



भारतीय सनदी लेखाकार संस्थान
(संसदीय अधिनियम द्वारा स्थापित)

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

[DISCIPLINARY COMMITTEE [BENCH-IV (2024-2025)]
[Constituted under Section 21B of the Chartered Accountants Act, 1949]

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

[PR-323/16-DD/15/2017-DC/818/2018]

In the matter of:

Shri L.V.N. Muralidhar

Flat no. 164, Srila Heights,

East Marredpalli,

Hyderabad

TELANGANA-500 026

.....Complainant

Versus

CA. Dharendra Datta (M. No. 080097)

M/s D. Datta & Associates (FRN No. 011249N)

Chartered Accountants,

117, Saini Enclave,

Vikas Marg

NEW DELHI-110 092

.....Respondent

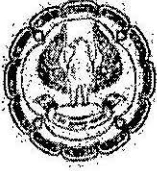
MEMBERS PRESENT:

1. CA. Ranjeet Kumar Agarwal, Presiding Officer (In person)
2. Shri Jiwesh Nandan, I.A.S (Retd.), Government Nominee (In person)
3. Ms. Dakshita Das, I.R.A.S. (Retd.), Government Nominee (Through VC)
4. CA. Mangesh P Kinare, Member (In person)
5. CA. Abhay Chhajed, Member (In person)

DATE OF HEARING : 28th MARCH, 2024

DATE OF ORDER : 16th May, 2024

1. That vide Findings dated 05.02.2024 under Rule 18(17) of the Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007, the Disciplinary Committee was inter-alia of the opinion that CA. Dharendra Datta (M. No.



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080097) (hereinafter referred to as the Respondent") is **GUILTY** of Professional Misconduct falling within the meaning of Clause (6) and (7) Part - I of Second Schedule to the Chartered Accountants Act, 1949.

2. That pursuant to the said Findings, an action under Section 21B(3) of the Chartered Accountants (Amendment) Act, 2006 was contemplated against the Respondent and a communication was addressed to him thereby granting an opportunity of being heard in person/ through video conferencing and to make representation before the Committee on 28th March 2024.

3. The Committee noted that on the date of hearing on 28th March 2024, the Respondent was physically present at ICAI Bhawan, Delhi. During the hearing, the Respondent submitted that he has made written representation dated 11th March 2024 on the Findings of the Disciplinary Committee. He further admitted that it was a mistake that occurred on his part while performing professional duties and the Complainant has amicably settled all financial matters, and further the Complainant has not suffered any financial loss on account of the mistake. The Committee also noted the written representation of the Respondent, which, inter-alia, are given as under:-

(a) The Company was in debt with SBI, which was being settled by depositing net amount of loan. All shareholders including the Complainant had contributed in the repayment of SBI loan. The Respondent was not aware that the Complainant is giving funds as loan and not as share application money. He came to know about the same through the present Complaint. It inadvertently became a mistake on his part.

(b) The matter was briefly discussed with the management of the Company and it was told to the Respondent that a large amount of money was due from the Complainant, which would be squared off on settlement of the case filed by Complainant against the Company with NCLT. Till then, the amount was being shown as a contingent liability. He accepted this mistake that the amount should not have been transferred to Capital Reserve Account and it should have been highlighted in his audit report.

(c) The Complainant has amicably settled all his financial matters with other major shareholders/ management to the best of his interest and has not suffered any financial loss on account of mistakes committed by the Respondent.

(d) The Respondent agreed with the Findings of the Disciplinary Committee and regretted the mistakes committed by him.

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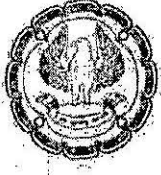
4. The Committee considered the reasoning as contained in Findings holding the Respondent 'Guilty' of Professional Misconduct vis-à-vis written and verbal representation of the Respondent. The Committee noted that the issues/ submissions made by the Respondent as aforesaid have been dealt with by it at the time of hearing under Rule 18.

5. Thus, keeping in view the facts and circumstances of the case and material on record including written and verbal representation of the Respondent on the Findings, the Committee noted that the Complainant, in capacity of one of the guarantors of the loan, had paid the amount of Rs 1.54 Crores to the Company to enable it to repay its loan taken from the Bank and the Company had utilised the same in allotment of equity shares to him without his consent and without complying with the relevant provisions of the Companies Act, 2013. The Committee held that the Respondent being the Statutory Auditor of the Company failed to exercise due diligence in respect of share capital issued by the Company during the year and failed to bring on record any evidence to show that the allotment of shares to the Complainant was made with Complainant's consent i.e., request letter and acceptance letter by the Complainant. Hence, it is viewed that the Respondent has failed to exercise due diligence and adopted casual approach while performing his duties, as statutory auditor.

