



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

[PR-68/2016-DD/26/2017-DC/811/2018]

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.

[PR-68/2016-DD/26/2017-DC/811/2018]

In the matter of:

**Dr. Kanchan Kumar Saxena (CEO),
Bhopal Sahakari Dugdha Sangh, Bhopal,
Mryadit Bhopal Dairy plant,
Habibganj, Bhopal - 462024**

.... Complainant

-Vs-

**CA. Subodh Maheshwari (M. No. 071569),
E-5/10 Arera Colony,
Opposite Habibganj Railway Station
Bhopal - 462 016**

.... Respondent

MEMBERS PRESENT:

1. CA. (Dr.) Debashis Mitra, Presiding Officer (Present in person)
2. Mrs. Rani Nair, I.R.S. (Retd.), Government Nominee (Present in person)
3. Shri Arun Kumar, I.A.S. (Retd.), Government Nominee (Present in person)
4. CA. Rajendra Kumar P, Member (Present in person)
5. CA. Cotha S Srinivas, Member (Present in person)

DATE OF MEETING : 28.06.2022 (Through Physical/ Video Conferencing Mode)

1. That vide findings under Rule 18 (17) of the Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007 dated 11.02.2022, the Disciplinary Committee was inter-alia of the opinion that **CA. Subodh Maheshwari (M. No. 071569), Bhopal** (hereinafter referred to as the



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Respondent") was **GUILTY** of Professional Misconduct falling within the meaning of Item (4) of Part II of the Second Schedule and Other misconduct falling within the meaning of Item (2) of Part IV of the First Schedule of the Chartered Accountant Act, 1949.

2. The Committee noted that this case was earlier fixed for punishment on 25th April 2022 and 1st June 2022 and was adjourned on both dates at the request of the Respondent. The Committee noted that on the present day i.e. 28th June 2022, the Respondent was present through video conferencing mode. The Respondent submitted that he is senior citizen having 36 years of practice in Bhopal and has an unblemished professional track record. He further urges the Committee that if any punishment is awarded to him, it would be a huge loss to him and his profession.

3. On the merits, the Respondent relied upon his submission dated 04th March 2022 in response to findings of the Disciplinary Committee whereby he mentioned that after getting aware of the First Information Report (FIR) in the matter, he had immediately returned the amount the Complainant Company and hence, the Complainant did not have any valid case against him. He further stated this fact was also considered by Hon'ble Madhya Pradesh High Court while granting Anticipatory Bail to him. He stated that alleged cheques were pretended to be issued for payment of VAT in the name of SBI and had the same being issued for payment of VAT the cheques were required to be issued as "Pay to Govt of MP under head 040- Tax on sale, trade etc" under the MP VAT Act 2002. The Respondent, accordingly, prays before the Committee that no punishment may be imposed upon him.

4. The Committee noted that the Respondent was earlier associated with M/s Bhopal Sahakari Dugdha Sangh as a consultant. The Committee noted that it has already been established that the latter had given cheques amounting to Rs. 2.60 crores for the payment of VAT to the Respondent, who fabricated the cheques in his name as well in his wife's and son's name. The Committee noted that amount of Rs. 2.60 crores were remitted to the Respondent in the different trenches by way of 12 cheques dated between 29th October, 2013 to 19th June, 2015. The Committee on perusal of the cheques noted that these cheques were clearly tempered and had brought loss to the Government exchequer



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by diverting the amount of VAT given by M/s Bhopal Sahakari Dugdha Sangh. The action of the Respondent was deliberate & fraudulent and the intention to defraud both the Complainant & the govt was clear & established. The Committee noted that the Respondent returned the money only after FIR was registered against him. The Committee also noted that the Respondent even failed to check the source of the funds from where these amounts in multiple transactions were credited to his and his family members bank accounts. The Committee observed that the Respondent not only diverted the money received in his professional capacity, but also his acts had brought disrepute to the profession. The creditability and reputation of the profession depends upon the manner in which the members of the profession conduct themselves.

