

In the matter between:

THE SOUTH AFRICAN INSTITUTE OF CHARTERED ACCOUNTANTS

In re:

ANOJ SINGH

The Accused

**DECISION OF THE DISCIPLINARY COMMITTEE OF THE SOUTH AFRICAN
INSTITUTE OF CHARTERED ACCOUNTANTS**

INTRODUCTION

1. The Accused (Mr Singh) has been charged by the South African Institute of Chartered Accountants (*"the Institute"*) for a number of breaches of the Institute's Bylaws and its Code of Conduct in relation to his conduct whilst he was employed as the Group Financial Officer of Transnet¹ and whilst he was employed as the Chief Financial Officer at Eskom.²
2. The charges relating to Mr Singh's conduct whilst employed at Transnet all relate to his involvement in the acquisition of what has colloquially been described as the *"1064 Locomotive Deal"*. That was an acquisition by Transnet

¹ During 2012 to 2015.

² During 2015 to 2016.

through a competitive bidding process of 1064 diesel and electric locomotives at a cost ultimately of R54,5 billion.

3. The charges relating to Mr Singh's conduct whilst employed at Eskom are varied but primarily relate to the authorization of payments of substantial sums to various service providers and are dealt with more fully later.
4. In what follows we address the following themes in the order set out below:
 - 4.1. Mr Singh's absence in these proceedings;
 - 4.2. the facts relating to the 1064 Locomotive Deal;
 - 4.3. an overview of the charges;
 - 4.4. each of the charges in respect thereof and our findings in relation thereto;
 - 4.5. the Eskom related charges;
 - 4.6. each of the charges in respect thereof and our findings in relation thereto;
 - 4.7. our decision on the sanction to be imposed;
 - 4.8. our decision on all of the charges.

MR SINGH'S ABSENCE

5. Mr Singh was given formal notice of the disciplinary hearing on 30 October 2019. On 4 November 2019, and in response to an invitation to attend a pre-hearing meeting by the Institute's attorneys, Mr Singh's legal

representative's Peyper Attorneys, informed the Institute's attorneys that they would not be taking part in the disciplinary proceedings.

6. The disciplinary proceedings commenced on 13 November 2019. Neither Mr Singh nor his legal representatives attended on the first day of the disciplinary proceedings or any day thereafter. The proceedings were widely published in the media and Mr Singh's absence on the first day was commented on by a number of journalists and news reporters. Mr Singh would therefore have known of the proceedings from the media as well.
7. We were accordingly satisfied that the Institute had given Mr Singh due notice of these proceedings and that Mr Singh's absence was attributable to an election made by him not to participate.
8. The disciplinary hearing accordingly proceeded in the absence of Mr Singh with the Institute leading a number of witnesses in support of the charges relating to Mr Singh's conduct whilst employed at Transnet and thereafter seeking to rely on a number of documents in support of the charges relating to Mr Singh's conduct whilst employed at Eskom.
9. Final argument by the Institute's legal representatives was presented on 17 July 2020.

THE FACTS RELATING TO THE 1064 LOCOMOTIVE DEAL

10. During July 2012, Transnet issued requests for proposals for the supply of new electric and diesel locomotives for its general freight business.

11. The acquisition of new locomotives was identified as a key issue for Transnet and a business case was prepared to motivate for the acquisition. The business case was in turn premised on amongst others a financial model indicating how the cost of acquisition of the new locomotives would be funded and what the return to Transnet over a period of time would be. This business case was prepared by consultants appointed by Transnet but in conjunction with employees of Transnet. The business case is a lengthy document that was aimed at providing the rationale to invest in the procurement of 1064 (465 diesel and 599 electric) new locomotives. Its opening line recommended the acquisition of the new locomotives at an amount of R38,6 billion. It included a paragraph that stated that this cost excluding the potential effects from forex hedging, forex escalation and other price escalations.³
12. The proposed acquisition of new locomotives was so important to Transnet that in anticipation of the receipt of bids pursuant to its request for proposals, it established a Locomotive Steering Committee of which Mr Singh was a member.
13. On the 18th of April 2013, the Locomotive Steering Committee held a meeting at which Mr Singh was the Acting Chairperson. At that meeting, Mr Singh highlighted a number of aspects relating to the business case for the acquisition of the 1064 locomotives. The Locomotive Steering Committee ultimately resolved to Transnet's Group Executive Committee that it approve the acquisition of the 1064 locomotives at an estimated total cost of acquisition