6. The Committee noted that the Respondent has failed to give any justifiable answer as to how the payment of Rs. 55 Lakhs made by the guarantor has been treated as gain and transferred to Capital Reserve Account. The Committee was of the view that the Respondent has failed to point out specified inappropriate treatment which has the effect of absolving the Company of its liability to pay to the Complainant and in turn dissolving the rightful claim of the Complainant from the books of accounts of the Company. Thus, the Committee held that the Respondent has not only failed to act diligently but has also failed to disclose a material misstatement known to him to appear in the Financial Statements of the Company with which he was concerned in the professional capacity. Hence, the Professional Misconduct on the part of the Respondent is clearly established as spelt out in the Committee's Findings dated 05th February 2024, which is to be read in consonance with the instant Order being passed in the case.

7. Accordingly, the Committee was of the view that the ends of justice would be met if punishment is given to him in commensurate with his Professional Misconduct.

(Signature)



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8. Thus, the Committee ordered that the name of the Respondent i.e. CA. Dharendra Datta (M. No. 080097) be removed from the Register of Members for a period of 01 (One) month.

Sd/-

(CA. RANJEET KUMAR AGARWAL)
PRESIDING OFFICER

Sd/-

(SHRI JIWESH NANDAN, I.A.S. {RETD.})
GOVERNMENT NOMINEE

Sd/-

(MS. DAKSHITA DAS, I.R.A.S. {RETD.})
GOVERNMENT NOMINEE

Sd/-

(CA. MANGESH P KINARE)
MEMBER

Sd/-

(CA. ABHAY CHHAJED)
MEMBER

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

नीलम पुंडीर / Neelam Pundir
वरिष्ठ कार्यकारी अधिकारी / Sr. Executive Officer
अनुशासन निदेशक / Disciplinary Directorate
इंस्टीट्यूट ऑफ चार्टर्ड एकाउंटेंट्स ऑफ इंडिया
The Institute of Chartered Accountants of India
आइसीएआई भवन, विश्वास नगर, शाहदद, दिल्ली-110032
ICAI Bhawan, Vishwas Nagar, Shaheed, Delhi-110032

CONFIDENTIAL

DISCIPLINARY COMMITTEE [BENCH – IV. (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.

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Ms. Dakshita Das, I.R.A.S. (Retd.), Government Nominee
CA. Mangesh P Kinare, Member
CA. Cotha S Srinivas, Member

DATE OF FINAL HEARING : 18th August 2023

PARTIES PRESENT

Complainant: Mr. L.V.N. Muralidhar (Through VC mode)
Respondent: CA. Dharendra Datta (In person)

1. Background of the Case:

The Respondent was Statutory Auditor of M/s Vestal Educational Services Private Limited (hereinafter referred to as "VSEPL/Company") for the F.Y. 2013-14 and FY 2014-15. The Complainant was one of the shareholders in the Company as well as acted as its director during 2009 to 2011. The Company availed a term loan of Rs. 10 Crores from SBI on 31st March 2009 and its balance as on 31-03-2014 stood as Rs.6.51 Crore. Against the total outstanding, the Company during 2014-15 had paid Rs.5.50 crores under One Time Settlement/OTS as full and final settlement of the term loan. The Complainant along with other promoters acted as the one of the personal guarantors of the said loan.

2. Charges in brief: -

- 2.1** The Complainant stated that he had advanced Rs.1.54 Crores to the Company to enable it to repay its loan taken from SBI against which the Company issued equity shares of Rs. 1.54 Crores without his approval. Accordingly, it is alleged that the Respondent failed to make any observation/qualification in his audit report for the FY 2014-15 regarding non-compliance by the Company of the provisions of 'Further Issue of Shares' as contained in Section 62 of the Companies Act, 2013.
- 2.2** The Complainant further alleged that the Company had wrongly recognized the amount of Rs.55 Lacs as gain instead of liability in its 'books of accounts' which was paid by the one of the guarantors of Company to bank on behalf of Company and the same had not been reported by the Respondent in his audit report for the FY 2014-15.

3. The relevant issues discussed in the prima facie opinion dated 06th January 2018 formulated by Director (Discipline) in the matter, in brief, are given below:

- 3.1** The Director (Discipline) observed that the Complainant had not been able to provide any loan agreement entered into by him with the Company for advancing the amount. However, upon perusal of the Bank statement of the Company with SBI vis-a-vis, Bank statement of the Complainant, it was evident that the funds had been transferred from his account to the account of the Company maintained with SBI on

different dates from 19th December, 2014 to 31st March, 2015. It was also pertinent to mention that as per OTS Scheme entered into between the Company and the SBI, the funds were required to be deposited in five instalments between October 2014 to March 2015.

- 3.2 Thus, considering the allegation, defence of the Respondent and documents on record, it was felt that the Respondent had failed to apply due care and professional skepticism, during the course of his audit. Further, in terms of 'Guidance note on Audit of Capital and Reserves' also, an auditor was required to be more careful while auditing the Capital and Reserves account which the Respondent seems to have failed to observe. In this regard, it was important to mention Para 4 of the said Guidance note as under: -

"The auditor in many audit engagements, particularly those relating to corporate entities, may find very few changes in the capital account and/ or reserve accounts. However, the transactions in the capital and reserve accounts are normally material in amount in addition to being significant in nature and, therefore, each transaction in these accounts requires careful attention..."

