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IN THE HIGH COURT OF DELHI AT NEW DELHI

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CHAT.A.REF 7/2014

Reserved on: **24th October, 2017**

Date of decision: **24th November, 2017**

**COUNCIL OF THE INSTITUTE OF CHARTERED
ACCOUNTANT OF INDIA**

..... Petitioner

Through: Mr. Rakesh Agarwal & Mr. Pulkit
Agarwal, Advocates.

versus

ASHOK KUMAR & ANR.

..... Respondents

Through: Ms. Reena Jain Malhotra, Advocate.

**CORAM: JUSTICE SANJIV KHANNA
JUSTICE PRATHIBA M. SINGH**

JUDGMENT

Prathiba M. Singh, J.:

The Institute of Chartered Accountants of India ('ICAI') has filed this reference under Section 21(5) of the Chartered Accountants Act, 1949 (*hereinafter 'the Act'*). The reference seeks passing of necessary orders under Section 21(6) of the Act pursuant to the recommendations of the ICAI Council in its 325th meeting held from 1st to 3rd June, 2013.

Factual background:

2. The genesis of the recommendations of the ICAI Council is the letter dated 10th June, 1999 received by the ICAI from the Securities and Exchange Board of India ('SEBI') pointing out several irregularities in the public issue of one M/s. Bhartari Financial Services Ltd. ('BFSL'). The letter written by SEBI to ICAI stated that investigations were conducted into the buying, selling and dealing in shares of BFSL, as also the role of Shri S.

K. Gupta, Chairman of BFSL and Shri Ashok Chawla, Chartered Accountant ('CA'), who is also a member of the ICAI. SEBI informed ICAI that the Chairman, SEBI had approved issuance of intimation to the ICAI to proceed against both these persons, who are CAs, for misconduct, under the Act.

3. The request made by SEBI as contained in the letter dated 10th June, 1999 is set out herein below:

*"Investigations revealed that 27 applications to the Public Issue were accompanied by stock invest issued by Sangli Bank, Karol Bagh, New Delhi. The stock invests were got issued by Shri Ashok Chawla from the bank on 23.11.95 whereas the issue of BFSL closed on 5.10.95. Though these stock invest were issued for amounts ranging between Rs.1.00-1.20 lacs each, they were used at a multiple of Rs. 10 in the applications i.e. stock invest actually issued for Rs.27 lacs was used for Rs.270 lacs, resulting in an irregular allotment of 1,17,200 shares. These allotments were made despite the bank having received a request from Shri Ashok Chawla for cancellation of the stock invests and withdrawal of the applications. The shares so allotted were subsequently forfeited and re-allotted to associate concerns of BFSL. **It was admitted by both that the finance was arranged by Shri S. K. Gupta and the share application forms along with the stock invests were handed over by Shri Ashok Chawla to Shri S. K. Gupta. However, neither Shri Ashok Chawla nor Shri S. K. Gupta could explain how the applications were made at higher amounts.***

Shri Ashok Chawla also obtained about 80-90 stock invests of Rs.10,000/- each from Sangli Bank, Karol Bagh after the close of the issue of the BFSL. The allotments against these applications were sold at a

profit through a member of the Delhi Stock Exchange. Investigations also revealed that 2016 stock invests amounting to Rs.53,69,000/- were not sent for realisation on the stipulated dates and the correspondence with the banks in this regard was fabricated by forging the signatures and rubber stamp impressions of the bank.

Shri Ashok Chawla and Shri S. K. Gupta connived with each other in arranging finance for purposes of obtaining ante-dated stock invests which were used at higher amount for subscribing to the public issue of BFSL after the close of its Issue and thus facilitated irregular allotments to the detriment of the general investing public. The Issue handling procedures were also vitiated in this case. The Institute of Chartered Accountants of India is requested to initiate disciplinary proceedings against Shri S. K. Gupta and Shri Ashok Chawla are as below:

Shri S.K. Gupta Bolni Chambers, Above Shiv Temple Dev Nagar, Karol Bagh, New Delhi- 110005	Shri Ashok Chawla 2/5131, Krishan Nagar, Behind Khalsa College, Karol Bagh, New Delhi-110005
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(emphasis supplied)”

