

BOARD OF DISCIPLINE

(Constituted under Section 21A of the Chartered Accountants Act 1949)

**Findings under Rule 14 (9) read with Rule 15 (2) of the
Chartered Accountants (Procedure of investigation of
Professional and Other Misconduct and Conduct of
Cases) Rules, 2007**

CORAM:

**CA. Rajendra Kumar P, Presiding Officer
Ms. Dolly Chakrabarty, Government Nominee**

IN THE MATTER OF:

Shri Sandeep Kumar Sharma,
Addl. Supdt. of Police, Office of Supdt. of Police CBI,
BS&FC, 5th Floor, Plot No. 5B, Head Quarter,
CGO Complex, Lodhi Road, New Delhi.....**Complainant**

Versus

CA. Gurinder Kumar Garg (M. No. 084159),
Director, M/s Sarvodya Highways Limited. (SHL)
Sadar Bazar, Khalifa Street,
Sangrur, Punjab..... **Respondent**

Date of Final hearing : 27th December 2024
Place of Final hearing : 'ICAI Bhawan' Chandigarh

PARTIES PRESENT:

Complainant Department: Shri. T. N. Sharma, Sub-Inspector, CBI along with Shri Chandra Shekhar, Sr. Public Prosecutor, CBI (Through VC)

Respondent: CA. Gurinder Kumar Garg along with his Counsel Shri Amit Dudeja

FINDINGS:

BACKGROUND OF CASE:

1. The present case arises out of an investigation conducted by the Central Bureau of Investigation (CBI), Banking Securities and Fraud Cell (BS&FC), New Delhi, which registered an FIR on 03.02.2015 against M/s SHL (Sarvodaya Highways Limited), its

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Director (the **Respondent** herein), and certain officials of the State Bank of Bikaner & Jaipur (hereinafter referred to as "**the Bank**"), Panchkula Branch. The investigation pertains to allegations of criminal conspiracy, forgery, cheating, and corruption, resulting in a wrongful loss to the Bank amounting to ₹52.50 crores. It is alleged that the Respondent, along with other Directors of SHL, approached the Bank and fraudulently obtained credit facilities, including a cash credit limit of ₹20 crores and a Bank Guarantee (BG) limit of ₹5 crores. These facilities were sanctioned based on the submission of 10 fabricated work orders purportedly issued by various companies, including associate entities of SHL, collectively valued at ₹348.24 crores. Subsequently, SHL is alleged to have induced the Bank to enhance the credit limit from ₹20 crores to ₹50 crores by submitting 12 additional fake work orders.

2. Despite availing the sanctioned credit facilities, no actual execution of the work as claimed in the fabricated orders was undertaken. The investigation further revealed that the Respondent, in collusion with other Directors of SHL, submitted false and forged documents to the Bank, thereby facilitating the release of funds under the pretence of legitimate business activities. This fraudulent scheme allegedly caused a wrongful loss of ₹52.50 crores to the Bank and a corresponding wrongful gain to the accused parties. Upon completion of the investigation, the CBI filed a charge sheet before the Special Court, CBI, Panchkula, under Sections 120B read with 420, 467, 468, 471 of the Indian Penal Code, 1860, and Section 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act, 1988. The case is now pending for adjudication.

CHARGE ALLEGED:

3. The Complainant CBI, BS& FC, New Delhi has registered a case on 03.02.2015 against SHL, the Respondent as Director of SHL and the officials of State Bank of Bikaner & Jaipur, Panchkula, for defrauding the said Bank to the tune of Rs. 52.50 Crores. It was further alleged that the Respondent along with other directors of Company approached the Bank for obtaining credit facilities of Rs.20 crore and Bank Guarantee (BG) limit of Rs.5 crore based on 10 fake orders of different companies including associate companies of SHL to the tune of Rs.348.24 crores. The said limit was enhanced from Rs.20 crore to 50 crore by submitting 12 fake work orders but did not execute any of the work for which credit facility was sanctioned and the funds were released by the bank based on fake orders. CBI investigation further revealed that the Respondent along with other Directors of SHL had submitted fake and fabricated documents to the Bank based on which bank released cash credit facilities, thereby causing wrongful loss amounting to Rs. 52.50 Crore to the Bank. After completion of the investigation, a charge sheet was filed in CBI Court Panchkula.