- 3.3 It was also seen that the Respondent could not bring on record all the relevant documents pertaining to the right issue of shares to the Complainant, the matter needs to be enquired into further in the regard as to whether he had applied required due diligence in carrying out the audit of the Company in respect of Capital and Reserves. Therefore, he was held prima-facie guilty for the same in terms of Item (7) of Part 1 of Second Schedule to the Chartered Accountant Act, 1949.

- 3.4 It was also observed that it was an admitted fact of the case that one of the Complainant's Company which stood as guarantor had paid amount of Rs. 55 lacs towards settlement of loan amount of the Company in question under OTS Scheme. Since, the primary liability to repay back the loan amount vested with the Company, payment of any sum by the Guarantor directly to the Bank should have been treated as liability of the Company as by making payment on behalf of the Company, the guarantor steps into the shoes of the Bank i.e., Creditor. However, in the instant

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case, it was observed that the Company instead of acknowledging the said liability of Rs. 55 Lacs in its 'books of accounts' had transferred the same to 'Capital Reserve Account' treating the same as gain which was not a correct accounting treatment. Further, it was also important to mention that by mentioning the said amount of Rs. 55 Lacs under Contingent Liabilities and Commitments (to the extent not provided for), the Company had tried to give a misleading disclosure.

3.5 As the liability of Rs. 55 Lacs existed at the balance sheet date, the Respondent as a prudent professional should have objected to the wrong accounting treatment adopted by the Company. However, from his submissions it seems that he appeared to be convinced with the explanation provided by the Company. The same was evident from his submissions wherein, he stated that a guarantor has to fulfil its obligation in an independent capacity and the Complainant had done the same. It was further seen that the Respondent had tried to take a plea of the Court case pending in the matter. However, since the allegation against the Respondent was regarding incorrect accounting treatment adopted by the Company, the same should have been reported by the Respondent in his audit report through adverse remarks. His failure to do so makes him prima facie guilty on this allegation. In this regard the Complainant in his rejoinder had stated that he had drawn inference from AS-29, Contingent Liabilities and Guidance Note on Revised Schedule VI of the Companies Act also merits consideration which makes it clear that the Company was required to recognize the amount of Rs. 55 Lakhs paid by the Guarantor as its liability instead of treating the same as gain. The Respondent being auditor had the liability to guide the Company in this regard and if the Company did not agree, he was under an obligation to make appropriate disclosures in this respect.

3.6 The Respondent thus seems to have failed to point out the inconsistency in the said absurd treatment which may have the effect of absolving the Company of its liability to pay to the Complainant and in turn dissolving the rightful claim of the Complainant from the books of accounts of the Company. Thus, the Respondent had not only failed to act diligently but had also failed to disclose a material misstatement known to him as appearing in the Financial Statements of the Company with which he was concerned in the professional capacity.

- 3.7 The Director (Discipline) in his Prima facie Opinion dated 06th January 2018 opined that the Respondent was Guilty of Professional Misconduct falling within the meaning of Clause (6) and (7) of Part I of Second Schedule to the Chartered Accountants Act, 1949.

The said Clause to the Schedule to the Act, states as under:

Clause (6) of Part I of Second Schedule:

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

(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.

Clause (7) of Part I of Second Schedule:

A member of the Institute, whether in practice or not, 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.”

- 3.8 The Prima Facie Opinion formed by Director (Discipline) was considered by the Disciplinary Committee at its meeting held on 20th April 2018, at New Delhi. The Disciplinary Committee considered the prima facie opinion dated 06th January, 2018 of the Director (Discipline) along with the Complaint, Written Statement, Rejoinder and additional documents. The Committee on consideration of the same, concurred with the reasons given against the charge (s) and thus, agreed with the prima facie opinion of the Director that the Respondent is prima-facie GUILTY of professional misconduct falling within the meaning of Clause (6) and (7) of Part I of the Second Schedule to the Chartered Accountants Act, 1949 and accordingly, decided to proceed further under Chapter V of the Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules 2007. The Committee, also directed the Directorate that in terms of the provisions of sub-rule (2) of Rule 18, the prima facie opinion formed by the Director be sent to the Respondent and the Complainant including particulars or documents relied upon by the Director, if any, during the course of formation of prima facie opinion and the



Respondent be asked to submit his Written Statement in terms of the aforesaid Rules.

4. Date(s) of Written submissions/Pleadings by parties:

The relevant details of the filing of documents in the instant case by the parties are given below:

S. No.	Particulars	Dated
1.	Complaint in Form 'I' filed by the Complainant	26 th December 2016
2.	Written Statement filed by the Respondent	16 th February 2017
3.	Rejoinder filed by the Complainant	26 th April 2017
4.	Prima facie Opinion by Director (Discipline)	06 th January 2018
5.	Written Submission filed by the Respondent	20 th September 2018 26 th April 2023 24 th July 2023
6.	Written Submission filed by the Complainant	24 th October 2018 04 th December 2018

5. Written Submissions filed by the Respondent after PFO:

The Respondent vide letters dated 20th September 2018, 26th April 2023, and 24th July 2023, filed his written submissions and inter alia stating as under:

5.1 The Respondent submitted that the Complainant had not disclosed his status as the Director and shareholder of M/s Vestal Schools Pvt Ltd (VSPL), the holding Company of VSEPL, thus enjoining majority control over the affairs of its subsidiary Company namely M/s Vestal Educational Services Pvt Ltd (VESPL).