³ **There was uncertainty as to when this was added to the business case as a previous version reflected such costs as being included in the total cost of acquisition.**

of R38,6 billion (excluding the potential effects from forex hedging, forex escalation, other price escalations and borrowing costs).

14. On the same day, Mr Singh made a submission to Transnet's Capital Investment Committee for the approval of the acquisition of the 1064 locomotives at an estimated cost of R38,6 billion. In doing so, he once again represented to the Capital Investment Committee that the amount of R38,6 billion excluded forex hedging, forex escalation, other price escalation and borrowing costs.
15. On 23 April 2013, Mr Singh presented the business case for the acquisition of the 1064 locomotives to Transnet's Board Acquisitions and Disposals Committee (*"the BADC"*). The business case was approved by the BADC and subsequently presented to Transnet's Board for approval which was granted on the 25th of April 2013. Transnet's Board approved the business case at a total estimated cost of R38,6 billion excluding forex hedging, forex escalation, other escalating costs and borrowing costs.
16. Bids were received from [REDACTED].
17. On 27 December 2013, Mr Singh together with [REDACTED] and [REDACTED], addressed a memorandum to Transnet's Cross-functional Evaluation team in which they motivated for the splitting of the award to two bidders for diesel locomotives and another two bidders for electric locomotives respectively on the basis that such a split would reduce delivery risk and would allow for locomotive standardisation. This was not contemplated by the requests for proposals.

18. On 28 January 2014, ██████ appointed Mr Singh to be part of a negotiating team, the main purpose of which was to negotiate the best and final offers received from the various bidders and to present those to Transnet's Board for approval.
19. Pursuant thereto, the negotiating team engaged with the various bidders. The post-tender negotiations commenced in February 2014 and ended on 14 March 2014. Contracts were subsequently concluded with the four bidders on 17 March 2014 for the acquisition of 1064 locomotives.
20. These post-tender negotiations resulted in an increase in the total cost of acquisition of the locomotives from R38,6 billion to R54,5 billion, an increase of R15,9 billion.
21. Subsequent to the conclusion of these contracts, and on 23 May 2014, ██████ presented a memorandum to Transnet's BADC, the purpose of which was to note the increase in the estimated total cost of the acquisition of the 1064 locomotives and to request that the BADC recommend an increase from R38,6 billion to R54,5 billion to the Board of Directors for approval. That memorandum had the support of Mr Singh and ██████ both of whom endorsed and recommended the increase and the request to Transnet's Board.
22. This memorandum and its contents played a significant role in these proceedings. Considerable evidence was led on it and a number of conclusions have been drawn by the Institute arising therefrom in support of the charges levied against Mr Singh. We deal with those aspects later in this decision.

23. It is against this background and the increase in the estimated cost of the acquisition of the 1064 locomotives that saw the Institute levelling charges against Mr Singh for various breaches of its Code of Conduct and its Bylaws.

