



Date of Pronouncement – 23.01.2024

[PPR/565/19/DD/42/INF/19-DC/1411/2020]

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.

[PPR/565/19/DD/42/INF/19-DC/1411/2020]

In the matter of:

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 a complaint vide reference no. PR/114/2016/DD/158/2016 dated 10th May, 2016 was filed by Shri Pawan Kumar Goel, Ludhiana containing allegations of non-payment of loan given to Respondent. The Board of Discipline, upon consideration of the Prima Facie Opinion of the Director (Discipline) in that matter, was of the view that the Respondent was also indebted to **M/s Nuchem Dye Stuffs Private Limited** besides being auditor of the Company for the financial year 2014-15 and such act was in violation of the guidelines issued by the Council. Accordingly, the Board directed the Directorate to initiate a separate "Information" case against the Respondent. Thereafter, in terms of the directions given by the Board of Discipline, the present matter 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.



2. The Committee noted that the Respondent has been held guilty vide findings dated 14.12.2023 (Ref no. PPR/565/19/DD/42/INF/19-DC/1411/2020). 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:

12. 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.

13. 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 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.

14. The Committee, however, noted that the Respondent's submissions that he did not receive the money 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.

15. Further, the Committee on perusal of record 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) |



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16. 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'.

17. 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.

18. 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.

19. The Committee noted that the charge against the Respondent in Prima-Facie opinion was of violation of section 141 of the Companies Act, 2013 and of the guidelines issued by the Council Guidelines no. 1-CA(7)/02/2008 as he was indebted to the Company besides being an auditor of the Company for the financial year 2014-15 and the Director (Discipline) made him guilty on the aforesaid grounds.

20. 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:



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“(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.

21. 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

1. 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 (1) of Part II of the Second Schedule to the Chartered Accountants Act, 1949.”

3. 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



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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:-

i) The Respondent stated that when there is no direct evidence with respect to being mediator then same may be inferred from surrounding circumstances which is called circumstantial evidence. He further submitted if an auditor assists its client in conduct of their business interest, it cannot be considered as bringing disrepute to the profession or the Institute and rather, it is a matter of regard for a client but at least not bringing disrepute.

4. 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 the 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 paid within 90 days of receipt of the order. The punishment regarding removal of name shall run concurrently with the punishment given to the Respondent in case no. PR/114/16-DD/158/2016/DC/1389/2020.

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

सीए श्रुति वर्मा / CA Shrutti Verma
सहायक निदेशक / Assistant Director
अनुशासनात्मक निदेशालय / Disciplinary Directorate
इंस्टीट्यूट ऑफ चार्टर्ड एकाउंटेंट्स ऑफ इंडिया
The Institute of Chartered Accountants of India
आईसीएआई भवन, विभागा नगर, शाहदरा, दिल्ली-110032
ICAI Bhawan, Vishwas 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.: [PPR-565/2019-DD/42/INF/2019/DC/1411/2020]

In the matter of:

CA Bhupendra Singh Rajput (M. No. 106729) of M/s B.S. Rajput & Associates in Re:

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 Informant : 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 a complaint vide reference no. PR/114/2016/DD/158/2016 dated 10th May, 2016 was filed by Shri Pawan Kumar Goel, Ludhiana containing allegations of non-payment of loan given to Respondent. The Board of Discipline, upon consideration of the Prima Facie

Opinion of the Director (Discipline) in that matter was of the view that the Respondent was also indebted to M/s Nuchem Dye Stuffs Private Limited (hereinafter referred to as the "Company") besides being auditor of the Company for the financial year 2014-15 and such act was in violation of the guidelines issued by the Council. Accordingly, the Board directed the Directorate to initiate a separate "Information" case against the Respondent. Thereafter, in terms of the directions given by the Board of Discipline, the present matter 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.

CHARGES IN BRIEF:-

2. The Committee noted that the charge against the Respondent is that he besides being the statutory auditor of the Company, i.e. M/s Nuchem Dye Stuff Private Limited, Ahmedabad was indebted to the said concern.
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 Pal 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. That the receipt of the loan was given only for accounting purpose to show in the books of accounts.
- f. 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.
- g. 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.
- h. That the statements of the Directors of the Company were taken before the Police Inspector, Ahmedabad wherein they gave the contradictory statement and never claimed that the money had been 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. Thereafter Mr. Dharmesh Patel was arrested on 21st November, 2018 and charge sheet was filed against him before Metropolitan Magistrate Court dated 01st May, 2019.
- j. It is stated that 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.

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4. The Director (Discipline) had, in his Prima-facie opinion, noticed that the Respondent had accepted an amount of Rs. 1.20 crores from the Company on 24th February 2015 and also showed such amount in the balance sheet of his firm as 'Creditor for exchange' against the Company. It is further observed by the Director (Discipline) that in the balance sheet of the Company for the F.Y. 2014-15, audited by the Respondent, this amount has been shown as 'Short-

term loans and advances". Hence, the Director (Discipline) opined that the Respondent, besides being the statutory auditor of the Company for the financial year 2014-15 was indebted for Rs. 1.20 crores to the Company, which is in violation of section 141 of the Companies Act, 2013 and Chapter X of council guidelines no. 1-CA(7)/02/2008 dated 8th August, 2008.