4. The present reference relates to the proceedings by the ICAI against Shri Ashok Chawla who is also known as Shri Ashok Kumar Chawla, a practicing CA. Upon receipt of the aforesaid letter, the ICAI sought clarifications from the respondent vide letters dated 6th November, 2003 and 6th August, 2004. No clarifications were received despite constant reminders. The ICAI thereupon decided to treat SEBI's communication as “information” for proceeding against the respondent for “other misconduct”

as per Sections 21 and 22 of the Act. The information letter was again sent to the Respondent on 15th December, 2005 enumerating the various charges against him. The Respondent submitted his written statement on 10th April, 2006.

5. Both the information and the written statement were placed before the ICAI Council in its 282nd meeting held from 5th to 7th November, 2008. The ICAI Council arrived at a *prima facie* opinion that the respondent was guilty of professional and other misconduct. The extract from the minutes of the aforesaid meeting reads as under:-

*"Item No.24: "Information" Cases under Section 21
11. Ashok Kumar in Re: (M.No. 084122) [25-CA-S-34B/2005]*

The Council considered the Information letter and the written statement submitted by the Respondent.

The Council on consideration of the aforesaid documents/submissions observed that the Respondent was failed to produce any documentary evidence to prove that he has not connived with other persons to defraud the public.

The Council, therefore, was prima facie of the opinion that the Respondent was guilty of professional and/or other misconduct. It was, therefore, decided to refer the case to the Disciplinary Committee for inquiry."

(emphasis supplied)

6. Accordingly, the matter was sent to the Disciplinary Committee ('DC') for an enquiry. The DC held several hearings. On 10th January, 2012, the DC recorded the statement of the respondent on oath. Documents requested by the respondent were provided. After hearing arguments, the DC in its report dated 26th December, 2012 came to the conclusion that the

respondent was guilty of 'other misconduct' as per the provisions of the Act.

7. On 2nd June, 2013 the respondent made a representation to the ICAI Council explaining his stand and requested that he should be absolved from all charges. The ICAI Council in its 325th meeting held between 1st to 3rd June, 2013 agreed with the reasoning of the DC and accepted the same. The ICAI Council held that the respondent was guilty of 'other misconduct' under Sections 22 read with Section 21 of the Act. The ICAI Council in this meeting also decided to recommend to this Court that the name of the respondent be removed from the register of members for a period of one year. The relevant extracts from the recommendations of the ICAI Council are set out herein below:

"8. The Council perused the documents available on record along with the submissions made by the Respondent before it. Upon consideration, the Council was of the view that submissions made by the Respondent in his defence was not convincing and it has been noted by the Council that the SEBI had debarred him for 5 years from Capital Market related activities and the Respondent did not appeal against this SEBI order before the SAT. When the Council enquired him about the same, the Respondent was not able to give any convincing reply on the same.

Further the Respondent in his submissions before the Council did not bring any new facts. The Council noted that the Respondent had admitted that around 80-90 stock invests were issued by Sangli Bank, Karol Bagh after the close of the Issue of BFSL on 5th October, 1995 and later on, the stand taken by the Respondent as to how the Bank had issued ante dated stock invests does not appear convincing at all to the Council. The Council further noted' that as a financier to the company for its issue and the role played by the

Respondent in facilitating irregular allotments to the detrimental of general public cap not be overlooked at all. Thus, the Council after detailed deliberations agreed with the reasonings of the Disciplinary Committee as contained in paras 5.1 to 5.1.0 above.

9. Accordingly, on consideration of the Report of the Disciplinary Committee along with the written representation dated 2nd June, 2013 received from the Respondent and also the oral submissions made by his authorized representative before it, the Council decided to accept the said Report and accordingly held that the Respondent was guilty of "Other Misconduct" under Section 22 read with Section 21 of the Chartered Accountants Act, 1949.

10. The Council also decided to recommend to the High Court that the

name of the Respondent be removed from the Register of Members for a period of one year.....”