5.2 The Respondent further submitted that the contention of the Complainant was that the offer letter had not been sent through registered post while he made sure that all the shareholders had taken the offer letters by hand including him, will turn the share

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application money into loan and had no locus-standi and was ultra-vires as the Companies Act,2013.

- 5.3 The Respondent further submitted that the contention of the Complainant was that money deposited directly to the Company's bank account to be treated as loan was ultra vires the Companies Act, 2013, as the channel of direct deposit was only proving his intention to invest share application money by signing cheques for RTGS treated as an implied consent of the same. The transfer of Rs. 1.54 Crore share application money cannot be an ultra vires loan under the Companies Act, 2013.
- 5.4 The channel of On-line transfer of funds was only for share application money and be treated as implied consent. There was nothing so special about the nature of a reserve requiring careful handling. Accountancy revolves around the concept of capital and/or revenue accounts.
- 5.5 The subject Company was a private limited and needs to open a separate bank account for receiving share application money as is done by listed or limited Companies.
- 5.6 The management could not imagine that one of the shareholders would dispute his allotment and file cases, otherwise, a separate bank account would have been opened for receiving share application money. The Complainant had no documents to back his contention that he gave out a loan without any request from the management for taking loan from him. Further, the Respondent has stated that the Complainant had compromised and had already settled his account with management and the Complainant has not informed about his settlement on the basis of the compromising all his issues. The Respondent further submitted that as an auditor cannot look into the disputes amongst the members of a private limited Company as it was a partnership firm.
- 5.7 The Respondent further submitted that the Complainant at a certain point had said that the auditor failed to revise the accounts to incorporate his loan information. The Complainant is a qualified Company Secretary (M. No. A10634) and was supposed to know the law relating to revision of annual accounts u/s 131 of the Companies

Act, 2013. Further, that the Board of Directors had to take prior approval of the Tribunal before taking any decision of revising annual accounts. The Complainant had no "locus standi" unless he produces the necessary documents to prove that the Company had taken a loan.

6. Written Submissions filed by the Complainant after PFO:

The Complainant vide letters dated 24th October 2023 and 4th December 2023 filed his written submissions and inter alia stating as under:

- 6.1** The Audit Report must state as to whether, in the Auditor's opinion, the Financial Statements depict a true and fair view of the state of the VESPL's affairs and whether the same had been prepared in tune with the statutory framework and other accounting standards.
- 6.2** The Complainant resigned as Director of both the VESPL and M/s Vestal Schools Private Limited (VSPL) on 25.10.2011. However, while VESPL appeared to have acknowledged the factum of his resignation in the said Company, they appear to be disputing it in respect of VSPL for malafide reasons. On account of certain frivolous disputes raised by VSPL/VESPL with respect to Complainant's resignation as Director from the Board of VSPL, Complainant had also filed his DIR-11 on 18.09.2017 with ROC whereby the effective date of resignation was acknowledged on 25.10.2011. Ministry of Corporate Affairs had also confirmed that Complainant had ceased to be Director of VSPL from 25.10.2011.
- 6.3** The date of resignation as Director of Vestal Group of Companies on 25.10.2011, VSPL was not a Holding Company of VESPL, and it had only subsequently on 16.03.2013 become the Holding Company. He further stated that he only holds 5000 shares in VSPL (which was allotted to him at the time of incorporation of the Company) and no further share had been allotted to him. Hence, being a minority shareholder his overall control was virtually non-existent.
- 6.4** The Complainant further submitted that VESPL was struggling to pay the OTS amount to SBI within the stipulated time frame, the fact that any default by VESPL would adversely affect his credibility. Since the Complainant was personal guarantor

and his assets which were mortgaged with SBI would be proceeded with, he was not in a position to deny the request made by VESPL to lend them the amount of Rs. 1,54,00,000 so as to enable them to pay the OTS installments to SBI. The said amount was paid by the Complainant to VESPL with the understanding that the same could be treated as a loan and therefore be repaid by VESPL to Complainant with interest. Further, to avoid making repayment to Complainant, VESPL converted his loan amount into equity without his consent. The said fraud was discovered by Complainant on 14.07.2015 when VESPL had sent the shareholding pattern to Complainant as on 31.03.2015.

- 6.5 He also stated that the Respondent did not even bother to check whether if the offer letter was addressed to Complainant, whether it was dispatched to him either by speed post/registered post and if there was any other proof to show that the offer letter was dispatched to Complainant or received by him.
- 6.6 That as per the Companies Act, 2013, if a Company cannot take the loan or deposit from any person other than the Director of the Company and VESPL has not reported any loan taken from Complainant in their books of accounts, this discrepancy should be reported by the Respondent.
- 6.7 The Complainant further submitted that in the year 2013, a term loan taken by VESPL became, a Non-Performing Asset (NPA) in the books of SBI and hence the bank initiated recovery proceedings against VESPL. The Complainant was one of the defendants as he was the personal guarantor for the term loan. Complainant agreed to settle the loan for Rs. 5,50,00,000 to be paid in five installments. VESPL was unable to arrange money in the stated time frame, they approached the Complainant in November 2014 and requested to lend amount of Rs 1,54,00,000 for repayment. The Complainant had remitted the amount only to avoid litigation against VESPL and to protect his credibility.
- 6.8 That VESPL had acknowledged that one of the Guarantors had remitted an amount of Rs. 55,00,000 directly to SBI towards partial settlement of One Time Settlement (OTS) with SBI. Thus, by dint of logic, the Guarantor ought to become the creditor of VESPL and the said amount ought to be treated as liability.

