



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-I (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/128/2016/DD/189/2016/DC/1442/2021]

In the matter of: -

Purushottam Das Tulsyan,
136, Jodhpur Park,
Kolkata (West Bengal) - 700068

.....Complainant

-Vs-

CA. Bal Chandra Khaitan, (M. No. 017387),
M/s. Agarwal Gupta Nokari & Rustagi Associates,
12, Waterloo Street,
3rd Floor,
Kolkata (West Bengal) – 700069

.....Respondent

MEMBERS PRESENT: -

CA. Charanjot Singh Nanda, Presiding Officer
Shri Jugal Kishore Mohapatra, IAS (Retd.) (Government Nominee)
CA. Chandrashekhar Vasant Chitale, Member
CA. Gyan Chandra Misra, Member

Date of Hearing : 2nd April 2024

Date of Order : 26.06.2024

1. That vide findings 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 noted that) CA. Bal Chandra Khaitan, (M. No. 017387) (hereinafter referred to as the Respondent") was held GUILTY of professional misconduct falling within the meaning of Item (5), (6) & (7) of 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 communication was



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addressed to him thereby granting opportunity of being heard in person / through video conferencing and to make written & verbal representation before the Committee on 2nd April 2024.

3. The Committee noted that on the date of the hearing held on 2nd April 2024, the Respondent was present through video conferencing, and he made his verbal submission on the findings of the Disciplinary Committee.

4. In his verbal submission the Respondent inter alia requested Committee to take a lenient view on him.

5. The Committee considered the reasoning as contained in the findings holding the Respondent Guilty of professional misconduct vis-à-vis verbal submissions of the Respondent.

6. Keeping in view the facts and circumstances of the case, material on record including verbal/ written submissions of the Respondent on the findings of the Committee, the Committee is of the view that the professional misconduct on the part of the Respondent is established. Accordingly, the Committee ordered that a fine of Rs. 5,000/- (Rupees Five Thousand only) be imposed upon the Respondent i.e. CA. Bal Chandra Khaitan, (M. No. 017387) to be paid within 90 days of receipt of the Order. If the Respondent fails to pay the fine within the stipulated period, his name be removed from the Register of Member for a period of thirty days.

Sd/-

(CA. CHARANJOT SINGH NANDA)
(PRESIDING OFFICER)

Sd/-

(SHRI JUGAL KISHORE
MOHAPATARA), I.A.S. (RETD.),
(GOVERNMENT NOMINEE)

Sd/-

(CA. CHANDRASHEKHAR VASANT
CHITALE)
(MEMBER)

Sd/-

(CA. GYAN CHANDRA MISRA)
(MEMBER)

DATE: 26.06.2024

PLACE: New Delhi

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

निशा शर्मा / Nisha Sharma

वरिष्ठ 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

ICAI Bhawan, Vishwas Nagar, Shahdra, Delhi-110032

CONFIDENTIAL

DISCIPLINARY COMMITTEE BENCH – I (2023-2024)

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

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

File No.: [PR/128/2016/DD/189/2016/DC/1442/2021]

In the matter of:

Shri Purushottam Das Tulsyan
136, Jodhpur Park,
Kolkata – 700068

.....Complainant

Versus

CA. Bhal Chandra Khaitan, Partner (M. No. 017387)
M/s. Agarwal Gupta Nokari & Rustagi Associates (FRN 310041E)
12, Waterloo Street,
3rd Floor, Kolkata - 700069

.....Respondent

MEMBERS PRESENT: -

- i) CA. Aniket Sunil Talati, Presiding Officer
- ii) Shri Prabhash Shankar, IRS (Retd.), (Government Nominee)
- iii) CA (Dr). Rajkumar Satyanarayan Adukia, Member
- iv) CA. Gyan Chandra Misra, Member

DATE OF FINAL HEARING : 31-10-2023
PLACE OF FINAL HEARING : New Delhi / Through Video Conferencing

PARTIES PRESENT:

Respondent : CA. Bhal Chandra Khaitan
Counsel for the Respondent : CA. A P Singh & CA. Utsav Hirani

1- BACKGROUND OF THE CASE-

The Respondent was the Statutory Auditor of Basukinath Food Processors Limited (hereinafter referred to as the "Company") for the financial years 2010-11, 2011-12, 2012-13 and 2013-14. The Complainant has alleged that the Respondent was negligent in the conduct of his professional duties as the financial statements and audit report contained misstatements & mistakes which were in contravention of Accounting Standards & Audit Standards prescribed by the ICAI. The Complainant was a director in the Company till 20/08/2013 and as per the Order/ Judgement passed by Hon'ble High Court of Calcutta dated 01/08/2011, a Scheme of Amalgamation was accepted and 5 Companies were merged/ amalgamated including the aforesaid Company and accordingly, all the financials were clubbed as per scheme of amalgamation.