BRIEF OF PROCEEDINGS HELD:

4. The details of the hearings fixed and held in the matter, are given as under:

Date of Hearing(s)	Status of hearing(s)
15 th December 2021	Adjourned at the request of the Respondent.
29 th December 2021	Part heard and adjourned.
23 rd November 2022	Adjourned to give final opportunity to the Respondent
29 th November 2022	Adjourned to give final opportunity to the Respondent
19 th December 2022	Adjourned at the request of Respondent

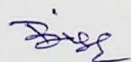
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29 th December 2022	Part Heard and adjourned
17 th May 2023	Part heard and adjourned
23 rd August 2023	Adjourned at the Request of Respondent
04 th April 2024	Part heard and adjourned
27 th December 2024	The case is heard and concluded

BRIEF SUBMISSIONS OF THE PARTIES:

COMPLAINANT

5. The Complainant submitted that there were 8 associate companies of M/s Sarvodaya Highways Ltd. of which at least one of the Directors of M/s SHL was also director during the relevant period. As per the records of ROC Punjab, Himachal Pradesh & Chandigarh, Shri Gurinder Garg was also one of the directors of associate companies namely M/s Surya City Infrastructure Ltd., M/s Sanjivini Infratech Pvt. Ltd. M/s Sagun Promoters and Builders Pvt. Ltd., M/s Savera Contractors and Builders Ltd., M/s JMR Infracture Ltd, M/s Girisha Towers Ltd., M/s Vardhman Tissue Limited & M/s Ikiya Home Decors Pvt. Ltd. During searches conducted by CBI, the stamps and other related documents of these group companies were recovered from the office of M/s SHL. Shri Gurinder Garg dishonestly availed credit facilities from SBBJ on the basis of fake/fabricated work orders of associated companies to cause wrongful loss to SBBJ and corresponding wrongful gain to themselves.
6. It is further submitted that during investigation it revealed that above mentioned associate companies did not exist/ never existed at the given addresses as mentioned in the work orders. In some work orders the address of concerned company was shown at Ludhiana, Kharar and Zirakpur, whereas the phone number with STD code of Chandigarh is mentioned. However, Directors of M/s SHL dishonestly and deliberately concealed the information w.r.t. its associate companies from SBBJ. Shri. Aushtosh Garg s/o Shri Gurinder Garg dishonestly accepted the work orders on behalf of M/s SHL and Sh. Gurinder Garg dishonestly accepted the Agreement of Contract on behalf of M/s SHL, with an intention to cheat the bank.
7. It is further submitted that Shri Gurinder Garg submitted three fake/forged work orders purportedly issued by M/s JBB Infrastructure Ltd. and M/s P G Electroplast Ltd. During investigation M/s JBB Everest Buildtech Pvt. Ltd & M/s P G Electroplast denied having issued the above work orders.
8. Additionally, it is submitted that Shri Gurinder Garg had submitted monthly stock statements of M/s SHL to SBBJ including details of the receivables from different companies which had purportedly awarded works to M/s SHL. Shri Gurinder Garg prepared false stock statements w.r.t. debtors of M/s SHL as no funds were received from its debtors, with an intention to induce SBBJ to release funds from its CC A/c. Investigation revealed that M/s SHL submitted false stock statements and that the funds released from CC account of M/s SHL maintained with SBBJ, Panchkula were not utilized by M/s SHL for the purpose for which these were sanctioned and were diverted/ siphoned off by Shri Gurinder Garg to cause wrongful loss to the Bank. All the cheques and RTGS applications of M/s SHL for transferring the funds of CC limits to different firms/ companies were either signed by Shri Gurinder Garg or Shri Ashutosh Garg.



9. Besides the above, it is submitted that Shri Gurinder Garg has also opened various accounts with Oriental Bank of Commerce, Sector-8, Chandigarh, SBP, Longowal, in the name of his employee relatives etc. for diverting the funds of CC limits of SHL from SBBJ. Shri Gurinder Garg has also opened different accounts in the names of firms at SBP, Longowal by using photocopy of ID Proof of different persons which are not traceable. These accounts were used by Shri Gurinder Garg for routing the defrauded amount of SHL. Shri Gurinder Garg had also submitted a false and forged CA certificate purportedly issued by M/s Virender Vishal and Associates to SBBJ w.r.t infusion of capital in SHL.
10. It is also submitted that in reply to the arguments advanced by the Respondent in respect of Order of Hon'ble High Court dated 18.07.2022, it is submitted that the Hon'ble High Court of Punjab & Haryana has neither observed that the accused Shri Gurinder Kumar Garg did not commit any offence nor commented upon the criminal act or Professional Misconduct of the accused Shri Gurinder Kumar Garg. The Hon'ble High Court has quashed the Criminal proceeding on the sole basis of OTS arrived between the accused and the Bank. Further the CBI has challenged the aforesaid Judgement before the Hon'ble Supreme Court of India vide SLP CrI. No. 11108/2022 and the matter is subjudice. Whereas the complaint filed by the CBI before the Board of Discipline of ICAI against Shri Gurinder Kumar Garg is related to his professional misconduct as a Chartered Accountant and the judgement passed by Hon'ble Punjab and Haryana High Court has no bearing on the proceedings of this Board of Discipline.