7. Brief facts of the Proceedings:

The details of the hearing fixed and held/adjourned in the said matter is given as under:

Particulars	Date of meeting	Status
1 st Time	02 nd May 2023	Part Heard and Adjourned
2 nd Time	18 th May 2023	Part Heard and Adjourned
3 rd Time	17 th July 2023	Adjourned at the request of the Complainant
4 th Time	18 th August 2023	Hearing concluded and decision taken

7.1 On the first hearing held on 02nd May 2023, the Respondent was present in person before it. Being first hearing of the case, the Respondent was put on oath. Thereafter, the Respondent was put on oath and the Committee enquired from him as to whether he is aware of the charges as contained in Para 2 above and the same were also read out. On the same, the Respondent replied that he is aware about the charges and pleaded 'Not Guilty' on the charges levelled against him. The Committee noted that the Complainant was not present and notice of listing of the case had been served upon him. The Committee asked the Respondent to make his submissions. The Respondent submitted that he had submitted his written submissions on 26th April 2023 before the Committee and stated that the matter had been settled amicably as per mutually agreed terms between the Complainant and the Company and accordingly, the instant Complaint had become infructuous. The Committee recorded the submissions of the Respondent and adjourned the matter to a later date. With this, the case was part heard and adjourned.

7.2 On the second hearing on 18th May 2023, the Committee noted that the Respondent was present in person while the Complainant was not present and notice of listing of the case, had been served upon him. Further, as per submissions made by the Respondent and documents brought on record during the last hearing in this case, that the matter had been settled amicably as per mutually agreed terms between the Complainant and the Company and accordingly, the instant Complaint had become infructuous. The Committee noted that the Secretariat had not received any such

communication/settlement from the Complainant. After considering the merits of the case and above submissions of the Respondent on record, the Committee deferred the matter with a view to extend one and final opportunity to the Complainant to appear before it and to substantiate the charges. The Committee was of the view that, if the Complainant does not appear in the next hearing as well, the matter be proceeded ex-parte. With this, the case was deferred to the next hearing.

7.3 On the third hearing on 17th July 2023, the Committee noted that the Respondent was present through Video conferencing mode, but due to some technical issues in internet connectivity, he could not participate in the meeting. On other side, the Complainant vide e-mail dated 17/07/2023 stated that he resides in Dubai due to work and cannot attend meeting physically. The Complainant further requested to grant him leave of absence for this time for present hearing and to give him another date of meeting which he could attend virtually. Acceded to the request of the Complainant, the Committee adjourned the case to a later date.

7.4 On the date of final hearing on 18th August 2023, the Committee noted that the Complainant was present through Video conferencing mode and the Respondent was present in person. The Committee noted that the Complainant appeared first time before it and was put on Oath. Further, the Committee directed the parties to make their submissions on merits of the case. The Complainant submitted that he had advanced an amount of Rs. 1.54 Crores to the Company towards repayment of loan to SBI under One Time Settlement against which, the Company had issued shares in his name without his consent and Respondent who was Statutory Auditor failed to qualify audit report for this discrepancy. Further, as per NCLT Order dated 01/01/2018, Hon'ble Tribunal had declared said allotment of shares to the Complainant null and void and had Ordered the Company to remit amount of Rs. 1.50 crores to the Complainant with 12% interest per annum. The Respondent submitted that the Company had produced all documents such as Board Resolution/ Bank statements which evidenced that the Right issue offer was opened, and the money was deposited in the Company's account through cheque/ Electronic Transfer by the Complainant.



7.5 After detailed deliberations, and on consideration of the facts of the case, various documents/material on record as well as oral submissions of both the parties before it, the Committee concluded hearing in the instant case.

8. Findings of the Committee

8.1 The Committee noted that the Complainant submitted that he is one of the shareholders of the Company and had also acted as Director from 2006 to 2011. The Company availed a term loan of Rs. 10 Crores from SBI on 31st March 2009 for which the Complainant stood as one of the personal guarantors. As the said loan became NPA in 2013, a one-time settlement was entered in to between the Company and the Bank on 5th August 2014. It is also noted that as per the Balance Sheet for the FY 2014-15 the loan outstanding was 6.51Crores from the Bank which has been repaid as at 31.03.2015 under specified OTS (Rs. 5.50 Crore was required to be repaid as full and final settlement) granted by the Bank. The Complainant stated that as the Company was not able to arrange the funds under One Time Settlement (OTS) within the specified time frame, they approached him in November 2014 to lend amount of Rs. 1.54 Crores to enable the Company to repay the instalments. Since the Complainant was the personal guarantor also, he did not deny the request of the Company. Accordingly, from December 2014 to March 2015, the Complainant transferred funds to the accounts of the Company on different dates totalling Rs. 1.54 Crores. The Complainant also mentioned that all the Directors including him had given their personal guarantees as well as he had also given part of his property to the bank as security.