2- CHARGES IN BRIEF:

The Complainant has alleged twelve allegations in total, out of which nine allegations have been dropped by the Director (Discipline) at the time of framing prima facie opinion however, the Respondent was held prima facie guilty in respect of following three allegations: -

(i) Allegation no. 4

The Complainant has alleged that the Respondent under Para 15 of CARO reporting for financial year 2013-14 has reported that the Company has not given any guarantee for loan taken by others from banks etc. but Note 6.16 of the Balance Sheet clearly mentions that the Company has issued a corporate guarantee in favor of Axis Bank for loans taken by farmers. The Complainant has alleged that the same tantamount to be misreporting on the part of Respondent.

(ii) Allegation no. 5

It is stated that certain Companies were merged with the subject Company vide High Court order and the merger was done under the purchase method as disclosed vide Schedule 23H attached to the audited accounts for 2010-11 and clause 12.3 of the Scheme of Merger mentions that any reserves arising from this merger would be treated as a Capital Reserve. Paragraph 37 of AS-4 also requires such an accounting policy. However, the Complainant has alleged that in the accounts of the Company, such reserves arising from the merger has not been shown as a Capital Reserve, instead it has been shown under General Reserve and has even been used to charge a portion of the depreciation but the Respondent in his auditor's report is silent on such accounting treatment.

(iii) Allegation no. 6

The Complainant stated that the grant-in-aid shown in the Note 5 of the Balance Sheet was received by the Company during 2011-12 and as per Note 3 and Note 1H(a) of notes to accounts for the year 2011-12, such grant is recognised in the Profit and Loss account in five years presuming that the life of fixed assets against which such grant is received is also five years. However, from the rates of depreciation given in Note 10 to the accounts for 2011-12, it is very clear that the useful life of such fixed assets is more than five years. Thus, the Complainant has alleged that the policy of transferring 1/5th of the grant-in-aid to Profit and Loss account is against Paragraph 14 of AS-12 but and the Respondent's report is silent on this aspect.

3- BRIEF FACTS OF THE PROCEEDINGS:**(i) Brief of the final hearing held on 31st Oct 2023**

At the outset of the hearing, the Committee noted that the Complainant was not present. The Respondent along with his Counsel was present. Thereafter, the Counsel for the Respondent made their detailed submissions on the allegations. The Committee also posed questions to the Counsels for the Respondent. After hearing the submissions, the Committee decided to conclude the hearing in the said matter.

(ii) Brief of the hearing held on 14th Sept 2023

At the outset, the Committee noted that the Counsel of the Respondent was present through VC. Thereafter, the Counsel for the Respondent pleaded not guilty and requested to adjourn the case, being the first hearing. The Committee acceded to his request and decided to adjourn the hearing in the matter. With this, the hearing in the matter was **part heard & adjourned**.

4- SUBMISSIONS / PLEADINGS OF PARTIES AND FINDINGS OF THE COMMITTEE:

- 4.1 The first allegation on which the Respondent was held prima facie guilty is about misreporting in CARO with respect to guarantees given to bank for the loan taken by the farmers.
- 4.1.1 In respect of instant allegation the Respondent in his submissions has stated following:-




- It is the responsibility of the management to prepare the books of accounts and that the Complainant was himself a director of the subject Company who has also signed financial statement of the Company.
- That the Company is in the business of food processing and providing related services to the farmers and other individuals. This Company worked as a nodal agency to disburse loans to the farmers, which were received from the banks and whatever loan that was disbursed to the farmers was considered to be the part of company's own loans and such liability was recorded in the books of accounts.
- That Guidance note on revised schedule VI does not require disclosure of its the guarantees which are given by the company on its own behalf for performance of its own business.

4.1.2 On perusal of documents on record the Committee noted that said loans was recorded by the Company as its own liability in the books of the Company and that it was not shown as third-party liabilities. Further, that such accounting treatment was approved by the management of the Company and the Respondent being an auditor cannot be held responsible for the accounting treatment adopted by the Company. The Committee further noted that though there may be some presentation and disclosure error however, no material misstatement can be attributed on the part of Respondent and accordingly the Respondent may be granted benefit for slight deviation in the proper disclosure requirement but since there is no gross negligence, the Respondent was held **Not Guilty** of professional misconduct on this allegation.