(emphasis supplied)

8. Pursuant to the said decision of the ICAI Council, the present reference was received by this Court on 4th August, 2014. Upon receipt of the reference, notice was issued to the respondent and to the Central Government. Notice to the Central Government stands served. The respondent has appeared through counsel. Arguments have been addressed on behalf of the petitioner by Mr. Rakesh Agarwal and on behalf of the respondent by Ms. Reena Jain Malhotra.

Relevant provisions of the Chartered Accountants Act, 1949:

9. The relevant provisions of the Act are set out herein below for ready reference:

“Section 21

(1) to (4).....

(5) Where the misconduct in respect of which the Council has found any member of the Institute guilty is misconduct other than any such misconduct as is referred to in sub-section (4), it shall forward the case to the High Court with its recommendations thereon.

(6) On receipt of any case under sub-section (4) or sub-section (5), the High Court shall fix a date for the hearing of the case and shall cause notice of the date so fixed to be given to the member of the Institute concerned, the Council and to the Central Government, and shall afford such member, the Council and the Central Government an opportunity of being heard, and may thereafter make any of the following orders, namely, -

(a) direct that the proceedings be filed, or dismiss the complaint, as the case may be;

(b) reprimand the member;

(c) remove him from membership of the Institute either permanently or for such period as the High Court thinks fit;

(d) refer the case to the Council for further inquiry and report.

Section 22 - Professional misconduct defined:-

For the purposes of this Act, the expression "professional misconduct" shall be deemed to include any act or omission specified in any of the Schedules, but nothing in this section shall be construed to limit or abridge in any way the power conferred or duty cast on the Council under sub-section (1) of section 21 to inquire into the conduct of any member of the Institute under any other circumstances."

10. The above two provisions vest in the ICAI Council the power to

enquire into any misconduct of a member of the ICAI. This legal position is also settled by the Supreme Court in ***Council of the Institute of Chartered Accountants & Anr v. B. Mukherjea AIR 1958 SC 72***, which states as under:

“5. Section 21, sub-s. (1), deals with two categories of cases in which the alleged misconduct of members of the Institute can be inquired into. If information is received or complaint is made to the Institute against the conduct of any chartered accountant the Council is not bound to hold an inquiry straightaway. The Council is required to examine the nature of the information or complaints made and decide whether, if the facts alleged against the member are proved, they would render the member unfit to be a member of the Institute. In other words, in the case of a private complaint made against members, it is only where the Council is satisfied *prima facie* that facts alleged against the member, if proved, would justify the exercise of disciplinary jurisdiction against the member that the Council is required to hold an inquiry. The conduct alleged must be such as, if proved, would render the member unfit to be a member of the Institute. The other case of cases has reference to the complaint received by the Council from the Central Government. In regard to this class of cases, the Council is not required, - and indeed has no jurisdiction to apply the *prima facie* test - before holding an inquiry. The Council is required to cause an inquiry to be held on such complaint straightaway. In both the cases when the inquiry is concluded, the findings of the Council are to be forwarded to the High Court. Section 22 purports to define the expression "conduct which, if proved, will render a person unfit to be a member of the Institute". It is an inclusive definition; it

includes any act or omission specified in the schedule but the latter portion of s. 22 clearly lays down that nothing contained in this section shall be construed to limit or abridge in any way the power conferred on the Council under sub-s. (1) of s. 21. The position thus appears to be that though the definition of the material expression used in 21, sub-s. (1), refers to the acts and omissions specified in the schedule, the list of the said acts and omissions is not exhaustive; and, in any event, the said list does not purport to limit the powers of the Council under s. 21, sub-s. (1), which may otherwise flow from the words used in the said sub-s. itself. The schedule to which s. 22 refers has enumerated in cls. (a) to (v) several acts and omissions and it provides that, if any of these acts or omissions is proved against a chartered accountant, he shall be deemed to be guilty of professional misconduct which renders him unfit to be a member of the Institute. Clause (v) is rather general in terms since it provides for cases where the accountant is guilty of such other act or omission in his professional capacity as may be specified by the Council in this behalf by notification in the Gazette of India. It must be conceded that the conduct of the respondent in the present case cannot attract any of the provisions in the schedule and may not therefore be regarded as falling within the first part of s. 22; but if the definition given by s.22 itself purports to be an inclusive definition and if the section itself in its latter portion specifically preserves the larger powers and jurisdiction conferred upon the Council to hold inquiries by s.21, sub-s. (1), it would not be right to hold that such disciplinary jurisdiction can be invoked only in respect of conduct falling specifically and expressly within the inclusive definition given by s. 22. In this connection it would