OVERVIEW OF THE CHARGES

24. The 1064 Locomotive Deal was also the subject of some evidence at the Judicial Commission of Inquiry into Allegations into State Capture chaired by Deputy Chief Justice Zondo (*"the Zonda Commission"*). Some of the evidence that was presented before the Zondo Commission, was presented to this Disciplinary Committee but not all of it. That is not surprising given that this Committee's task was to evaluate Mr Singh's professional conduct against the Institute's Code of Conduct and not to enquire into allegations of state capture that are the subject matter of the Zondo Commission. Our findings and conclusions on the evidence presented to us must therefore be seen in this context.
25. In coming to our decision, we have considered all of the evidence that was led by the Institute. That evidence is captured firstly in witness statements furnished to us, secondly in the documentary bundles handed to us prior to and during the proceedings and finally in the recorded transcripts of the oral testimony given by witness during the proceedings. We do not propose to repeat or summarize all of the evidence that was led or relied upon. We likewise do not reference the evidence to paginated sections of the documents that we have considered as we deem that to be unnecessary. We have however highlighted certain evidence in our decision below but in doing so, it should not be taken as meaning that other evidence that we have not

highlighted was either irrelevant or ignored.

26. We also point out that in the case of the Transnet charges, although the Institute proffered eleven separate charges against Mr Singh, many could have been combined into a single charge stemming from conduct relating to a single document. It was therefore not surprising that in its heads of argument, the Institute grouped the first 7 charges together. Notwithstanding this, we have elected to deal with each charge separately, save where the charges are in the alternative to another in which case we have dealt with them together.

27. We have also noted that each of the charges contain a number of breaches of the Institute's Bylaws. They are not cast as alternatives (save in respect of Bylaw 34.13) and we have therefore adopted the approach of dealing with them cumulatively. In summary, the Institute has relied on four Bylaws. They are:

27.1. Bylaw 34.2 which provides the following act or omission as constituting improper conduct:

"conducting himself or herself with gross negligence in connection with any work performed by him or her in his or her profession or employment "

27.2. Bylaw 34.10 which provides the following act or omission as constituting improper conduct:

"committing a breach of any Rule or Code of Professional Conduct prescribed by the Board from time to time "

27.3. Bylaw 34.12 which provides the following act or omission as constituting improper conduct:

"conducting himself or herself in a manner which, in the opinion of the ... Disciplinary Committee is discreditable, dishonourable, dishonest, irregular or unworthy or which is derogatory to the Institute or tends to bring the profession of accountancy into disrepute."

27.4. Bylaw 34.13 which provides the following act or omission as constituting improper conduct:

"failing to comply with any regulation, Bylaw, article or Code of Conduct."

28. Bylaw 34.2 we note requires of the Institute to establish gross negligence on the part of Mr Singh. Gross negligence is to be distinguished from ordinary negligence. Ordinary negligence is the failure to exercise reasonable care⁴ whereas gross negligence has been described as a conscious or wilful disregard of the need to take such reasonable care that would likely cause harm or loss.⁵ The difference is one of degree⁶ with the latter being a more serious form of negligence. It is more than simple carelessness or failure to act. Ultimately, a determination of whether conduct amounts to gross negligence turns on the conduct involved and whether it can be said to have crossed the line from mere carelessness to a deliberate or flagrant disregard

⁴ Kruger v Coetzee 1966 (2) SA 428 AD at 430E.

Afrox Healthcare Ltd v CCMA [2012] 7 BLLR 649 (LAC).

⁶ Armitage v Nurse [1997] 2 ALL ER 705 but see Masstores (Pty) Ltd v Murray & Roberts Construction (Pty) Ltd [2008] ZASCA 12 where Lewis JA questioned whether such a difference existed.

of the welfare of others.

29. In contrast to Bylaw 34.2, Bylaw 34.12 is broader in ambit. It contemplates a variety of conduct that range from mere irregularity to dishonesty. Importantly, it conceives of a finding of guilt if the conduct tends to bring the profession of accountancy into disrepute. Whether conduct may bring the profession into disrepute will depend on the nature of the offence, the impact that it may have on the profession and the reputational harm that may be caused by such conduct to the profession.
30. The Institute has also relied on Bylaws 34.10 and 34.13 both of which in turn refer in different ways to the Institute's Code of Conduct. The relevant codes relied upon are those set out in sections 110,120,130,150, and 220. We do not quote those sections but merely identify that they relate principally to integrity (section 110), objectivity (section 120), professional competence and due care (section 130), professional behaviour (section 150) and conflicts of interest (section 220). We have not, in the decision that follows, drawn a distinction between the various sections of the Code of Conduct. It was unnecessary to do so. Our findings in relation thereto should accordingly be read to mean a finding on one or more or all of such sections of the Code of Conduct as relied upon by the Institute.
31. In what follows we deal with each of the charges levelled against Mr Singh. In doing so, we once again do not repeat the facts relied upon in the charge sheet or the charges themselves. These may be gleaned from the charge sheet contained in the bundle presented to us at the commencement of the proceedings.

