

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

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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.

In the matter of:

The Chief Manager, Stressed Assets Management Branch (II), State Bank of India, Mumbai

-Vs-

CA. Dinesh Gopalrao Malpathak, (M.No. 006427), Nashik
[PR-310/13-DD/49/2014/DC/514/2017]

MEMBERS PRESENT:

CA. Atul Kumar Gupta, Presiding Officer,
Shri Rajeev Kher, IAS (Retd.), Government Nominee,
CA. Rajendra Kumar P, Member,
CA. Chandrashekhar Vasant Chitale, Member

1. That vide report dated 08.02.2018, the Disciplinary Committee was of the opinion inter-alia that **CA. Dinesh Gopalrao Malpathak (M.No.006427)** (hereinafter referred to as the "Respondent") was **GUILTY** of professional misconduct falling within the meaning of Clauses (7) and (9) of Part I of the Second Schedule to the Chartered Accountants Act, 1949.

2. That pursuant to the said report, an action under Section 21B (3) of the Chartered Accountants (Amendment) Act, 2006 was contemplated against the Respondent and communications dated 6th December, 2018 and 14th May, 2019 were addressed to him thereby granting an opportunity of being heard in person and/or to make a written representation before the Committee.

3. The Committee noted that on 30th May, 2019, the Respondent was neither present nor there was any communication from him about adjournment of hearing. The Committee noted that the Respondent vide his letter dated 23rd May, 2018 and e-mail dated 18th December, 2018 made his written representations on the findings of the Disciplinary Committee.

4. The Committee noted that the Respondent in his written representations reiterated his earlier submissions as made in the matter. The Respondent stated that the alleged lapse on which he has been held guilty is rather technical in nature. No fact was suppressed or concealed by him.

5. The Committee considered the reasoning (s) as contained in paras no.1 to 7 of the Disciplinary Committee report, holding the Respondent Guilty of professional misconduct.



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6. The Committee considered the findings as contained in the Report along with written representations of the Respondent.

7. Keeping in view the facts and circumstances of the case, material on record and written representations of the Respondent submitted before it, the Committee ordered that the name of the Respondent i.e. CA. Dinesh Gopalrao Malpathak (M.No.006427) be removed from the Register of Members for a period of 6 months (Six months) and a fine of Rs.1,00,000/- (Rupee One Lakh only) (excluding taxes, if any) be imposed upon the Respondent i.e. CA. Dinesh Gopalrao Malpathak (M.No.006427) to be paid within 30 days of receipt of this order.

[Handwritten mark]

Sd/-
(CA. ATUL KUMAR GUPTA)
PRESIDING OFFICER

Sd/-
(SHRI RAJEEV KHER)
GOVERNMENT NOMINEE

Sd/-
(CA. RAJENDRA KUMAR P)
MEMBER

Sd/-
(CA. CHANDRASHEKHAR VASANT CHITALE)
MEMBER

DATE: 30.05.2019

PLACE : Mumbai

Certified Copy
[Signature]
Ajay Kumar Jain
Deputy Secretary
Disciplinary Directorate
The Institute of Chartered Accountants of India
ICAI Bhawan, I.P. Marg, New Delhi-110 002

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[PR-310/13-DD/49/2014]-DC/514/2017]

CONFIDENTIAL

DISCIPLINARY COMMITTEE [BENCH – II (2017-2018)]

[Constituted under Section 21B of the Chartered Accountants (Amendment)
Act, 2006]

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-310/13-DD/49/2014]-DC/514/2017]

In the matter of:

The Chief Manager
Stressed Assets Management Branch (II)
State Bank of India, Raheja Chambers
B-Wing, Ground Floor
Free Press Journal Marg
Nariman Point
Mumbai – 400 021. **Complainant**

-vs.-

CA. Dinesh Gopalrao Malpathak (M. No. 006427)
1, Vatsala Niwas
Gole Colony
Near Gupte Hospital
Nashik – 422 002. **Respondent**

MEMBER PRESENT:

CA. Naveen ND Gupta, Presiding Officer
Shri Amit Chatterjee, Government Nominee
Mrs. Bindu Agnihotri, Government Nominee
CA. Sanjay Kumar Agarwal, Member
CA. Manu Agarwal, Member

DATE OF FINAL HEARING : 07.11.2017

PLACE OF FINAL HEARING : ICAI, BKC, MUMBAI

PARTIES PRESENT:

Complainant : Shri Rajendra U. Dahat, Assistant General Manager,
State Bank of India with Mrs. Shobha Anil
Chaudhary, Deputy Manager, State Bank of India
Respondent : CA. Dinesh Gopalrao Malpathak
Counsel for Respondent : Advocate S. G. Gokhale



CA. Dinesh Gopalrao Malpathak (M. No. 006427)

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Finding of the Committee


1. The Committee noted that charge against the Respondent is that M/s. R. S. Luth Education Trust, Nashik availed loans from State Bank of India (SBI) and also from Punjab National Bank (PNB) while these loans are reflecting in the Audited Statements of the Trust as on 31.03.2010, these liabilities are not shown in the audited statements as on 31.03.2011. On the other hand, the Trust has shown some amounts as receivable from the Banks on the basis of a suit filed by them in the Civil Court, Nashik, on which the Banks are contesting and no final Order is passed by the Court. Hence, the Statement of Accounts of the Trust as on 31.03.2011 prepared by the Trust and certified by the Respondent do not reflect the true and correct position of the accounts of the Trust.