8.1.1 The Committee noted that the Company has approved the offer of the 85,00,000 equity shares of Rs 10 each at par on right issue basis to all the existing shareholders on 18.12.2014. The issue was closed on 17.01.2015 and it was decided by the Board of Directors, upon the request of the shareholders that the excess funds be utilised for the payment of OTS to the lender, to allot the shares in lieu of subscription money received from the various shareholders.

8.1.2 Accordingly, the Company allotted the equity shares in two tranches i.e., first allotment of 46,69,222 equity shares for the amount of Rs 4,66,92,220/- was done
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on 24.01.2015 and second allotment of 37,56,011 equity shares for the amount of Rs 3,75,60,110/- was done on 31.03.2015. In the first tranche, 1,39,541 equity shares at Rs 10/- was issued to the Complainant and in second tranche 14,00,459 equity shares at Rs 10/-.

8.1.3 However, it is observed from the details of Bank transfer made by the Complainant that the Complainant had transferred the amount of Rs 67,50,000/- before/upto the date of allotment on 24.01.2015. It was noted from the resolution dated 31.03.2015 that the Company has received request from the shareholders that the excess funds be utilised for the payment of OTS to the lender. However, no such request letter from the Respondent has been brought on record before this Committee. Hence, this raises the suspicion on the content of the Board Resolutions and indicates that the amount of money from the Complainant has been received as loan rather than subscription money for the allotment of shares.

8.1.4 Here, it is relevant to mention that the Complainant has also brought on record the details of transfer made by him during December 2014 to March 2015, totalling Rs 1.54 crore. He also brought on record the copy of the bank Statement for the ICICI Bank Account of the Complainant. It was observed that majority of the transfers were reflecting in the specified Bank Statement provided by the Complainant. The details of the transfer as submitted by the Complainant is tabulated below.

S. No.	Date of Transactions	Mode	Amount
1	23.12.2014	RTGSICICR52014122300083718	Rs. 5,00,000/-
2	27.12.2014	RTGSICICR52014122700098343	Rs. 17,50,000/-
3	27.12.2014	RTGSICICR52014122700010382	Rs. 20,00,000/-
4	29.12.2014	RTGSICICR52014122900016304	Rs. 10,00,000/-
5	12.01.2015	RTGSICICR52015011200024061	Rs. 7,50,000/-
6	14.01.2015	RTGSICICR52015011400095100	Rs. 7,50,000/-
7	02.02.2015	RTGSICICR52015020200088465	Rs. 3,00,000/-

8	20.02.2015	RTGSICICR52015022000001139	Rs. 10,00,000/-
9	20.02.2015	RTGSICICR52015022000026361	Rs. 7,00,000/-
10	21.02.2015	RTGSICICR52015022100038917	Rs. 21,00,000/-
11	21.02.2015	RTGSICICR52015022100052535	Rs. 5,50,000/-
12	16.03.2015	CNRBR52015031600630553	Rs. 5,00,000/-
13	24.03.2015	NEFTICICOSFO002741248426	Rs. 5,00,000/-
14	24.03.2015	RTGSICICR52015032400090844	Rs. 15,00,000/-
15	25.03.2015	NEFT ICICOSFO002741780050	Rs. 6,00,000/-
16	26.03.2015	NEFTICICOSFO002742170401	Rs. 7,00,000/-
17	31.03.2015	NEFTICICOSFO002744592669	Rs. 2,00,000/-
18		Total	Rs.1,54,00,000/-

8.1.5 The Committee also noted the requirement of Section 62 of the Companies Act, 2013 in respect of the 'further issue of share capital' which states as under:

"62. Further issue of share capital.—

(1) Where at any time, a company having a share capital proposes to increase its subscribed capital by the issue of further shares, such shares shall be offered— (a) to persons who, at the date of the offer, are holders of equity shares of the company in proportion, as nearly as circumstances admit, to the paid-up share capital on those shares by sending a letter of offer subject to the following conditions, namely:—

(i) the offer shall be made by notice specifying the number of shares offered and limiting a time not being less than fifteen days and not exceeding thirty days from the date of the offer within which the offer, if not accepted, shall be deemed to have been declined;

(ii) unless the articles of the company otherwise provide, the offer aforesaid shall be deemed to include a right exercisable by the person concerned to renounce the shares offered to him or any of them in favour of any other person; and the notice referred to in clause (i) shall contain a statement of this right;

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(iii) after the expiry of the time specified in the notice aforesaid, or on receipt of earlier intimation from the person to whom such notice is given that he declines to accept the shares offered, the Board of Directors may dispose of them in such manner which is not disadvantageous to the shareholders and the company; (b) to employees under a scheme of employees' stock option, subject to special resolution passed by company and subject to such conditions as may be prescribed; or

(c) to any persons, if it is authorised by a special resolution, whether or not those persons include the persons referred to in clause (a) or clause (b), either for cash or for a consideration other than cash, if the price of such shares is determined by the valuation report of a registered valuer subject to such conditions as may be prescribed.