Charges 1 and 2

32. Charges 1 and 2 are pleaded in the alternative. Both relate to a contravention of Bylaw 34.2 and in the case of charge 1 also includes an allegation of improper conduct relating to Bylaw 34.10.
33. They relate primarily to Mr Singh's conduct *vis a vis* the business case and the statements reflected therein that the cost of the acquisition of the 1064 locomotives excluded the potential effects from forex hedging, forex escalation and other price escalations.
34. The Institute's case is that the business case included such effects and that Mr Singh had either misled the BADC or was grossly negligent in failing to ensure that the business case accurately and clearly stated that the initially indicated total costs was R38,6 billion and inclusive of forex hedging and escalations.
35. The Institute placed considerable reliance on the evidence of Mr Gallard, an Electrical Engineer and erstwhile employee of Transnet who was in some respects involved in the procurement of the 1064 locomotives and who subsequently was appointed to assist in an investigation into the acquisition of the 1064 locomotives.
36. We did not find Mr Gallard's evidence impressive. Much of it was conjecture and speculation on his part. He moreover expressed opinions on matters which we do not believe he had the necessary expertise on. A further troubling feature of Mr Gallard's evidence was that he was quite willing to attribute the most serious of conclusions relating to Mr Singh's conduct only, when other

reasonable inferences could have been drawn. The impression created was that he was tasked to find and conclude Mr Singh's guilt in relation to the acquisition of the 1064 locomotives rather than furnish an objective and unbiased view.

37. An added difficulty was that the complaints of misleading the BADG or the Board were made in circumstances where Mr Gallard himself was present at various meetings at which the exclusion relating to forex was minuted and to which there was no demure on his part or on the part of any other attendees for that matter. He was unable to proffer any reasonable explanation for this.
38. The net result was that no one, more specifically those who had been intimately involved with the financial model underpinning the business case, had queried or raised any objections to the inclusion of the statement in the business case that the total cost of R38,6 billion excluded the potential effects from forex hedging, forex escalation and other price escalations.
39. The Institute submitted that the indifference of other role players was irrelevant because we were tasked to consider only Mr Singh's involvement and professional conduct. But that approach respectfully is somewhat myopic given the senior employees involved and the rather serious accusations levelled against Mr Singh. We have therefore grappled with the notion that Mr Singh misled the BADG in circumstances where all involved were privy to the contents of the business case and would have known whether the financial model included or excluded forex hedging and escalation. There was no evidence that this was a deliberate strategy intended for an ulterior purpose. Many inferences were drawn by Mr Gallard but they were unsupported and at

best speculative.

40. In contrast, we found Mr Chabi's evidence to be more credible and convincing. Mr Chabi is an Actuary who independently analysed the financial model underpinning the business case. He concluded that the total cost of acquisition of R38,6 billion in fact allowed for foreign currency hedging and price escalations.
41. Mr Singh had been given a PowerPoint presentation on 18 April 2013 which indicated that price escalations and forex hedging were included in the estimated total cost of acquisition. But that is as far as the evidence went.
42. We therefore find Mr Singh guilty of improper conduct in respect of Charge 2 within the meaning of Bylaw 34.2 by conducting himself grossly negligently in failing to ensure that the business case accurately and clearly stated that the initial costs of R38,6 billion included the potential effects from forex hedging, forex escalation and other price escalations.
43. We accordingly make no finding in respect of Charge 1 though we do express the view that we would have had difficulty in concluding that Mr Singh was dishonest in misleading the BADC or Transnet's Board.