5. Accordingly, the Committee viewed that full opportunity for hearing was given to the Respondent and the Respondent was duly heard and ends of justice can be met if punishment is given to the Respondent commensurate with his above professional misconduct.

6. Therefore, keeping in view the facts and circumstances of the case, material on record and submissions of the Respondent before it, the Committee ordered that the name of the Respondent - CA. Subodh Maheshwari (M. No. 071569), Bhopal, be removed from the Register of members for a period of 01 (One) year along with fine of Rs. 1,00,000/- (Rupees One Lakh).

Sd/-

(CA. (DR.) DEBASHIS MITRA)
PRESIDING OFFICER

Sd/-

(MRS. RANI NAIR, I.R.S. RETD.)
GOVERNMENT NOMINEE

Sd/-

(CA. RAJENDRA KUMAR P)
MEMBER

Sd/-

(SHRI ARUN KUMAR, I.A.S. RETD.)
GOVERNMENT NOMINEE

Sd/-

(CA. COTHA S SRINIVAS)
MEMBER

DATE: 26.08.2022

PLACE: NEW DELHI

प्रमाणित सत्य प्रतिलिपि / Certified true copy

सीए. सुनील कुमार / CA. Suneel Kumar
सहायक सचिव / Assistant Secretary
अनुशासनात्मक निदेशालय / Disciplinary Directorate
इंस्टीट्यूट ऑफ चार्टर्ड एकाउंटेंट्स ऑफ इंडिया
The Institute of Chartered Accountants of India
आईसीएआई भवन, विश्वास नगर, शाहदरा, दिल्ली-110032
ICAI Bhawan, Vishwas Nagar, Shahdara, Delhi-110032

CONFIDENTIAL**DISCIPLINARY COMMITTEE [BENCH – II (2021-2022)]****[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.****File No. : [PR-68/2016-DD/26/2017-DC/811/2018]****In the matter of:**

Dr. Kanchan Kumar Saxena (CEO),
Bhopal Sahakari Dugdha Sangh,
Maryadit Bhopal Dairy Plant,
Habibganj, Bhopal – 462024

.....Complainant**Versus**

CA. Subodh Maheshwari..... (M. No. 071569),
E-5/10 Arera Colony,
Opposite Habibganj Railway Station,
Bhopal-462016

.....Respondent**MEMBERS PRESENT:**

CA. (Dr.) Debashis Mitra, Presiding Officer (Through VC)
Shri Rajeev Kher, Government Nominee, (Through VC)
CA. Amarjit Chopra, Government Nominee, (Through VC)
CA. Babu Abraham Kallivayalil, Member,
CA. Rajendra Kumar P, Member, (Through VC)

DATE OF FINAL HEARING : 25.06.2021 (Through Video Conferencing Mode)

PARTIES PRESENT :

Complainant's Counsel : Mr. Arjun Garg, Advocate
Respondent : CA. Subodh Maheshwari
Respondent's Counsel : Mr. Sumit Kansal, Advocate

CHARGES IN BRIEF:-

1. The Committee noted that in the present case, during the period October 2013 to October 2015 certain cheques amounting to Rs. 2.60 crores for the payment of VAT were given by M/s Bhopal Sahakari Dugdha Sangh, a co-operative society (hereinafter referred as the "**Organisation**") to the Respondent of which he was earlier associated as consultant. The charge against the Respondent is that he fabricated these cheques in his name as well in his wife's and son's name. Accordingly, the Respondent was held prima-facie Guilty by Director (Discipline) of Professional and/or Other Misconduct falling within the meaning of Clause (2) of Part IV of the First Schedule and of Professional Misconduct falling within the meaning of Clause (4) of Part II of the Second Schedule to the Chartered Accountant Act, 1949 read with Section 22 of the said Act.

