



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.

In the matter of:

Sh. Shanta Prasad Chakravarty

-Vs-

CA. Rajendra Chandra Sharma (M. No. 052029),

Dibrugarh

[PR/49/2019/DD/78/2019/DC/1511/2021]

Members present:

- i) CA. Charanjot Singh Nanda, Presiding Officer
- ii) Shri Jugal Kishore Mohapatra, IAS (Retd.) (Government Nominee)
- iii) CA. Gyan Chandra Misra, Member

Date of Hearing : 14.05.2024

Date of Order : 20.08.2024

1. That vide findings dated 28-11-2023 under Rule 18(17) of the Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007, the Committee noted that **CA. Rajendra Chandra Sharma (M. No. 052029)**, (hereinafter referred to as the **Respondent**) was held **GUILTY** of professional misconduct falling within the meaning of item (7) & (8) of Part I of the 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 dated 03-05-2024 was addressed to him thereby granting opportunities of being heard in person / through video conferencing and to make written & verbal representation before the Committee on 14-05-2024.

Sh. Shanta Prasad Chakravarty, -Vs- CA. Rajendra Chandra Sharma (M. No. 052029), Dibrugarh



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3. The Committee noted that the Respondent was present through Video conferencing. The Respondent made his verbal submissions on the findings of the Disciplinary Committee. The Committee considered the reasoning as contained in findings holding the Respondent Guilty of Professional misconduct vis-à-vis written and oral submissions of the Respondent.

4. The Committee thus viewed that the Professional misconduct on the part of the Respondent has been established within the meaning of item (7) & (8) of Part I of Second Schedule to the Chartered Accountants Act, 1949.

5. Keeping in view the facts and circumstances of the case, submission of the Respondent on record and based on the findings of the Committee, the Committee ordered that, the Respondent, CA. Rajendra Chandra Sharma (Membership No. 052029) be reprimanded and also imposed a fine of Rs. 50,000/- (Rupees Fifty Thousand only) upon him to be paid within 90 days of receipt of this Order. The Committee also ordered that if the Respondent fails to pay the fine within the stipulated period as aforesaid, his name be removed from the Register of Members for a period of 30 days.

Sd/-

CA. CHARANJOT SINGH NANDA
(PRESIDING OFFICER)

Sd/-

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

Sd/-

(CA. GYAN CHANDRA MISRA)
(MEMBER)

DATE: 20.08.2024
PLACE: New Delhi

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

नीलम पुंडीर / Neelam Pundir
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, विश्वविद्यालय रोड, बंगलूरु - 560032
ICAI Bhawan, Vishwavidyalaya Road, Bangalore - 560032

Sh. Shanta Prasad Chakravarty, -Vs- CA. Rajendra Chandra Sharma (M. No. 052029), Dibrugarh

Shanta

CONFIDENTIAL

DISCIPLINARY COMMITTEE [BENCH – I (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

Ref. No. – [PR/49/2019-DD/78/2019/DC/1511/2021]

In the matter of:

Sh. Shanta Prasad Chakravarty
T R Phukan Road, Chiring Chapari,
Dibrugarh – 786001

.....Complainant

Versus

CA. Rajendra Chandra Sharma (Membership No. 052029)
Bagamber Nilamoni,
Phukan Path, New Market,
Dibrugarh – 786001

.....Respondent

MEMBERS PRESENT: -

- i) Sh. Jugal Kishore Mohapatra, IAS (Retd.) (Government Nominee),
Presiding Officer, Through Online Mode**
- ii) Shri Prabhash Shankar, IRS (Retd.), (Government Nominee)**
- iii) CA (Dr). Rajkumar Satyanarayan Adukia, Member**

DATE OF FINAL HEARING : 14-09-2023
PLACE OF FINAL HEARING : New Delhi / Through Video Conferencing

Sh. Shanta Prasad Chakravarty -Vs- CA. Rajendra Chandra Sharma (M. No. 052029), Dibrugarh

Parties Present:

Respondent : CA. Rajendra Chandra Sharma
Counsel for the Respondent : Adv. Devaraj Sahu