be relevant to mention s. 8 which deals with disabilities. Section 8, sub-ss. (v) and (vi), support the argument that disciplinary jurisdiction can be exercised against chartered accountants even in respect of conduct which may not fall expressly within the inclusive definition contained in s. 22. We, therefore, take the view that, if a member of the Institute is found, prima facie, guilty of conduct which, in the opinion of the Council, renders him unfit to be a member of the Institute, even though such conduct may not attract any of the provisions of the schedule, it would still be open to the Council to hold an inquiry against the members in respect of such conduct and a finding against him in such an inquiry would justify appropriate action being taken by the High Court under s. 21, sub-s. (3). It is true that the High Court would take action against the offending member only if the High Court accepts the finding made by the Council and not otherwise. This conclusion is strengthened if we bear in mind the extended meaning of the expression "to be in practice" given in s. 2, sub-s. (2), which we have already dealt with. In this view of the matter we must reverse the conclusion of the learned Judges of the Calcutta High Court that the conduct proved against the respondent does not fall within Sections 21 and 22 because it is not conduct connected with the exercise of his profession as a chartered accountant in the narrow sense of that term."

Thus, professional misconduct includes any misconduct as enumerated in the Schedules to the Act as well as any other misconduct.

Submissions of the Petitioner:

11. The counsel for the petitioner has taken us through the various documents on record to submit that the findings against the respondent, both

by SEBI as also the findings of the DC, clearly establish that he has indulged in misconduct. He specifically relies upon the order of Chairman, SEBI dated 12th December, 2002 passed against the respondent under Section 11B of the SEBI Act, 1992 read with Regulation 12 of the SEBI (Prohibition of Fraudulent & Unfair Trade Practices relating to Securities Market) Regulations, 1995. The specific allegations of SEBI relate to the following two broad issues:

- (i) Irregular allotment of 1,17,200 shares of BFSL involving irregular subscription for 27,00,000 shares with an application money of Rs.2.7 crores by way of stock invests issued by Sangli Bank, Karol Bagh, New Delhi.
- (ii) Allotment of 7,000 shares against applications accompanied by anti-dated stock invests issued by Sangli Bank.

12. After discussing both the issues, the Chairman of SEBI, in his report, held the respondent guilty of both charges. The petitioner, thereafter, relies upon the investigation report of SEBI which had also clearly concluded that the respondent connived with Shri S. K. Gupta in making irregular allotments and ante-dating the stock invests.

13. The petitioner finally relies upon the conclusion of the investigation report dated 10th December, 2002 which debarred the respondent for a period of 5 years.

14. The petitioner thereafter relies upon the proceedings initiated by the ICAI and the statement recorded during the proceedings before the DC on 5th September, 1997. According to Mr. Agarwal, learned counsel for the petitioner, the statement recorded completely establishes the misconduct of

the respondent inasmuch as he has not been able to explain any of the allegations raised against him. Thus, the decision of the ICAI Council to debar the respondent for a period of one year deserves to be upheld.

Submissions of the Respondent:

15. Ms. Malhotra, learned counsel for the respondent, submits that the respondent, Mr. Ashok Chawla, is only a CA and not a beneficiary of any of the transactions. He merely introduced Shri S. K. Gupta to his family members and relatives. On both counts i.e. irregular allotment and ante-dating, Ms. Malhotra submits that the respondent is not guilty.