2. The Committee heard the submissions of the Respondent and duly considered various documents made available on record by both the Informant and the Respondent.

3. In respect of said charge, the Committee observed that explanatory disclosures have been given in the Notes to the Balance Sheet as on 31.03.2011 of R.S. Luth Education Trust, Nasik. Specific disclosures which have been made in Notes E, F, and G are reproduced here as under:-

" (E) The trust has filed suit in Nashik Civil Court No. 192/2011 Date 02.03.2011 against State Bank Of India, Mumbai and Punjab National Bank, Mumbai for redemption of mortgage and claim for damages amounting to Rs.549.68 Crores. The claim includes damages incurred up to F.Y.2010-11 to the tune of Rs. 238.83 Crores, and future projected revenue losses to an extent of Rs.220.85 Crores. This claim amount includes future revenue damages/ losses till F.Y. 2014-15.

(F) In the books of accounts of F.Y. 2010-11 the claim amount Rs.238.83 Crores is credited to Reserve & Surplus under the Head "Claim – Damages Recovery from banks". The Trust has adjusted and set off the loan amounts as on 31.03.2010 of SBI and PNB amounting to Rs. 84.64 Crores against its claim for damages, the balance amount recoverable from banks as on 31.03.2011 of Rs.154.19 Crores is shown in Balance Sheet. Provision for interest recoverable on the balance dues from banks is not recognized in the Income and Expenditure A/c as the said Income shall accrue only after receipt of the moneys on the decision of Hon'ble Civil Court, Nashik or any other Court. State Bank Of India and Punjab National Bank are defending the above suit and have also filed counter suit against the Trust in Debt Recovery Tribunal (D.R.T Mumbai) for recovery of the entire loan advanced by these banks and interest amount.


CA. Dinesh Gopalrao Malpathak (M. No. 006427)

Summary of adjustments for above mentioned suit:-

I. Losses already incurred till 31st March, 2011

A. Losses Claimed in Civil Suit

S.no.	Particular	SBI	PNB	Total
1	Short fall in Cash Profit	780884291	601450119	1382334410
2	Cost Escalation	637411979	195622584	833034563
3	Differential Interest	148876167	24083405	172959572
	Total Claim till 31.3.2011	1567172437	821156108	2388328545

B. Less:

Loan Amount as on 31.03.2010 adjusted above claim.

1	Term Loan	467675973	171666333	639342306
2	FITL	173560188	33520616	207080804
	Total Loan	641236161	205186949	846423110
C.	Balance Losses Recoverable as on 31.3.2011	925936276	615969159	1541905435

II. Claim for Projected Short Fall in Future Years

(Figures in Crores)

Sr. No	Particular	SBI	PNB	Total
1	2011-12	26.87	29.86	56.73
2	2012-13	27.67	26.38	54.05
3	2013-14	34.37	25.16	59.53
4	2014-15	37.68	12.86	50.54
		126.59	94.26	220.85

(G) Lender banks appointed Chartered Engineers who also submitted their reports from time to time to the bankers regarding the project, cost and time over runs, revenue losses etc. These

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reports and the Project Reports submitted by the Trust at the time of applying for loans also form the basis of calculations of damages.

4. The Committee also noted that as per Para 32 of AS-29 "Provisions, Contingent Liabilities and Contingent Assets", *Contingent assets are not recognised in Financial Statements since this may result in the recognition of income that may never be realised. However, when the realisation of income is virtually certain, then the related asset is not a contingent asset and its recognition is appropriate.*

5. In view of above noted accounting treatment and AS-29, the Committee was of the view that said Income shall accrue only after the decision of Hon'ble Civil Court, Nashik or any other Court in favour of the Trust. However on perusal of papers available on record, Court judgement has not been delivered in favour of trust and so it was not appropriate to bring claim amount in the books of trust as there was no virtual certainty regarding acceptance of claim of trust by the Court and hence the Respondent should not have accepted the treatment of bank loans setoff in the books of accounts of the Trust.