1- BRIEF OF THE DISCIPLINARY PROCEEDINGS HELD ON 14.09.2023: -

On the day of hearing, the Committee noted that the Complainant was not present, however, the Respondent along with his Counsel was present. Thereafter, the Counsel for the Respondent made his detailed submissions on the allegation. The Committee also posed questions to the Counsel for the Respondent. After hearing the submissions of the Counsel, the Committee decided to conclude the hearing in the above matter. With this, the hearing in the matter was **concluded and the Judgement was kept reserved.**

2- BRIEF BACKGROUND OF THE MATTER: -

In the instant case, the Complainant is reported to have a shareholding of 6.29% of the total shareholding of a Private Limited Company namely, M/s Bochapathar Tea Estate Pvt. Ltd. (hereinafter referred to as the "**Company**") as on 31st March 2016. The Complainant has raised several allegations against the Respondent, who was the Statutory Auditor of the Company for FY 2015-16.

3- CHARGES IN BRIEF: -

The Complainant has levelled following allegations against the Respondent:

- (i) Under Para 5 (a) of the Auditor's Report for the financial year ended on 31.03.2016 under the heading 'Report on other Legal and Regulatory Requirements', the Respondent being the Statutory Auditor has mentioned that he had not received the information and explanation regarding a few **Old balances brought forward** from earlier years, which were believed to be necessary for the purpose of audit. However, the Respondent had neither quantified the old balances as mentioned nor given the adequate justification for such non-quantification. Further, the Respondent had not considered the overall effect of the above audit qualification on the true and fair view of the financial statements. As such, it was evident that

the Respondent had failed to obtain sufficient information, which was necessary for expression of an opinion, or that its exceptions were sufficiently material to neglect the expression of an opinion.

- (ii) Under Para 5 (b) of Auditor's Report for the financial year ended on 31.03.2016, under the heading 'Report on other Legal and Regulatory Requirements', the Respondent had merely mentioned that **Statutory dues** like PF dues, Cess on green leaves etc. have been accounted by the Company, as is explained to him, however he has failed to specify the extent of arrears of outstanding statutory dues as on the last day of the financial year i.e., on 31.03.2016. Further that the Respondent under para 5(b) has merely stated that provision for interest on statutory dues shall be incorporated in due course whenever such intimations are received from the concerned authorities, however, he has failed report the amount of Statutory dues on which provision was required to be made together with the amount of provision for interest etc. which proves that the Respondent has merely relied on the information provided by the management of the Company.
- (iii) Under Para 5 (c) of the Statutory Auditor's Report for the financial year ended on 31.03.2016, under the heading 'Report on other Legal and Regulatory Requirements', the Respondent being the Auditor had mentioned that the Company was facing a grave situation due to uncertainty about the Company to continue as a "**Going Concern**". The Respondent was required to quantify the statement made by him about uncertainty towards continuity of the Company "going concern" instead of just making a passing reference in the auditor's report. Further, the Respondent should have considered the overall effect of uncertainty about going concern basis on the true and fair view of the financial statements. As such, it is alleged that the Respondent did not exercise due diligence.
- (iv) Under Annexure-A, Para (i) (a), the Respondent instead of reporting on whether **Fixed Asset Register** has been maintained by the Company as per the requirement of law or not, he has merely mentioned that fixed asset register needs modification and improvement with proper details".

- (v) Under Annexure-A, Para (v), the Respondent instead of reporting on whether **Internal Control Procedure** are adequate commensurate to the size of Company, the Respondent has merely mentioned that internal procedure needs improvement.
- (vi) The Respondent being the Statutory Auditor has **failed to attend the Annual General Meeting** of the Company held on 23rd August 2017 in contravention to Section 146 of the Companies Act 2013.
- (vii) The Complainant alleged that the financial statements of the Company for FY 2015-16 had completely suppressed the **Loan taken from M/s Eastern Agro Processing & Co-operative Society Limited**. The report of the Respondent being the Statutory Auditor was completely silent about the suppression of the aforesaid loan. Thus, in the absence of aforesaid loan in the Annual Accounts, the said Annual Accounts were incorrect, misleading, window dressed and failed to give a "True and Fair View".

6- SUBMISSIONS/PLEADINGS OF THE RESPONDENT

It is observed that the Respondent during the course of hearing has stated that he has already made his detailed submission in his Written Statement dated 23rd May 2019 and requested Committee to give their deliberation on the basis of such submissions.