16. According to Ms. Malhotra, insofar as the allotment of shares is concerned, the irregular allotment is something which BFSL and Mr. Gupta need to explain. In support of this submission, she relied upon the copy of some of the stock invests, which are filed on record, to demonstrate that there was in fact no tampering or irregular allotment. In any event, the issuance of share certificates is by the company and its promoters in which Mr. Chawla plays no part. Insofar as the ante-dating of documents is concerned, Ms. Malhotra submits that he was not responsible for ante-dating the documents. The same were issued by the bank and hence the bank will have to explain how it was dated differently - especially in comparison with the copies which were available with the respondent. Thus, on both counts, it is the submission of the respondent, that he is not liable.

17. It is further submitted by Ms. Malhotra that the respondent's conduct does not constitute misconduct as stipulated in Schedule-I and Schedule-II of the Act and hence the punishment meted out to him is extremely harsh. Ms. Malhotra, on the merits of the allegations submits that, in any event,

letters for withdrawal of the allotment were submitted even prior to the allotment of the shares and hence no benefits were derived from the irregularities in the forms or the so called ante-dating. She further submits that the respondent is not guilty of any professional misconduct and hence his conduct deserves to be viewed sympathetically.

Analysis and Findings:

18. Stock invests are monetary instruments that are deposited in banks in order to enable a person to subscribe to shares in a public issue. The amount of the stock invest is held in trust with the bank to pay the amount required for the shares allotted. These stock invests are issued by the bank as a counter guarantee in respect of payment for proposed shares to be allotted to the applicant.

19. Such a system has evolved in order to ensure that once a person subscribes to share capital and shares are allotted to him as part of a public issue process, he or she does not shy away from making payment for the said shares. It also protects the applicant, who does not have to deposit share application money with the application form. Instead of the share application money, the applicant can furnish stock invest. If the shares are allotted, the money available in the stock invests are utilized for payment of the share application money and if no shares are allotted, the money can be released back to the depositor.

20. Considering the nature of the allegations against the respondent, the two questions that arise are as to who paid the money for availing the stock invest. The statement of the respondent recorded by the DC throws enormous light on these aspects and virtually affirms and seals the case

against him. Some of the salient facts emerging are:

- The respondent appeared before the Committee along with his counsel who was present alone at the time of the statement being recorded;
- The respondent admits that all information required by him has been provided;
- The respondent admits that he had a copy of the enquiry report of SEBI;
- The respondent sought adjournments on a few occasions and the same was granted;
- The respondent's statement was recorded on oath;
- The respondent pleaded not guilty qua Regulation 15(2);
- The respondent claimed to be a market operator/ professional facilitator;
- The respondent used to earn 6% commission from investors for whom he arranged portfolio investments;
- In response to a specific query as to who arranged the funds, the respondent gave an evasive answer, the same is extracted below:

“President:

How this stock invests arranged - by pledging his own FD or what?

Counsel for the Respondent:

That has to be verified from the Bank, My Lord, the first allegation is that that these stock invests were antedated. The issue was closed on 5.10.95 and when the SEBI enquired about it Bank said according to their records these are issued on 22nd November so they are antedated. I have to submit

that for issuing the stock invests somebody had to remit money with the banker then only the stock invests can be issued. SEBI did not have any finding to the effect that the money was received on November and we are sure the money was remitted long long before. It was very much within 5th October and stock invest is valid for three months. So the stock invests has peculiarity, it is a paper just like a pay order or draft, however, its validity has speciality where the drawees name is not filled, it is quite possible that the Bank must have made some mistake in their record or after three years when they informed the SEBI there must be some around part but if it is said that the stock invests were issued on 5th October without corroborating the evidences that the money received against this issue, I think, it would be very prematurity to take that into account number one I have to submit about the antedated point.”

- The respondent denied knowledge as to how the stock invests came to be dated 23rd November, 1995 when the public issue closed on 5th October, 1995.
- Again on a specific query as to who gave the money as security to the bank before investing in the stock invest, the reply was completely bereft of any facts which reads as under:

“Shri Anil Kumar Agarwal, Member:

What is the procedure? Does she has to make any payment to the bank?