(2) The notice referred to in sub-clause (i) of clause (a) of sub-section (1) shall be despatched through registered post or speed post or through electronic mode to all the existing shareholders at least three days before the opening of the issue.

...."

8.2 The Committee also observed that the Respondent had brought on record the documents regarding the allotment of shares on 24.01.2015 which includes 'Letter of Offer' with Issue opening date 18.12.2014 and issue closing date as 17.01.2015 along with list of shareholders as on 18.12.2014, format of the blank Application form to be filled by the shareholder/applicant, form of renunciation to be filled by the shareholder/applicant along with the application by renounee(s) to be filled by the renounee(s). Although the Respondent has brought on record the copy of the acceptance letter by the other persons mentioned as shareholder namely K.V Vijya Lakshmi Kumari (for 12,082 shares), K.Seethayya (for 5,60,766 shares), Vestal School Pvt Ltd (for 39,36,223 shares). Further, with respect to the allotment made on 31.03.2015, the Respondent has brought on record the acceptance letter by the one of the persons mentioned as shareholder namely K.V.V Subba Rao (for 2,40,000 shares). However, he has failed to bring

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on record the acceptance letter issued by the Complainant (for 1,39,541 purported shares on 24.01.2015 and 14,00,459 purported shares on 31.03.2015) which also creates suspicion on the compliance of the Section 62 of the Companies Act, 2013 by the Company also.

- 8.3 The Committee noted that the Respondent in his defence had mentioned that *"There was nothing so special about the nature of a reserve requiring careful handling. Accountancy revolves around the concept of capital and/or revenue accounts."* The specified contention of the Respondent is not acceptable as para 4 of the Guidance note on Audit of Capital and Reserves' specifically requires as under: -

"The auditor in many audit engagements, particularly those relating to corporate entities, may find very few changes in the capital account and/ or reserve accounts. However, the transactions in the capital and reserve accounts are normally material in amount in addition to being significant in nature and, therefore, each transaction in these accounts requires careful attention..."

Hence, the respondent as statutory auditor was required to follow the Guidance Note issued by the ICAI for its members which help the members to perform their duties in more efficient manner. Further, the Respondent has not provided any documentary evidence which concludes that the Respondent has verified the Share Capital and checked the compliance of the Section 62 of the Companies Act, 2013 by the Company while performing his audit.

- 8.4 The Committee noted, as per order of NCLT, Hyderabad dated 01st January 2018 bearing C.P. No. 08/59/HDB/2017 in which the bench had declared the allotment of shares to the Complainant on 24th January 2015 and 31st March 2015 of M/s Vestal educational Services Pvt Ltd as null and void and directed that the amount of Rs. 1,50,00,000 (Rs. One crore and fifty lakhs only) be repaid by the Company with interest @12% p.a. calculated from 01st April 2015 till date of actual payment to the Complainant. The Committee also noted that aggrieved by the aforesaid

Order of the NCLT, M/s VESPL filed Company Appeal (AT) No. 65 of 2018 before Hon'ble NCLAT wherein the appeal of the appellant i.e. M/s VESPL was dismissed by the NCLAT and affirmed the decision of the NCLT vide its order dated 16th November 2018.

- 8.5 Considering the above, the Committee was of the view that the Complainant, in capacity of one of the guarantors of the loan, had paid the amount of Rs 1.54 crore to the Company to enable it to repay its loan taken from the Bank and the Company has utilised the same in allotment of equity shares to him without his consent and without complying with the relevant provisions of the Companies Act, 2013. The Respondent being the Statutory Auditor of the Company failed to exercise due diligence while auditing the issue of share capital made by the Company during the year as failed to bring on record any evidence to show that the allotment of shares to the Complainant was made with Complainant's consent i.e., request letter and acceptance letter by the Complainant. Hence, it is viewed that the Respondent has failed to exercise due diligence and adopted casual approach while performing his duties, as statutory auditor.
- 8.6 Therefore, the Committee held the Respondent **GUILTY** of Professional misconduct falling within the meaning of Clause (7) of Part – I of Second Schedule to the Chartered Accountants Act, 1949.
- 8.7 The Committee further examined the **next charge** against the Respondent that the amount of Rs. 55 Lacs (paid by one of the guarantors of the term loan to the bank in settlement of the loan of the Company) instead of showing it as liability, was recognized as gain and transferred to Capital Reserve account in the Balance Sheet of the Company as on 31-03-2015. The Committee observed that Note 2.24 of the financial statement that the loan was completely repaid by paying Rs 5,50,00,000 to the bank and stood at Nil as at 31.03.2015. Further, it is also mentioned therein that the gain/difference of Rs.1,56,14,591/- which includes Rs.55,00,000/- paid by one of the Guarantor directly to bank under OTS, have been transferred to Capital Reserve Account.