Charges 3, 4 and 5

44. Charges 3, 4 and 5 relate to Mr Singh's conduct in justifying the increase in the total cost of acquisition to Transnet's Board. Charge 5 is in the alternative to Charges 3 and 4. We therefore deal with these three charges together.

45. Charges 3, 4 and 5 are primarily based on the contents of the memorandum submitted by [REDACTED] on 23 May 2014 to Transnet's BADC. This memorandum was prepared by Mr Singh's subordinates but with considerable input by Mr Singh.
46. The memorandum represented that the total cost of acquisition had increased to R54,5 billion due to a number of factors including forex and escalation costs of R9,5 billion.
47. The statements contained in the memorandum of 23 May 2014, relating to the increase in the total cost of acquisition being attributable to forex escalation, were not correct. That is because the financial model had already factored in the costs of forex hedging and escalation.
48. The reasons advanced for the increase were thus misleading and negligently made. The evidence suggests that Mr Singh played an important role in the production of the memorandum and therefore he would have either known or been told of the actual reasons for the increase in the total cost of acquisition. There was however no direct evidence that Mr Singh revisited the earlier financial model when settling the memorandum of 23 May 2014.
49. We are of the view that on the evidence Mr Singh failed to clearly explain the correct position regarding the inclusion of forex hedging and escalation and that he therefore breached the Institute's Code of Conduct as contemplated by Bylaw 34.10 and as pleaded in charge 3.
50. We are unable to conclude that Mr Singh was grossly negligent by misrepresenting or withholding the full or correct reasons for the increase in

the total cost of acquisition of the 1064 locomotives within the meaning prescribed by Bylaw 34.2.

51. We are of the view that Mr Singh had failed to provide a proper account to Transnet's Board of the components that led to the increase from R38,6 billion to R54,5 billion. We do not attribute such conduct to be grossly negligent but rather consider it to be a breach of the Institute's Code of Conduct within the meaning of Bylaw 34.10 as pleaded in charge 5.
52. In light of our conclusions above, we make no finding in relation to charge 4.

Charge 6

53. Charge 6 relates to Mr Singh's conduct in changing the hurdle rate from 18.56% to a lower rate of 15.2% in order to present the increased cost of acquisition of the 1064 locomotives as still being profitable to Transnet.
54. The evidence before us established that the time when Mr Singh adopted the lower hurdle rate of 15.2%, Transnet had not amended its hurdle rate policy. Mr Singh knew that.
55. The inference is irresistible that Mr Singh applied a lower hurdle rate in order to achieve a positive NPV and consequently a representation to Transnet's Board that the 1064 Locomotive Deal remained profitable notwithstanding the substantial increase of the total cost of acquisition to R54,5 billion.
56. We therefore find Mr Singh guilty of gross negligence in that he misled Transnet's Board by failing to disclose that the increase in the cost of acquisition would render the business case or the 1064 Locomotive Deal, no

longer profitable to Transnet.

57. We also find that Mr Singh deliberately changed the hurdle rate from the applicable 18.56% to a lower rate of 15.2% in order to conceal from the Board that the project was no longer profitable to Transnet and that he is thus guilty of Bylaw 34.10 and the Codes of Conduct relied upon therein.

Charge 7

58. Charge 7 relates to Mr Sing's conduct in misleading Transnet's Board or allowing it to be misled that a cost-savings of between R6 billion and R10 billion had been realised in the conclusion of the 1064 Locomotive Deal transaction when this was not the case.
59. Charge 7 once again is permeated by the evidence relating to the memorandum of 23 May 2014 and its contents.
60. We have in this regard relied on the evidence of Mr Chabi whose conclusions have demonstrated that the representation that such cost-savings had been realised was not true.
61. Given our conclusions in relation to charge 6 above, we find Mr Singh guilty of improper conduct within the meaning of Bylaw 34.2 in that he conducted himself grossly negligently by allowing the Board to be misled about a cost-saving which was not the case.
62. We equally find his conduct to have breached the Institute's Code of Conduct as envisaged by Bylaw 34.10.