Counsel for the Respondent:

Of course, sir. The bank has to first collect the money as a security before investing in the stock invests.

Shri Anil Kumar Agarwal, Member:

Just answer me. Do you have to make payment by cheque, by demand draft?

Counsel for the Respondent:

Sir, the system is that you have to create fixed deposits in the name of the applicant so that it is a margin.

Shri Anil Kumar Agarwal, Member:

Where is the copies of the FDRs or whatever?

Counsel for the Respondent:

That is not annexed.

Shri Anil Kumar Agarwal, Member:

The point is that you can always make friends of the banks and ask them to issue back dated or antedated.

Counsel for the Respondent:

It is not the fact.

Shri Anil Kumar Agarwal, Member:

Let me complete.

Counsel for the Respondent:

Ok, Sir.

Shri Anil Kumar Agarwal, Member:

I am not saying it is a fact. I am saying that there is a possibility, it can happen.. Can you find out, can you place before the Committee a copy of the, security that was submitted to the bank in each of the case with date there?

Counsel for the Respondent:

Yes, we can. It is possible that Savitri Devi got the FDRs issued because the security of her son or

daughter's FDRs also be taken because bank had liberty, I will go to the bank and apply for it on what basis they have given this.”

- The respondent was confronted with the specific allegation in paragraph 4.2.1 of the SEBI’s investigation report which reads as under:

“Vice President:

*I will draw your attention to the page No. 5 of the SEBI investigation report para 4.2.1. Last paragraph one **all the stock invests had been issued to Shri Ashok Chawla on 23.11.1995 against the security of his fixed deposits.***

Counsel for the Respondent:

Sir, that is what I am contesting”

- The respondent admits that he has not challenged the SEBI’s investigation report but argued before the DC that the findings in that report were wrong;
- The respondent stated that since the promoter of the company did not pay him the money, he backed out from the contract and the investors withdrew their applications. He did not have any explanation as to why the shares have been allotted in his name;
- When he was confronted with the fact that in 1997, he had accepted before SEBI that he had ante-dated stock invests and why he was resiling from the same before the DC, the respondent states as under:

“Vice President:

In 1997 he had agreed antedated and later on he denied that, do you have the date when he denied?

Counsel for the Respondent:

In 2001. in 1997, when they started inquiry naturally they had their version and once he got opportunity to oppose it, he is relying upon the stock invests themselves by that the stock invests have come back and then he said that look, these are carrying 5.10.1995 date, how you are saying that the banker is saying something else? So there is nothing more to do on this. I would like to draw Your Honours attention to page No. 11 of this booklet. I would read the second paragraph. The investigations revealed that BFSL acting through its Chairman Mr. S.K. Gupta in connivance with Ashok Chawla made irregular allotments in the public Issue of BFSL involving irregular subscription for shares by way of application accompanied by stock invests issued after closure of the issue. The next sentence is more important that these stock invests issued for Rs. 1 lacs, Rs. 1.1 lac and Rs. 1.2 lacs were fraudulently altered to higher amounts of Rs. 10 lacs, Rs. 11 lacs and Rs. 12 lacs respectively. This is factually incorrect conclusion, My Lords. I have six stock invests I can produce My Lords, these do not carry any alterations. I received all stock invests back. The Company manipulated the share applications, I suspect, My Lord because they did not give the share application back. So this is completely erroneous statement based on that they concluded.”

- The respondent admits that his FDs, which were securities for stock invests, were released, as can be seen from the following:

“Vice President:

The stock invests were returned to the Respondent?

Counsel for the Respondent:

Yes, Sir.

Vice President:

How did you get back your FDs that was under lien and since the stock invests is with you?

Counsel for the Respondent:

This is valid only for three months. It does not have any validity after that.”

- The respondent is practising as a chartered accountant under the trading style A.K. Chawla & Associates since 1985. A submission was made on his behalf to the following effect:

“Vice President:

You practicing since when?

Respondent:

1985.

Vice President:

In which name you are practicing?

Respondent:

A.K. Chawla & Associates.

