent.
- l. That nobody will take the loan to immediately pay it to the other party.
- m. That he has never visited Ludhiana as alleged for availing loan. The travelling expenses during FY 2014-15 as per audited accounts are only Rs 39272/-.
- n. He also submitted copy of his ledger account to establish that there were no expenses for travelling to Ludhiana.
- o. That the Complainant is only taking shelter of Respondent signing the receipt for having received the sum.

BRIEF FACTS OF THE PROCEEDINGS:-

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

S.No.	Date	Status of Hearing
1.	01.06.2022	Part Heard & Adjourned
2.	24.07.2023	Part Heard & Adjourned
3.	18.08.2023	Heard and Concluded.

On the day of the first hearing held on 1st June 2022, the Committee noted that the Respondent along with his counsel, CA Deepak R Shah were present through Video Conferencing and Mr. Rajesh Gupta, GM Finance, representative on behalf of Complainant was present through Video Conferencing mode. 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. The Committee noted that the camera of the representative of the Complainant was switched-off due to frequent technical issues at his side. The Committee directed the Complainant to be physically present during the next meeting when so ever the case is fixed. Thereafter, looking into the fact that this was first hearing, the Committee decided to adjourn the hearing to a future date. With this, the hearing in the matter was partly heard & adjourned.

12. On the day of second hearing held on 24th July, 2023, the Committee noted that the Respondent along with his counsel, CA. Deepak R Shah were present physically at Delhi Office and Mr Rajesh Gupta, CFO of the Company, representative on behalf of Complainant was also present physically at Delhi Office. The Committee asked the Complainant's Authorised Representative to brief the charges against the Respondent.

12.1 The Complainant's Authorised Representative briefed the charges from the Prima Facie Opinion and submitted that the cheques issued by the Respondent got bounced due to which he had filed a case under Section 138 against the Respondent. The Complainant further submitted that the Respondent had resigned as an auditor from the Company in April, 2016 i.e. after one year of receiving the loan.

12.2 Thereafter, the Respondent made his submissions by submitting that the amount was not taken as loan and he had mentioned about the same in his Written Statement also with corroborative evidence. The Committee posed certain questions to both the parties to understand the issue involved and the role of the Respondent in the case.


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12.3 On the same the Complainant's Authorised Representative submitted that he was not aware of the submissions by the Respondent. The Committee on consideration of the same directed the Respondent to provide a copy of the same to the Complainant. The Complainant was also directed to submit his response on the documents submitted by the Respondent. With this, the hearing in the matter was partly heard and adjourned.

13. On the day of final hearing dated 18th August 2023, the Committee noted that the Respondent along with his counsel, CA Deepak Shah was present physically and appeared before it. The Committee further noted that Shri Rajesh Gupta, CFO of the Company and Authorised Representative of the Complainant was also present physically.

13.1 The Committee asked the Complainant's Authorised Representative to explain the issue. To which he submitted as under:

- a. That the Company had provided friendly loan of Rs. 1.20 crores to the Respondent which is also reflected in the Balance Sheet(s) and the Respondent have also agreed on the same.
- b. The same is reflected in the balance sheet as Long-term loans and the balance sheet is signed by the Respondent.
- c. The Respondent has also issued a receipt which states that he has received loan from the Company.
- d. Thereafter, the Respondent issued two post-dated cheques as security money which were bounced.

13.2 When the Respondent was asked to make his submissions, he submitted that in the previous hearing, the Complainant's Authorised Representative was asked to submit a reply on his submissions however the same has not been received by him till date hence the Committee directed the Complainant's Authorised Representative to provide the same to the Respondent. The Complainant's Authorised Representative submitted that the only objection raised by the Respondent in his submission was that in some police investigation the Director of the company had given a statement wherein he

mentioned that the said amount was an investment and not a loan. However, the said statement was given on suggestion of advocate who advised that since the Company don't have any license of NBFC. So, the Company is not authorized to give the loan to any of the persons. So, quote the said amount as investment instead of loan.

13.3 Thereafter, the Respondent submitted that the said amount is not shown as a long-term advance. It is shown as other advances only. He reiterated his earlier submissions and stated that he has given instances in his written statement to prove that the said amount was not given to him as a loan. He has not charged any commission for the transaction and the Complainant also agreed on that.

13.4 Upon consideration of the submissions of the Respondent/ his Counsel and considering the documents available on record, the Committee decided to conclude the hearing.

FINDINGS OF THE COMMITTEE:

14. The Committee noted that the Respondent in his submissions had inter-alia mentioned that the nature of the transaction was not for providing a loan to him, but his account was used only as a pass-through entity. The Committee, in this regard, on perusal of bank statements of the Respondent noted that the Respondent had received the amount of Rs. 1.20 crore in his account from the Company on 24th February 2015 and on the same day, this amount was transferred to M/s Vraj Sales. Similarly, M/s Janpath Estates Pvt. Ltd. transferred Rs. 1.20 crore to the Respondent's Account on 26th February 2015, which was transferred by him on the same day to M/s Vraj Sales.

15. The Committee noted that the Respondent in his defence submitted various documents containing admission of facts of a meeting held between the directors of the Company and the Vraj Sales by three persons who introduced Respondent to the Vraj Sales in their statement before the police authorities, complaint filed before police authorities, the statement of the directors of the

... statement wherein amount from the Complainant was received and transferred to M/s. Vraj Sales was shown etc.