4.2 The next allegation on which the Respondent was held prima facie guilty is about improper disclosure and treatment of reserve arising on account of amalgamation. The Complainant has alleged that the Company has shown Amalgamation Reserve under the head General Reserve whereas it should have been shown as Capital Reserve. Further the such Amalgamation Reserve has also been used to charge a portion of depreciation.

4.2.1 In this connection, the Respondent in his submission has stated that the merger had taken place on the basis of purchase price method and reserve arising on account of amalgamation should ideally have been classified as a Capital Reserve, but the management decided to keep it as a General Reserve as they believe it to be the profit that was earned on amalgamation and which was available for their use and accordingly they adjusted depreciation from this particular reserve.

- 4.2.2 The Committee noted that AS-14 provides for treatment of reserve arising on amalgamation as Capital Reserve. The relevant para reads as under: -

"Any excess of the amount of the consideration over the value of the net assets of the transferor company acquired by the transferee company should be recognised in the transferee company's financial statements as goodwill arising on amalgamation. If the amount of the consideration is lower than the value of the net assets acquired, the difference should be treated as Capital Reserve."

On perusal of documents on record the Committee observed that excess/profit on amalgamation has though been shown separately as Amalgamation Reserve but the same is shown under the heading "General Reserve Fund". Further, as per requirement of Schedule VI to the Companies Act, 1956, Capital Reserve is required to be disclosed separately under the heading "Capital Reserve" but in the instant case the Committee noted that the reserve arising on amalgamation though named as amalgamation reserve, has been shown under the category of General Reserve Fund.

The Committee also noted that the requirement of AS-14 and Schedule VI of the Companies Act, 1956 was not complied with by the Company despite the fact that the amount of such reserve being material. The Committee also noted that apart from showing such reserve under General Reserve, the Company also utilized such reserve for charging depreciation, but the Respondent failed to report such accounting treatment and non-compliance in his audit report. Accordingly, the Respondent was held **Guilty** of Professional Misconduct under this allegation.

- 4.3 The next allegation wherein the Respondent was held prima facie guilty by Director (Discipline) is regarding unproportionate recognition of grant-in-aid by the Company.

4.3.1 In respect of instant allegation, the Respondent has submitted that management of the Company decided to charge 1/5th of the total amount received as Grant-in-aid to the Profit and Loss account of the Company and the Grant-in-aid cannot be linked to exact rate of depreciation as this aid was provided to give support of the costs that would escalate when cold chain would be established.

4.3.2 The Committee on perusal of Para no. 8.4 of AS-12 on "Accounting for Government Grants", viewed that grants related to depreciable assets are treated as deferred income which is recognised in the Profit & Loss statement on a systematic and rational basis over the useful life of the Asset.

AS

[Signature]

Such allocation to income is usually made over the periods in the proportions in which depreciation on related Assets is charged. In the instant matter, the Company has recognised 1/5 of the grant received as income in the year of receipt and balance was shown under Reserve & Surplus. The Committee noted that though there was slight divergence on the accounting treatment adopted by the Company, however, the policy to transfer 1/5th of such grant has been clearly disclosed in the Note 1H (a) to the notes to accounts and hence the same does not tantamount to a gross negligence. Accordingly, the Committee decided to hold the Respondent **Not Guilty** on this allegation.

5. **CONCLUSION:**

In view of above noted facts and discussion, in the considered opinion of the Committee, the Respondent is **GUILTY** of Professional Misconduct falling within the meaning of Item (5), (6) and (7) of Part-I of Second Schedule to the Chartered Accountants Act, 1949.

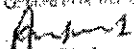
Sd/-
(CA. Aniket Sunil Talati)
PRESIDING OFFICER

Sd/-
(Shri Prabhash Shankar, I.R.S. (Retd.))
GOVERNMENT NOMINEE

Sd/-
CA (Dr). Rajkumar Satyanarayan Adukia
MEMBER

Sd/-
(CA. Gyan Chandra Misra)
MEMBER

DATE: 11.02.2024
PLACE: NEW DELHI

श्री
Created by the member

श्री राज कुमार / Rajkumar Satyanarayan
वरिष्ठ कार्यकारी अधिकारी, / Sr. Executive Officer
अनुशासनसमक निदेशालय / Disciplinary Directorate
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