BRIEF FACTS OF THE PROCEEDINGS:

2. On the day of final hearing on 25/06/2021, the Committee noted that the Complainant Counsel was represented by his Counsel Shri Arjun Garg, Advocate along with his colleague Ms. Shrutika Garg through Video Conferencing mode. The Respondent along with his Counsel Mr. Sumit Kansal, Advocate was also present before it. At the outset, the Committee enquired from the parties that since the composition of the Committee had changed further to the hearing held on 29th January 2021, as to whether they wish to have a de-novo hearing in the present matter. On the same both parties agreed to continue from the stage it was left at the time of last hearing.
- 2.1 Thereafter, the Committee began the proceedings in the matter wherein the Complainant's Counsel explained the modus operandi of the alleged misconduct on the part of the Respondent. The Respondent's Counsel made his line of defense while being specifically questioned by the Committee with regards to, among others, source of loans & advances shown in his personal account, client's money received in his personal saving joint account etc. The Respondent was also examined by the Committee.

2.2 After hearing both the parties, the Committee concluded the hearing by reserving its judgement with the directions to both the parties to produce following information to it for its perusal before pronouncing its decision:

From the Complainant:

- a. Status of FIR/ cases pending in Court.
- b. Chronology of events in the case.

From the Respondent:

- a. Income Tax Return of Ms. Anju Maheswari for A.Y. 2014-15 and 2015-16.
- b. Personal Balance Sheet of Ms. Anju Maheswari with Capital Account for A.Y. 2014-15 and 2015-16. The Respondent's Counsel presented arguments in defense and presented matter as per charges alleged upon him. After considering all papers available on record and after detailed deliberations and recording the submissions, the Committee decided to conclude the matter.

2.3 Thereafter this matter was placed in meeting dated 15th September 2021 for consideration of the facts and arriving at a decision by the Committee. The case was considered by same members who earlier heard this case. The Committee noted that the both the parties had made submissions in the matter. Keeping in view the facts and circumstances of the case, material on record and submissions of the parties at the time of earlier hearing(s) the Committee passed its judgement.

FINDINGS OF THE COMMITTEE

3. The Committee noted the submission of the Respondent/ his Counsel whereby they inter-alia stated as under:
 - a. That alleged cheques were never handed over to the Respondent and were directly credited to the account of the Respondent or his wife or his son.
 - b. The Respondent was not aware of the purpose for which cheques were given by the organisation to him. He was of bona-fide belief that the same were given by Mr. Sudhir Jain, Accountant of the Organisation for Investment in stock market and Mutual funds.

- c. The Respondent was having share business also. The Respondent assured fixed return to Mr. Sudhir Jain in lieu of deposits.
 - d. When the Respondent came to know about FIR against him, he immediately returned the amount to the Organisation.
 - e. The Respondent worked as Tax consultant till 31st March, 2013 only and as per his scope of work the same was not covering depositing of cheques.
4. The Committee with regard to the contention of the Respondent that he has worked as the tax consultant only upto 31st March 2013, noted that in letter dated 3rd February 2015 (**Page D-26 of prima-facie opinion**) of the Respondent to the organisation, he himself referred to the M.P VAT, Entry Tax and Central Sales Tax assessment orders for the year 1-4-2012 to 31-03-2013. The Committee further noted that in order dated 19th February 2015 the Deputy Commissioner, Sales tax (**Page D-32A of prima-facie opinion**) had mentioned that the Respondent along with Manager Finance of the Organisation were present in compliance to notice to the Organisation. The Committee was of view that the contention of the Respondent is not tenable as the said documents depicts his association with the organization even after the year 2013.
5. The Committee further noted that the Respondent had admitted that he was doing investment business and alleged cheques were given and deposited directly in his account(s) by Mr. Sudhir Jain who was working as accountant in the organisation. When the Committee enquired from him from where Mr. Sudhir Jain (who was working as accountant) had given amount in crores to him, the Respondent failed to provide any justified answer and merely mentioned that Mr. Sudhir Jain might be having other incomes also.
- 5.1 The Committee in this regard noted that amount of Rs. 2.60 crores was remitted to the Respondent and his family members account in the different trenches by way of twelve cheques (**page C-7 to C-12 of prima-facie opinion**) dated between 29th Oct, 2013 to 19th June, 2015. The Committee was surprised to note that neither the Respondent nor his family members had bothered to check as to where from these amounts were reflected in their bank accounts. The Committee