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 Item (1) of Part II of the Second Schedule to the Chartered Accountants Act, 1949. The said item in the Schedule to the Act states as under:

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"

6. The Committee noted that the Respondent in his submissions dated 24th February 2021 after Prima Facie Opinion had, inter-alia, mentioned as under:
 - a. That he was not doing any project finance work and only introduced the Company to M/s Vraj Sales who are experts in arranging loans.
 - b. The discussion regarding arranging of the loan took place directly between the arranger and the directors of the Company. Since he was known to both the parties, he was asked to act as a mediator and to route the transaction through his account.
 - c. That M/s Vraj Sales failed to arrange finance for the Company and, accordingly, the Company wanted its money back. When he contacted M/s Vraj Sales, he was threatened of dire consequences and thereafter, concerned persons of M/s Vraj Sales were absconding.

- d. To prove his bonafide that he was acting only as a pass through entity he submitted that he immediately transferred the said sum to M/s Vraj sales as agreed between both parties.
- e. That M/s Vraj Sales is arranging loans for other clients which is also mentioned in the FIR filed by him.
- f. 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.
- g. That he had submitted the statement of three persons who introduced him to M/s Vraj Sales and who admitted the facts of such a meeting as given to the police authorities.
- h. He has also submitted the statement of directors of the Company given before the Police authorities wherein they have stated that they were to invest the sum as suggested by the Respondent and they have paid for such investment and not as loan.
- 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.
- k. That the said amount is shown under the head 'Sundry creditors for expenses' and is set off against the amount given to Vraj Sales in his audited accounts for financial years 2014-15 to 2018-19. He has not shown the amount as an asset or liability as he was only pass through entity.
- l. That nobody will take the loan to immediately pay it to the other party.
- m. That there is no evidence that he had visited Ludhiana for availing a loan.
- n. That assisting a client never brings disrepute to the profession rather it is an example how far a CA can go to help his client in furtherance of his business.

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BRIEF FACTS OF THE PROCEEDINGS:-

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

| S.No. | Date | Status of Hearing |
|-------|------------|--|
| 1. | 31.10.2022 | Adjourned on the request of the Respondent |
| 2. | 20.06.2023 | Part Heard & Adjourned |
| 3. | 24.07.2023 | Part Heard & Adjourned |
| 4. | 18.08.2023 | Heard & Concluded |

8. On the day of the first hearing held on 31st October 2022, the Committee noted that the Respondent, vide email dated 22nd October 2022 sought adjournment on the grounds of his unavailability in town due to the Diwali festival. He further mentioned that his Counsel CA. Deepak R Shah, is also not available. The Committee, looking into the fact that the matter is placed for a hearing for the first time, decided to adjourn the matter to a future date.
9. On the day of the second hearing dated 20th June, 2023, the Committee noted that the Respondent along with his Counsel Mr Deepak Shah, 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. Thereafter, the Committee, looking into the fact that this was the first hearing, decided to adjourn the hearing to a future date.
10. On the day of the third hearing dated 24th July, 2023, the Committee noted that the Respondent along with his Counsel Mr Deepak Shah, was present physically. The Committee noted that the instant case is related to another case, vide ref. no. PR/114/2016-DD/158/2016-DC/1389/2020, pending before it. The Committee upon consideration decided, that to arrive at a uniform conclusion, both the cases should be heard together. Accordingly, the Committee decided to adjourn the case to future date.

11. 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 Respondent's Counsel presented his line of defence by presenting the arguments and the Committee posed certain questions to the Respondent to understand the issue involved and the role of the Respondent in the case.

11.1 The Committee noted that the Respondent/ his Counsel in his submissions had, inter-alia, submitted as under:

- a. That the Respondent had not taken any loan from the Company and it was a project finance which was passed through his books of accounts and thus, the Respondent was only a pass-through entity.
- b. That the Respondent after this episode had resigned from the Company.
- c. That the Respondent had a relationship of over 14 years with the Company due to which he allowed them to route the funds through his account and he is not charging any commission for routing of funds from his account.
- d. That the person/entity to whom the Respondent transferred the funds of the Company was fraudulent and ran away with the money and due to which he failed to return the money to the Company.
- e. That the Respondent failed to judge a person, but ultimately, his intention was to help the Company.
- f. That the Respondent has already given instances in his written statement wherein it is proved that he has not taken any loan from the Company.

11.2 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:**

12. 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.

13. 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 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.
14. The Committee, however, noted that the Respondent's submissions that he did not receive the money 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.
15. Further, the Committee on perusal of record 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) |

16. 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'.
17. 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.
18. 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.
19. The Committee noted that the charge against the Respondent in Prima-Facie opinion was of violation of section 141 of the Companies Act, 2013 and of the guidelines issued by the Council Guidelines no. 1-CA(7)/02/2008 as he was indebted to the Company besides being an auditor of the Company for the financial year 2014-15 and the Director (Discipline) made him guilty on the aforesaid grounds.

20. 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

.....

....."

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 officer of the auditor.

21. 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

22. 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 (1) of Part II of the Second Schedule to the Chartered Accountants Act, 1949.

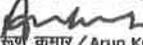
SD/-
(MRS RANI NAIR, I.R.S. RETD.)
GOVERNMENT NOMINEE & PRESIDING OFFICER

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
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अरुण कुमार / Arun Kumar
मुख्य कार्यकारी अधिकारी / Sr. Executive Officer
अनुशासनात्मक निदेशालय / Disciplinary Directorate
इंस्टिट्यूट ऑफ चार्टर्ड एकाउंटेंट्स ऑफ इंडिया
The Institute of Chartered Accountants of India
आईसीएआई भवन, विश्वास नगर, शाहदरा, दिल्ली-110032
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