Charge 8

63. Charge 8 relates colloquially to what has been described as batch splitting.
64. Mr Singh together with [REDACTED] and [REDACTED] motivated for the splitting of the award to two bidders for diesel and another two bidders for electric locomotives, respectively,
65. The splitting of the award however had not been approved by Transnet's Board nor was it in accordance with the RFP that had been issued by Transnet. This notwithstanding, Mr Singh recommended the splitting of the award, We should point out that his recommendation does not appear to have been for any ulterior purpose. He appears to have been motivated by the rationale that such a splitting would reduce delivery risks and would allow for locomotive standardisation.
66. Mr Singh was alerted to the fact that batch splitting may require revisiting the tender process but his approach was that time was against Transnet and the matter should proceed, In adopting this approach, we believe Mr Singh crossed the line of what would be considered ordinary negligence, He ought to have appreciated that batch splitting would result in additional costs to Transnet but he flagrantly dispelled the potential for any additional costs without considering the effect this would have for Transnet
67. We therefore find Mr Singh guilty within the meaning of Bylaw 34.2 in that he was involved in committing Transnet alternatively he failed to act to prevent Transnet from being committed to batch splitting thereby exposing Transnet to a price increase.

68. We likewise find Mr Singh's conduct to be in breach of the Institute's Code of Conduct within the meaning prescribed by Bylaw 34.10.

69. We make no adverse finding insofar as Bylaw 34.12 is concerned.

Charge 9

70. Charge 9 relates to the failure to have presented the best and final offers that had been received from the bidders before Transnet's Board before they had been signed.

71. There was no evidence that the negotiating team of which Mr Singh was the Chairperson had presented the details of the best and final offer to Transnet's Board before the agreements with the bidders had been signed.

72. This constituted a contravention of Transnet's Procurement Procedures Manual.

73. Even though Mr Singh was not the head of procurement, as the Group Chief Financial Officer he ought to have known that such contracts could not be concluded before Transnet's Board had approved them. He was either complicit or supine both of which we consider to be improper conduct.

74. We therefore find Mr Singh guilty within the meaning of Bylaw 34.2 and 34.10.

Charge 10

75. Charge 10 relates to Mr Singh's failure to have obtained the written consent of the Minister and National Treasury for the conclusion of the four agreements for the acquisition of the 1064 locomotives.

76. This charge is based on an interpretation of a shareholder's compact or the significance and materiality framework which is an appendix to the shareholder's compact.
77. Much turned on whether the significance and materiality framework required mere notification (as the framework itself suggests) or approval.
78. We cannot on this basis conclude that Mr Singh was guilty of gross negligence and thus improper conduct within the meaning prescribed by Bylaw 34.2
79. There was in any event no evidence that any of these issues had been brought to his attention or that he was aware of these requirements but nevertheless signed them.
80. We similarly do not find Mr Singh guilty of any of the Codes of Conduct relied upon by the Institute as envisaged by Bylaw 34.10.
81. We therefore do not find Mr Singh guilty in respect of charge 10.

Charge 11

82. Charge 11 relates to Mr Singh's conduct in approving certain relocation costs for two of the bidders despite the fact that the business case made no provision for such relocation and despite the fact that such relocation costs had not been budgeted for.
83. We found the evidence of Mr Laher in this regard to be insightful. Mr Laher had expressed reservations to Mr Singh about the relocation and of the costs that were associated with them. Mr Singh notwithstanding these reservations approved the relocation costs.

84. We accordingly find that Mr Singh had not only failed to exercise due care in committing Transnet to these costs but that he flagrantly ignored the likely loss that Transnet would suffer as a consequence of his approval. We therefore find that he was grossly negligent within the meaning of Bylaw 34.2 in having approved the relocation costs.