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on perusal of cheques noted that the payer of the cheques is the Organisation which is clearly mentioned on the face of the alleged cheques. The Committee was not convinced with the reply of the Respondent and was of opinion that the Respondent failed to check the proper source of funds and involvement of name of Mr. Sudhir Jain is an afterthought. The Committee also noted that the Respondent had engaged himself in business other than profession of Chartered Accountants without permission of the Council.

6. The Committee also viewed that even if the defence/ averment of the Respondent is accepted that he took money from Mr. Sudhir Jain to invest on his behalf even then the shares/ investments were not made in name of Mr. Sudhir Jain. The Committee from perusal of Balance Sheets of the Respondent for the year ending 31.03.2014 and 31.03.2015 noted that other loans and advances were increased from Rs. 72 lacs (as on 31.03.2014) to Rs. 166.80 lacs (as on 31.03.2015) and its application was mainly made to reduce personal loan liabilities to tune of Rs. 69 lacs as under:

Loans	31.03.2014	31.03.2015
Secured loan from Banks	Rs. 116.88 lacs	Rs. 59 lacs
Loans From H N Agrawal, Parag Agrawal and Shrigopal Agrawal	Rs. 11.00 Lacs	Nil

Moreover, the Committee noted that money taken by him from Mr. Sudhir Jain for investment was invested in the name of the Respondent only. Hence the Committee noted that the Respondent used the client's money for his own purpose. The Committee observed that the Respondent failed to deposit the client's money in separate bank Account.

7. The Committee noted that the anticipatory bail was granted to the Respondent against the FIR lodged by the Complainant. The matter is sub-judice before the Ld. District Court, Bhopal and is at stage of final arguments. The Committee

noted that the Respondent in his defence mentioned that he returned the money by taking loan from his wife.

8. The Committee observed that admission from the Respondent before the Committee about receipt of money and merely returning it to organisation soon after lodging of FIR by the Complainant does not absolve the Respondent from the charges levied upon him. Moreover, the Respondent utilised that money for his personal purpose is clearly violation on his part. Accordingly, the Committee opined that the Respondent not only deflects the money received in professional capacity but also his acts had brought disrepute to the profession.

CONCLUSION

9. In view of the above findings stated in above paras vis a vis material on record, Accordingly, in the considered opinion of the Committee, the Respondent is **GUILTY** of Professional and/or Other Misconduct falling within the meaning of Item (2) of Part-IV of the First schedule and Item (4) of Part II of Second Schedule to the Chartered Accountants Act, 1949 read with Section 22 of the Act.

sd/-

(CA. (Dr.) DEBASHIS MITRA)
PRESIDING OFFICER

approved & confirmed through email
(SHRI RAJEEV KHER, I.A.S. RETD.)
GOVERNMENT NOMINEE

approved & confirmed through email
(CA. AMARJIT CHOPRA)
GOVERNMENT NOMINEE

approved & confirmed through email
(CA. RAJENDRA KUMAR P)
MEMBER

approved & confirmed through email
(CA. BABU ABRAHAM KALLIVAYALIL)
MEMBER

DATE: 10TH FEBRUARY, 2022
PLACE: NEW DELHI

सही प्रतिलिपि होने के लिए प्रमाणित /
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अरुण कुमार / Arun Kumar
कार्यकारी अधिकारी / Executive Officer
अनुशासनात्मक निदेशालय / Disciplinary Directorate
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