RESPONDENT

11. The Respondent submitted that he is Director of M/s Sarvodaya Highways Ltd., and the company M/S Sarvodaya Highways Ltd. had taken cash credit limit from State Bank of Bikaner and Jaipur now State Bank of India to the tune of Rs. 20.00 Crores as Fund Based and Rs. 5.00 crores as Non-Fund Based vide letter dated 23/12/2011 with the condition that after seeing the performance of the company, bank will enhance the credit facility and accordingly the company again applied for enhancement vide letter dated 28.05.2012 and Bank enhanced the limit to Rs. 50.00 Crores as Fund Based and Rs. 5.00 Crores as Non-Fund Based vide letter dated 27/07/2012. Later on 30/03/2013, the bank restructured the said credit facility and converted Rs. 50.00 Crores Fund Based facility to Rs. 52.42 Crores, Non-Fund Based facility to Rs. 2.58 Crores and Rs. 2.42 Crores as FITL.
12. It is also submitted that due to recession in the real estate industry, the company failed to pay the interest to the bank and the above said credit facility was declared NPA on 28.07.2013 and accordingly Notices under Section 13(2) of SARFESI Act 2002 dated 21/08/2013 and Notice under Section 13(4) of SARFESI Act 2002, were issued. Thereafter the bank filed the OA before the DRT-III Chandigarh. After hearing to the company, the said notices were declared null and void, later DRT-III Chandigarh scrap the above said Notices of 13(2) and 13(4) of SARFESI act 2002.
13. It is further submitted that later in the year 2015, the bank SBBJ, now SBI, filed complaint to the CBI dated 09.01.2015 and after detailed inquiry done by the CBI, charge sheet under section 173 Cr. P. C., was filed before the Hon'ble Additional Session Judge, CBI, Panchkula which is pending for further orders and actions. However, to date the Hon'ble Court has not framed charges against any of the accused based on the said charge sheet which was filed by the CBI under 173 Cr. P. C., Impugned RC. BD1 / 2015 / E / 0002 / CBI / BS&FS / DLI dated 03.02.2015. Further,

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the company along with other Directors filed Discharge Application u/s 227 Cr. P.C. before Additional Session Judge, CBI, Panchkula and Hon'ble Additional Session Judge, CBI Panchkula. In the meanwhile, the company filed quashing petition against said impugned RC BD1 / 2015 / E / 0002 / CBI / BS&FS / DLI, dated 03.02.2015 before the Hon'ble High Court of Punjab and Haryana petition Number CRM 31272 of 2018. The Hon'ble High Court, after hearing the facts of the case directed the Additional Session Judge, CBI, Panchkula not to proceed further till the petition No. CRM 31272 of 2018 is not decided.

14. Additionally, it is also submitted that in the meantime the company approached the State Bank of Bikaner and Jaipur now State Bank of India to settle dues of the bank under 'One Time Settlement' (OTS) with the detailed proposal. After considering the proposal submitted by the company, the said proposal went through various committees of the bank and the said proposal was approved on 05/03/2018 for Rs. 41.00 Crores. However, due to such a short period given by the bank to the company, the company could arrange only Rs. 12.00 Crores by 31/03/2020. The bank, without waiting for further payment and without any notice cancelled the said OTS. Again, the company gave a proposal to the bank for Rs. 29.00 Crore along with prevailing rate of interest which was Rs. 5.30 Crores and bank approved the composite OTS vide Letter No. SAMB/TEAM-IV/SHL/1514, the same was paid by the company to bank before the scheduled time. The banks also released all securities plus hypothecation/ mortgaged with the bank.
15. Besides above, it is also submitted that the Hon'ble Supreme Court in the case of Sadhu Ram and Singla and others vs Central Bureau of Investigation (Criminal Appeal No. 396 of 2017) under Para 21 of its Judgement dated 23rd February 2017, observed and held as under: -

21. ".....Having carefully considered the singular facts and circumstances of the present case, and also the law relating to the continuance of criminal cases where the complainant and the accused had settled their differences and had arrived at an amicable arrangement, we see no reason to differ with the view taken in Manoj Sharma case and several decisions of this Court delivered thereafter with respect to the doctrine of judicial restraint. In concluding hereinabove, we are not unmindful of the view recorded in the decisions cited at the Bar that depending on the attendant facts, continuance of proceedings, after a compromise has been arrived at between the complainant and the accused, would amount to abuse of process of court and on exercise in futility since the trial would be prolonged and ultimately, it may end in a decision which be on no consequences to any of the parties."