Moreover, in view of documents dated 26/09/2017 brought on record by the Complainant, it is noted that in notes to accounts for Financial Year 2015-2016, the Respondent has stated that "

The Trust has filed suit in Nashik Civil Court No. 192/2011 dated 2nd March 2011 against State bank of India, Mumbai and Punjab National Bank, Mumbai for redemption of mortgage and claim for damages amounting to R. 459.68 Crores. The claim includes damage incurred up to F.Y. 2014-15 to the tune of Rs. 459.68 Crores. The Hon'ble Civil Judge, Senior Division, Nashik has framed and decided the Preliminary issue of jurisdiction in favor of R.S Luth Education Trust on 28th March, 2013. At the instance of the Banks the Hon'ble High Court by a judgment and order, dated August 12, 2015 remanded the matter back to the Hon'ble Civil Judge Senior Division, Nashik for fresh determination. The Hon'ble Civil Judge, Senior Division, Nashik by his judgment and order dated December 12, 2015 held that the Civil Court has no jurisdiction to hear and try the Civil Suit. R.S Luth Education Trust has preferred First Appeal No. 109 of 2016 against the said judgment and order of the Hon'ble Civil Judge, Senior Division, Nashik in High Court, Mumbai and the said First Appeal has been admitted on August, 24 2016. The same is presently adjourned for hearing on October 18, 2016.

In the books of accounts of F.Y. 2010-11. The claim amount of Rs. 238.83 Cr. is credited to Reserve & Surplus under the head "Claim Damages Recovery from banks". The trust has adjusted


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and set off the loan amounts as on 31/2/2010 of SBI and PNB amounting to total Rs. 84.64 Cr. against its claim for damages and the balance amount recoverable from banks as on 31.03.2011 of Rs. 154.19 Cr. is shown in balance sheet as per following table. In F.Y. 2011-12, the claim amount of Rs. 56.73 Cr. is credited to Reserve and Surplus under the head "Claim-Damages Recovery from bank" and the same is also added in the balance amount recoverable from bank as on 31/3.2012. In F.Y. 2012-13, the claim amount of Rs. 54.05 Cr. is credited to Reserve and Surplus under the head "Claim- Damages Recovery from banks" and the same is also added in the balance amount recoverable from bank as on 31/03/2013.

From the above, it is clearly coming out that in year 2015, the Court has rejected the claim of Trust and the Trust has filed an Appeal against this order.

6. Further, on perusal of Balance sheet of the Trust for the financial year ending 31st March,2010 it is noted by the Committee that under the head "Loan from others", the loan from SBI and PNB Mumbai are appearing but same has been made nil in the Balance sheet for financial year ending 31st March,2011. In notes to account of the Trust for the financial year 2010-11, the Respondent has mentioned that Rs. 84.64 crores has been adjusted against claim for damages but the Committee was of the view that mere giving the explanations/disclosures in notes to accounts was not sufficient and the Respondent should have qualified his audit report in this regard in view of above facts he should have not accepted this accounting treatment adopted by the Trust especially when the matter was sub-judice and there was no clear certainty of acceptance of claim of damages of the Trust by the Court against the banks and accordingly, he should have qualified his audit report since the amount of loan was material.

7. Further the Committee observed that Balance Sheet for Financial Year 2010-2011 was signed on 29/09/2011, however, in view of above said facts, it is clear that appeal of the Trust was not decided in favour of the Trust till date of signing of Audit Report by the Respondent. In view of these noted facts, it is thus clear that the Respondent has accepted wrong treatment adopted by the Trust in respect of the loans taken by it from the concerned Banks whereby the Trust has wiped off the amounts payable to the Bank as damages to be receivable as per claims made in Hon'ble Court. The Respondent under such circumstances should have clearly given a qualified report for such a treatment being made considering that the matter is under litigation.


CA. Dinesh Gopalrao Malpathak (M. No. 006427)

Conclusion

8. Thus in the considered opinion of the Committee, the Respondent is **GUILTY** of professional misconduct falling within the meaning Clauses (7) and (9) of Part I of the Second Schedule to the Chartered Accountants Act, 1949.

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Sd/-
(CA. NAVEEN ND GUPTA)
PRESIDING OFFICER

Sd/-
(SHRI AMIT CHATTERJEE)
GOVERNMENT NOMINEE

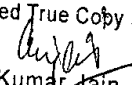
Sd/-
(Mrs. BINDU AGNIHOTRI)
GOVERNMENT NOMINEE

Sd/-
(CA. SANJAY KUMAR AGARWAL)
MEMBER

Sd/-
(CA. MANU AGARWAL)
MEMBER

DATE : 08th February, 2018

PLACE : New Delhi

Certified True Copy /

Ajay Kumar Jain
Assistant Secretary
Disciplinary Directorate
The Institute of Chartered Accountants of India
ICAI Bhawan, I.P. Marg, New Delhi-110 002