Vice President:

Is it a proprietorship firm?

Respondent:

Yes, Sir.

Vice President:

Since 1993, two years before when this issue was opened, we need your financial statement of Mr. Ashok Chawla and your firm, the income-tax assessment till 2000.

Counsel for the Respondent:

I have last prayer to make My Lords. My submission is that connivance was not there, his intention was not fraudulent at the same time he wanted to be associated with the capital market to make some fast money perhaps. That has been seen leniently.”

- The respondent also admitted that in another case, involving Manu Finlease, he had acted in concert with Sh. S.K. Gupta, in fraudulently altering the stock invests and back dating the application, resulting in illegal allotments. The case is still pending before SEBI.

21. A perusal of the above statement of the respondent and the conclusions derived therefrom are very telling in nature. The effect of the same is discussed hereinbelow.

22. As recorded above, there are two main allegations against the respondent.

Issue No. 1: Irregular allotment of 1,17,200 shares of BFSL involving irregular subscription for 27,00,000 shares with an application money of Rs.2.7 crores by way of stock invests issued by Sangli Bank, Karol Bagh, New Delhi.

23. On this issue, the investigation of SEBI had revealed that there were 27 applications for 1 lakh to 1.2 lakh shares each, involving the application money of Rs.10 to 12 lakh each. These applications were accompanied by stock invests issued by Sangli Bank, Karol Bagh, New Delhi and were allotted 4,000-4,800 shares each. The public issue of BFSL had closed on 5th October, 1995, but the stock invests were issued on 23rd November, 1995.

The stock invests were 10 times more than what they were issued for namely, they were meant for 10,000 to 12,000 shares each involving share application money of 1 lakh to 1.20 lakh but were irregularly converted into higher stock invests i.e. 10 times more, resulting in allotment of 4000 to 4800 shares each. The findings of SEBI are contained in the investigation report and the conclusions therein. SEBI's report was forwarded to the ICAI which conducted its own enquiry and the Disciplinary Committee of ICAI had arrived at the same conclusion. The conclusions of the DC are also summarised above.

24. The respondent's submission that he was not involved in the tampering of the stock invest on the ground that he had handed over the blank forms to Sh. S.K. Gupta and his staff members, should be disbelieved in light of the evidence and material. Even if one were to believe that the applications and stock invests were tampered with by Sh. S.K. Gupta, there is no reason whatsoever as to why the respondent, a CA by profession, ought to have handed over applications and blank monetary instruments to anyone, so as to enable such a person to not only tamper with the date, but also the number of shares and the amount of share application money. The finding of SEBI is that the respondent connived with Sh. S.K. Gupta. Even the DC of the ICAI categorically records that the respondent had connived with Sh. S.K. Gupta, which finding reads as under:

“8.3 The Committee had perused the documents on record, the written submissions filed by the Respondent and also heard the Respondent and his Counsel in person. It was observed by the Committee that the Respondent had admitted that he was in association with Mr. S.K. Gupta for

arranging the finance. It was observed by the Committee that the Respondent was to receive consideration of 6% on the investment. Since, the Respondent did not receive the consideration, he got the applications withdrawn vide withdrawal notices dated 01.12.1995 sent to BFSL. The BFSL vide letters dated 14.12.1995 returned the original stock invests. The Respondent also admitted that these stock invests were returned to him. However, the letters of BFSL show that the stock invests were addressed to the applicants. The returning of stock invests to the Respondent instead of the applicants clearly shows, the association of the Respondent with Mr. S.K. Gupta and establishes his connivance with him.”

25. The DC further notes that when the letter of withdrawal was sent to the company, the stock invests were actually returned to him instead of the investors and this is a clear evidence of connivance between the respondent with Sh. S.K. Gupta by using the names of the applicants.