The Committee observed that the Respondent has inter-alia made following submissions in his defense:

- 6.1 As regards first allegation pertaining to the old balances, the Respondent has submitted that he had verified all Books of Accounts produced by the Company before him, and had obtained the information and explanations which were material for audit purpose leaving certain very old balances, although not material in quantity but basis of which could not be ascertained from available records having been brought forward from the previous years for long and he had even consulted the previous Statutory Auditors to ascertain the status of such carried forward balances and was informed that such balances could only be traced from the records of the

Company and in view of the Respondent the value of such balances were not material and would not affect the readers for their analysis in any manner.

- 6.2 In respect of charge relating to relating to Statutory dues like PF dues, Cess on Green Leaves etc., the Respondent submitted that the same had been duly accounted for in the books of accounts, but interest had not been quantified by the respective departments. The Respondent stated that the Company had been following the policy of providing for interest etc. on belated payment of such dues / filing of relevant returns whenever intimations were received from the concerned authorities. The Company had been following the policy of accounting for such liabilities in their books of account when interest etc. were quantified and determined from year after year in the past. Accordingly, the Respondent deemed it necessary to bring it to the notice of the stakeholders for their consideration. Further the interest quantified on presumptive basis would not affect the true and fair view of the state of affairs of the Company.
- 6.3 In response to allegation related to going concern of the Company, the Respondent submitted that he, being the auditor was of the opinion that due to continuous losses, the Company's Net Worth had been eroded and was not certain about the Company to continue as "Going Concern". However, after going through the management efforts to increase productivity in the near future, he was of the view that the Company could continue as a "Going Concern".
- 6.4 In response to the allegation on not attending the AGM of the Company, the Respondent stated that his son was hospitalized in Gwalior (MP) as he was suffering from the dengue fever with falling platelet count since 19/08/2017 for which the Respondent had to rush to Gwalior for proper care and better treatment of his son and this fact was duly conveyed to the Board Members prior to the AGM scheduled for 23/08/2017 and was recorded as such in the minutes of the AGM held.
- 6.5 In response to the allegation related to loan, the Respondent submitted that whatever documents were available before audit and recorded in the Books of Accounts had been disclosed in the Audit Report. Further that the trade advance in the form of block and invoice advance have been availed by the Company since earlier years (over ten years) from M/s Eastern Agro Processing & Co-operative Society Limited and had been treated as such in the Audited Accounts under proper head of account in the

light of the information and explanation made available to the Audit firm during the course of the audit.

7- **FINDINGS OF THE COMMITTEES**

At the outset the Committee noted that in respect of various allegations levelled by the Complainant, the Director (Discipline) has held Respondent prima facie guilty in respect of all allegations except on allegation contained at point no 3 (iv) & (v) above which pertain to maintenance of Fixed Asset Register and adoption of adequate Internal Control Procedure.

7.1 The Committee noted that in respect of allegation relating to old balance, the Respondent has submitted that he had verified all Books of Accounts as maintained and produced by the Company before him, and there were certain old balances, not material in his view which the Management of the Company has failed to provide and that he had even consulted the previous Auditor about the same and he was informed that such balances could only be traced from the records of the Company. It was viewed by the Committee that the onus to provide the relevant details pertaining to the old balances lies only with the Management of the Company and since the said details were not found in the records of the Company, the Respondent being auditor cannot be held liable for the same. On perusal of the audit report issued by the Respondent, the Committee noted that under para 5 (a), it has been reported that except for few of old balances, he has obtained all information and explanations. The Committee opined that the Respondent being the auditor for the current period cannot be held guilty in respect of such Old balance, the information about which can be made available by the Company alone. Accordingly, no professional misconduct can be attributed to the Respondent in respect of instant charges and hence the Respondent is **Not Guilty** of professional Misconduct.