16. Furthermore, it is also submitted that the basic FIR which was the base of complaint against the Respondent has already been quashed by the Hon'ble Punjab and Haryana High Court on dated 18.07.22 and that the entire loan amount has been repaid, and, in the proceedings, which were pending before the Debt Recovery Tribunal-III, Chandigarh, on 15.12.2017, following order was passed: -

"The counsel for the bank and bank officer stated that there are some legal defects in the notice issued under Section 13(2) and 13 (4) of SARFAESI Act by the bank in this case, due to which they are withdrawing the above proceedings and after initiating the recovery proceedings afresh, will file the above case. Hence, as the above proceeding has become ineffective, the above SA is hereby dismissed".

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17. The Respondent has also relied upon a judgment of the Hon'ble Supreme Court in CBI New Delhi Vs. B.B. Aggarwal and others, 2019 (5) RCR (Cr.) 573, wherein it is held that when it comes to notice of the investigating agency that a bank is defrauded while making the public issues of a company and later on, charge sheet is filed in the Court and the company compromised the matter with the Bank before the Debt Recovery Tribunal and the company reconciled their accounts, on settlement of the accounts before DRT, no live issue survived, therefore, there exists no occasion to prosecute the accused and uphold the order passed by the High Court quashing the criminal complaint. It is submitted that in the instant case also, DRT proceedings stand decided in view of the compromise and the bank itself has released the mortgaged property by writing letter to Tehsildar concerned and has even given a certificate to the Superintendent of Police, CBI, Chandigarh that the loan account of the company stands closed, therefore, the proceedings are liable to be quashed. As per final order of the hon'ble High court of Pb and Haryana.
18. Thus in view of the observations made above and also in view of judgments of the Hon'ble Punjab & Haryana High Court and of the Hon'ble Supreme Court in B.B. Aggarwal's case (supra), whereby the FIR bearing RC No BD1 / 2015 / E / 0002 / CBI /BS&PS/DLI dated 03.02.2015 and final report dated 30.11.2016 as well as the consequential proceedings arising out of the FIR are ordered to be quashed, the Respondent prayed the Board for quashing the disciplinary proceedings against him.

OBSERVATIONS OF THE BOARD:

19. Upon a detailed examination of the facts of the case and based on the submissions made and arguments advanced by the parties, the Board observed that the allegations against the Respondent revolve around his alleged involvement in companies which are allegedly used as an instrument to fraudulently avail facilities from the said Bank. It was highlighted that discrepancies existed in the registered addresses of certain companies on the MCA-21 portal, with one company, Savera Contractors Builders Limited, not being registered at all. Furthermore, it was alleged that the Respondent's professional address was used for the incorporation of some of these companies and that he was a director in two of the involved entities.
20. The Board notes the arguments put forth by the Counsel for the Respondent, particularly the reference to the High Court order and the settlement of disputes with the Bank through a One-Time Settlement (OTS). The acceptance of the OTS by the Bank, along with the release of all properties of the Respondent, indicates the Bank's satisfaction with the settlement and its acknowledgment of the resolution of financial disputes. This settlement further underscores the closure of the financial aspects of the matter and suggests that the Bank was aware of potential unrecovered amounts when agreeing to the terms.
21. The Board also acknowledges that any matter of a criminal nature fall outside its jurisdiction and is a subject matter to be adjudicated by the competent judicial authorities. No evidence or findings have been presented before this Board to conclusively establish the Respondent's criminal intent or direct complicity in fraudulent activities.
22. While it is observed that the Respondent did not submit a written statement to dispute the Complainant's allegations, this omission alone cannot be construed as an admission of guilt, particularly considering the settlement with the Bank and the absence of

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conclusive evidence against the Respondent. The Board, therefore, finds no basis to hold the Respondent guilty of professional misconduct or any wrongdoing in this matter. However, the Board advises the Respondent to exercise diligence and professional care in his future conduct to avoid any similar controversies and to uphold the highest standards of professionalism.

CONCLUSION:

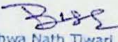
23. Thus, in conclusion, in the considered opinion of the Board the Respondent is **Not Guilty** of Professional Misconduct falling within the meaning of Clause (8) of Part I of First Schedule to the Chartered Accountants Act, 1949. Accordingly, the Board passed an order for closure of the case in terms of the provisions of Rule 15 (2) of the Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007.

Sd/-
CA. Rajendra Kumar P
Presiding Officer

Sd/-
Dolly Chakrabarty, IAAS (Retd.)
Government Nominee

Date: 25-01-2025

सही प्रतिलिपि होने के लिए प्रमाणित
Certified to be true copy


बिष्वा नाथ तिवारी / Bishwa Nath Tiwari
कार्यकारी अधिकारी / Executive Officer
अनुशासनात्मक निदेशालय / Disciplinary Directorate
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