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8.8 Note 2.24 of the financial statement reads as follows:

"On request of the Company, the term loan outstanding of Rs. 6.51 Cr payable to Bank has been settled for Rs. 5.50 Cr towards principal amount under the One Time Settlement (OTS), which was sanctioned by the Bank on 05.08.2014. The Banks dues has paid under OTS within stipulated time and there is no liability of the Bank at the end of year. The gain/ difference on account of principal amount of term loan has been transferred to Capital Reserve account aggregating Rs. 1,56,14,591/- during the year, which includes Rs. 55,00,000/- paid by one of the Guarantors directly to Bank under OTS, which has been disputed by the Company."

8.9 The Committee also noted the Paragraph 8.3 of the Guidance Note on Schedule III has been noted as follows.

"8.3. Non-current liabilities

A liability shall be classified as current when it satisfies any of the following criteria:

- (a) it is expected to be settled in the company's normal operating cycle;*
- (b) it is held primarily for the purpose of being traded;*
- (c) it is due to be settled within twelve months after the reporting date; or*
- (d) the company does not have an unconditional right to defer settlement of the liability for at least twelve months after the reporting date. Terms of a liability that could, at the option of the counterparty, result in its settlement by the issue of equity instruments do not affect its classification.*

All other liabilities shall be classified as non-current.

Based on the above definitions, on the face of the Balance Sheet, the following items shall be disclosed under non-current liabilities.

- Long-term borrowings;*
- Deferred tax liabilities (Net);*
- Other Long-term liabilities;*
- Long-term provisions."*

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- 8.10** The Committee also noted that when the Guarantor has paid the money on behalf of the Company, it should have been reflected under the Liabilities (Amount Payable) by the Company. As per the above mentioned guidelines issued by the Paragraph 8.3 of the Guidance Note on Schedule III instead of treating it as gain on account of difference on account of principal amount of term loan and repayment. Hence, the contention that a guarantor has to fulfil its obligation in independent capacity is not acceptable.
- 8.11** From the perusal of the Note 2.14 {(Contingent liabilities and Commitments (to the extent not provided for))}, it is noted that the said amount of Rs 55 lakhs have been paid by the Annapurna Gardens Private Limited/AGPL and the AGPL has claimed such amount in Petition filed against the Company before the High Court. The Respondent has also stated at PFO stage that, the Company had not acknowledged the claim of Rs. 55 lacs in its books of accounts and therefore a gain of this amount took place as the Company paid Rs. 4.95 Crores only from its resources. The said contention is also contradictory as the Respondent on one side is stating that the said amount has been recognised at Rs 55 lakhs under the Capital Reserve and on the other side the Respondent is stating that the said amount has not been recognised in the books and appearing as contingent liability. The Committee noted as per the Guidance Note on Terms Used in Financial Statements the expression 'capital reserve' is defined as "a reserve of a corporate enterprise which is not available for distribution as dividend". Hence, it is viewed that the Respondent has failed to give any justifiable answer in this regard as to how the payment made by the guarantor has been treated as gain and transferred to Capital Reserve Account.
- 8.12** Accordingly, the Committee was of the view that the Respondent has failed to point out the above specified inappropriate treatment which has the effect of absolving the Company of its liability to pay to the Complainant and in turn dissolving the rightful claim of the Complainant from the books of accounts of the Company. Thus, the Committee was of the view that the Respondent has not only failed to act diligently but has also failed to disclose a material misstatement

known to him to appear in the Financial Statements of the Company with which he was concerned in the professional capacity.

- 8.13 Therefore, the Committee held the Respondent **GUILTY** of Professional misconduct falling within the meaning of Clauses (6) and (7) of Part – I of Second Schedule to the Chartered Accountants Act, 1949.

9 **Conclusion**

In view of the findings arrived at as stated in above paras, vis-a-vis material on record, the Committee gives its charge wise findings as under:

Charges as per PFO	Findings	Decision of the Committee
Para 2.1 as above	Para 8.1 to 8.6 as above	Guilty - Clause (7) of Part I of Second Schedule
Para 2.2 as above	Para 8.7 to 8.13 as above	Guilty - Clause (6) and Clause (7) of Part I of Second Schedule

- 10 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 Clause (6) and (7) Part – I of Second Schedule to the Chartered Accountants Act, 1949.

Sd/-

(CA. RANJEET KUMAR AGARWAL)
PRESIDING OFFICER

Sd/-

(SHRI JIWESH NANDAN, I.A.S. {RETD.})
GOVERNMENT NOMINEE

Sd/-

(MS. DAKSHITA DAS, I.R.A.S.{RETD.})
GOVERNMENT NOMINEE

Sd/-

(CA. MANGESH P KINARE)
MEMBER

Sd/-

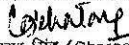
(CA. COTHA S SRINIVAS)
MEMBER

DATE: 05/02/2024

PLACE: New Delhi

Shri L.V. N. Muralidhar, Hyderabad -Vs- CA. Dharendra Datta (M.No.080097)

सही प्रतिलिपि होने के लिए प्रमाणित
Certified to be true copy


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कार्यकारी अधिकारी / Executive Officer
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