26. The most glaring fact that completely belies the case of the respondent is that the fixed deposits which were given as security for issuance of the stock invests belonged to the respondent. This is clear from both SEBI's investigation as also the statement recorded by the DC of the ICAI. The respondent admitted that the fixed deposits that were given as security for the issuance of stock invests. Thus there can be no doubt that the respondent was guilty of the misconduct and has failed in his professional duty of maintaining a distance between him and the promoter. His conduct leading upto the irregular allotment of shares is blameworthy and at fault. The conduct clearly constitutes 'misconduct'.

Issue No. 2: Allotment of 7,000 shares against

applications accompanied by ante-dated stock invests issued by Sangli Bank.

27. On this issue there was a clear finding of SEBI that 80-90 stock invests of Rs.10,000/- each were issued to Mr. Ashok Chawla by Sangli Bank, Karol Bagh after the closing of public issue by BFSL. The respondent had also admitted before SEBI that 7000 shares allotted against these applicants were sold through Mr. Gautam Rohatagi, member of Delhi Stock Exchange. The respondent, in his statement recorded on 5th September, 1997 before SEBI, had admitted that he had obtained ante-dated stock invests. Through these irregular investments he earned profit of Rs.40,000/-by conniving with Mr. S. K. Gupta and indulging in ante-dating. He also deprived the general investing public from investing in BFSL. The findings of SEBI are not challenged by the respondent.

28. The DC, on perusal of the documents and written statement of the respondent and after duly hearing the counsel for the respondent, came to the conclusion that the stock invests were issued on 23rd November, 1995. The entire chain of events as recorded in the DC's report points to the respondent being the centre piece or fulcrum of the transactions. The said chain of events and facts are –

- (i) the respondent had arranged the investors;
- (ii) FDs to secure stock invests were belonging to the respondent;
- (iii) the respondent obtained blank forms and submitted it to BFSL and Mr. Gupta;
- (iv) Irregularities were committed in the forms by inflating the number of shares and the application money.
- (v) The stock invests were returned to the respondent after letter of

withdrawal was sent.

All these point clearly to the fact that it was none else but the respondent who was conducting all the dealings leading up to the issuance of the stock invests and allotment of the shares - though the applications for allotment of shares were allegedly withdrawn subsequently.

29. Thus, it can be seen that both SEBI and ICAI have found him guilty after following due process. Statement of the respondent has been recorded before both the authorities. He has candidly admitted in his statement that he was to be paid 6% commission on these transactions and that he did not appeal against the order of SEBI, debarring him for 5 years after holding him guilty. Even the DC held him guilty and the ICAI Council of ICAI, in its meeting on 2nd June, 2013, directed his removal from the register of members of ICAI for a period of one year.

30. This recommendation of the ICAI having been made on 2nd June, 2013, this Court notes that events which relate to the case date back to 1995. More than 22 years have passed since the events have transpired. Though this Court may have been inclined to increase the nature of punishment to the respondent, owing to the long delay, it is directed that the respondent shall be debarred for a period of one year as recommended by the DC.

31. This Court would like to observe that CAs ought to maintain the highest level of ethics and integrity, not only in the interest of their clients but also to ensure that probity and sanctity are not compromised in any manner as CAs are not merely professionals engaged by their clients, but are protectors and guardians of financial markets on which a nation depends. In the present case, after the report of the DC, the respondent made a

representation to the ICAI Council to the following effect:

“In view of the above it is submitted that the order of the DC suffers from serious errors on facts and consequently on judgment. The only role that I played in BFSL public issue was a finance facilitator and it cannot be treated as an act of misconduct, because it was just for my survival. Kindly absolve me from all charges and oblige.”

(emphasis supplied)

This clearly proves that the respondent was well aware of the misconduct in which he had indulged and was praying for sympathy from the ICAI Council.

32. The reference is accordingly accepted and in exercise of powers under Section 21(6) of the Act, it is directed that the respondent shall be suspended from the membership of the ICAI for a period of one year. During this period, the respondent is restrained from rendering any services as a CA as recognized by the Chartered Accountants Act, 1949.

33. The reference is allowed in the above terms with costs of Rs.10,000/- to be paid by the respondent to the petitioner within 4 weeks.

PRATHIBA M. SINGH, J

SANJIV KHANNA, J

November 24, 2017/dk/R