7.2 In respect of charges relating to statutory dues, the Committee observed that the Respondent has submitted that statutory dues like PF dues, Cess on Green Leaves etc. had been accounted for in the books of accounts but interest had not been quantified by the respective departments and that the Company had been following the policy of providing for interest etc. on belated payment of such dues / filing of relevant returns whenever intimations were received from the concerned authorities. The Committee note that under para 5(b) the Respondent has made due disclosure in his audit report stating that the provisions for interest etc. on the

belated payments of such dues shall be incorporated in due course as and when such intimations are received from the concerned authorities. Hence, the said note suffices the disclosure requirement and there are no lapses on the part of the Respondent on this count. Accordingly, the Respondent was held **Not Guilty** of professional misconduct on the said charges.

- 7.3 In respect of charges pertaining to uncertainty about the Company to continue as a "going concern", the Respondent has submitted that he, being the auditor, was of the opinion that due to continuous losses, the Company's Net Worth had been eroded and had uncertainty about the Company to continue as "Going Concern" however, after going through the management efforts to increase productivity in the near future, the auditor was of the view that the Company could continue as a "Going Concern". The Committee observed that judgement about whether the Company can continue as going concern is purely subjective and since the Respondent has stated that management was making effort to increase the productivity, he believed that the Company would revive and be continued as a going concern. The Committee finds that the said disclosure about treating Company as a going concern was appropriate and accordingly, no professional misconduct can be attributed to the Respondent. Accordingly, the Respondent was held **Not Guilty** of professional misconduct on the said charges.
- 7.4 In respect to allegation pertaining to the requirement of Section 146 of the Companies Act 2013, for attending the AGM of the Company, the Committee observed that the Respondent in his written statement has stated that his son was hospitalized and due to this he had to rush to Gwalior for proper care and better treatment of his son and he has conveyed this fact to the Board Members prior to the scheduling of AGM. However, the Committee observed that such requirement of Section 146 is mandatory in nature and if the Respondent was not able to attend the said meeting himself, he should have deputed his representative on his behalf, but he failed to do so. The Committee also observed that the Respondent has failed to provide any evidence that he was granted exemption by the Company, and it is also coming out that he has also not deputed his authorized representative (other qualified Chartered Accountant) to attend the AGM of the Company. Accordingly, considering the mandatory nature of provision the Respondent was held **Guilty** of Professional Misconduct on this count.
- 7.5 In respect to the allegation relating to suppression of Trade Advance given by M/s Eastern Agro Processing & Tea Warehousing Co-operative Society Ltd to the subject Company, the Committee pursued the copy of agreement entered into

between the two Companies. The Committee observed that the Respondent has stated that the said loan had been treated in the Audited Accounts under proper head of account in the light of the information and explanation made available to him during the course of the audit and he could not disclose any thing which was not placed before him during audit. The Committee on perusal of the financial statement of the Company noted that it had availed 38.30 lakhs as unsecured loan from directors and their relatives as shown in the balance sheet, and an interest expenditure (finance cost) of Rs. 33.01 lacs have been disclosed in the Statement of Profit & Loss for the year ended on 31.03.2016. The Committee observed that it cannot be ascertained as to the loan on which, such huge finance cost (interest paid) has been incurred. The Committee also noted that the Respondent has taken a defense that the loan related documents were not provided to him during the conduct of his audit. However, it is also noted that amount of loan availed viz a viz Interest expense booked by the Company seems to be material considering the balance sheet size of the Company, and the plea of the Respondent on this count is not tenable and he cannot be given any benefit of doubt on this aspect. Accordingly, the Respondent was held **Guilty** of professional misconduct.

8- Conclusion: -

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

Sd/-

SH. JUGAL KISHORE MOHAPATRA, IAS (RETD.),
PRESIDING OFFICER, GORERNMENT NOMINEE

Sd/-

(SHRI PRABHASH SHANKAR, I.R.S. (RETD.))
GOVERNMENT NOMINEE

Sd/-

(CA (DR). RAJKUMAR SATYANARAYAN ADUKIA)
MEMBER

DATE: 28.11.2023

PLACE: NEW DELHI

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Certified to be true copy
Nisha Sharma
निशा शर्मा / Nisha Sharma
वरिष्ठ कार्यकारी अधिकारी / Sr. Executive Officer
अनुशासनात्मक निदेशालय / Disciplinary Directorate
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The Institute of Chartered Accountants of India
आईसीएआई भवन, विश्वास नगर, शाहदरा, दिल्ली-110032
ICAI Bhawan, Vishwas Nager, Shahdra, Delhi-110032