16. The Committee, however, noted that the Respondent did not receive the amount as loan and he acted only as a mediator between the Company and M/s Vraj Sales Corporation and transferred such amount to M/s Vraj Sales Corporation on the same day is not tenable as he has failed to bring on record any document/agreement with the Company to support his contention that he had acted as a mediator only.
17. Further, the Committee on perusal of records noted that the Respondent had accepted an amount of Rs. 1.20 crore in his firm's current account on 24th February 2015 from the Company and such amount received by him was duly shown and reflected in Schedule to his Firm's Balance sheet in financial years 2014-15 to 2018-19 under the head 'Sundry creditors for expenses' against the Company and is set off against amount given to partners of M/s Vraj Sales as under:

Sundry Creditors for Expenses	Amount
Nuchem Dyestuffs Pvt. Ltd.	1,20,00,000
Vraj Sales Corporation	(1,20,00,000)

18. The Committee noted that the Respondent had accepted that he had audited and signed the Balance Sheet of the Company for the year ended 31.03.2015 in the capacity of the statutory auditor of the Company and in the same Balance Sheet this amount has been shown as 'Short Term Loans & Advances'.
19. The Committee noted that the cheque issued by the Respondent as security money was presented on 18th April 2015 and returned unpaid due to insufficient funds. Further the two cheques no. 000147 and 000146 dated 23rd May 2015 and 1st June 2015 respectively amounting Rs. 25.00 lacs and Rs. 95.00 lacs issued by the Respondent after service of notice by the

20. The Committee hence noted that such disclosure clearly reflects that the Respondent was indebted to the Company. The Committee noted that the Respondent was a Chartered Accountant for the last 15 years and would be conversant with the guidelines of the Institute. Further, the fact, apparent from records, cannot be denied that, being a Chartered Accountant, the Respondent was indebted to the Company. His action prove his lack of due diligence with respect to adherence of provisions of Act in conduct of his professional duties. Further he has not returned the money till date which shows his casual approach and continued indebtedness.
21. Even if the contention of the Respondent is accepted, it is apparent that, as an auditor he allowed the entity to route the transaction from his account even after knowing the consequences of the same. The Committee also noted that the reason provided by the Respondent for routing the funds from his account was also not acceptable because, as an auditor, the Respondent was not expected to promote such practices. The Committee observed that the Respondent had not only done wrong but also exceeded his mandate besides being the auditor of the Company.
22. The Committee as regards violation of section 141 of the Companies Act, 2013 and of the guidelines issued by the Council Guidelines no. 1-CA(7)/02/2008 noted that it is apparent the Respondent was indebted to the Company besides being an auditor of the Company for the financial year 2014-15.
23. The Committee noted that the Chapter X of Guidelines issued by the Council Guidelines No. 1-CA(7)/02/2008, dated 8th August, 2008 given as Appendix No. 34 of the Chartered Accountants Act, 1949 reads as follows:

"Appointment of an auditor when he is indebted to a concern

A member of the Institute in practice or a partner of a firm in practice or a firm shall not accept appointment as auditor of a concern while

indented to the concern or given any guarantee or provided any security in connection with the indebtedness of any third person to the concern, for limits fixed in the statute and in other cases for amount exceeding Rs. 10,000/-"

The Committee further noted that the Section 141 of Companies Act, 2013 which contains the provision relating to 'Eligibility, qualifications and disqualifications of auditors'. The sub section (3) (d) (ii) of Section 141 reads as follows:

"(3) The following persons shall not be eligible for appointment as an auditor of a company, namely:—

(a).....

(b).....

(c).....

(d) a person who, or his relative or partner—

(i)

(ii) is indebted to the company, or its subsidiary, or its holding or associate company or a subsidiary of such holding company, in excess of such amount as may be prescribed; or

.....

....."

Further According to Provisions of Section 141(4) of the Companies Act, 2013, where a person appointed as auditor of the company incurs any of the disqualification mentioned in Section 141(3) of the Companies Act, 2013 after his appointment, he shall vacate his office as such auditor and such vacancy shall be deemed to be casual vacancy in the office of the auditor.

24. On perusal of the above provisions, the Committee noted that an auditor shall not accept appointment as auditor of a concern if he was indebted to the concern or has given any guarantee or provided any security in connection with the indebtedness of any third person to the concern, for limits fixed in the

statute and in other cases for amount exceeding Rs. 5,00,000/- in 12.2.16 shall not be eligible for appointment as an auditor of a Company if he is indebted to the company, or its subsidiary, or its holding or associate company or a subsidiary of such holding company. Further, he shall vacate his office as auditor immediately and such vacancy shall be deemed to be a casual vacancy in the office. However, in the present case, the Respondent continues as a statutory auditor of the Company. In this way, the Respondent has clearly violated the provisions of Companies Act, 2013 and the Council Guidelines and is indebted to the Company for the aforesaid amount.

CONCLUSION

25. In view of the above observations, considering the submissions of the Respondent and documents on record, the Committee held the Respondent **GUILTY** of Professional Misconduct falling within the meaning of Item (7) of Part I and Item (1) of Part II of the Second Schedule, and Item (2) of Part IV of the First Schedule to the Chartered Accountants Act, 1949.

Sd/-

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

Sd/-

(SHRI ARUN KUMAR, IAS, RETD.)
GOVERNMENT NOMINEE

Sd/-

(CA. SANJAY KUMAR AGARWAL)
MEMBER

DATE: 14TH DECEMBER, 2023

PLACE: NEW DELHI

सही प्रतिलिपि होने के लिए प्रमाणित
Certified to be true copy

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