THE ESKOM RELATED CHARGES

85. The Institute has proffered seven charges against Mr Singh arising out of his conduct whilst employed as the Chief Financial Officer at Eskom. They may broadly be divided into the following categories:

85.1. the approval of irregular payments to McKinsey;

85.2. the approval of irregular payments to Trillion;

85.3. his conduct surrounding the Tegeta Performance Guarantee and the purchase of Optimum Mine;

85.4. his improper relationship with the Gupta family.

86. No oral evidence was led by the Institute in support of these charges. Instead the Institute sought permission to rely on documentary evidence in terms of Bylaw 20.4.7. The reasons advanced by the Institute for wanting to lead documentary evidence as opposed to *viva voce* evidence, relate primarily to its difficulty in getting individuals with personal knowledge of the facts to come and give evidence.

Bylaw 20.4 reads as follows: "*All evidence given at the hearing of a complaint by the Disciplinary Committee shall be viva voce unless the Disciplinary Committee resolves that the documents received in connection with the matter shall be admitted as evidence in the proceedings.*"

87. The documentary evidence was varied consisting of records of interviews with various employees of Eskom, affidavits filed in court proceedings, affidavits submitted to the Zonda Commission, judgements of the High Court and email correspondence and minutes of relevant meetings.
88. The default position contemplated by Bylaw 20.4 is that oral evidence is to be led before the Disciplinary Committee. The reason therefore is obvious. It affords the Disciplinary Committee to interrogate the evidence that is being led in accordance with its duties as an inquisitorial body. The qualification that documentary evidence may be led would generally apply in relation to documents that are either not controversial or that have been admitted by the Mr Singh or documents of a public nature (such as judgments of the High Court).
89. Many of the documents sought to be relied upon by the Institute consist of affidavits or internal notes of interviews with various individuals which the Disciplinary Committee cannot interrogate. Other documents such as email correspondence or minutes which the Institute seeks to rely upon, may be acceptable without *viva voce* evidence as those are documents, the contents of which the Institute seeks to interpret and which the Disciplinary Committee can likewise do.
90. We point out that the Institute's application is for the introduction of documentary evidence rather than *vive voce* evidence. The admissibility and cogency of the documents relied upon is an entirely different question.
91. Given the difficulties experienced by the Institute in procuring *viva voce* evidence and given that many of the documents on which we ultimately have

reached our conclusion on, are documents which are unlikely to be controversial, we have decided to permit the receipt of such documentary evidence.

92. Against this brief background, we turn to the specific charges relating to Mr Singh's conduct whilst employed at Eskom.

Charges 12 and 13

93. Charge 12 relates to Mr Singh's approval of payments to McKinsey **for** services rendered in circumstances where McKinsey's appointment to Eskom was unlawful and therefore irregular **for** want of compliance with Section 217 of the Constitution.

94. Charge 13 relates to Mr Singh's conduct in being instrumental in the appointment of McKinsey without following a proper procurement process.

95. Insofar as these charges are concerned, the documentary evidence sought to be relied upon by the Institute established in our view the following:

95.1. Mr Singh had just joined Eskom during or about August 2015;

95.2. at the time, there was already an ongoing internal debate as to the appointment of McKinsey as a consultant and in particular, whether McKinsey could be appointed on a risk basis and if so whether a deviation from National Treasury was required;

95.3. differing opinions were furnished on the issue;

- 95.4. ultimately at a meeting held on 21 October 2015, Eskom's Tender Committee resolved to appoint McKinsey notwithstanding the differing views expressed internally. Mr Singh was not present at that meeting;
- 95.5. subsequent thereto, a service level agreement was entered into between Eskom and McKinsey;
- 95.6. in the interim Mr Singh had been requested to approve payments to McKinsey which he did.
96. Charge 12 seeks to hold Mr Singh guilty for the payment to McKinsey in circumstances where its appointment was unlawful and therefore irregular. Although it is true that the High Court had subsequently found the agreement concluded with McKinsey to have been unlawful, Mr Singh was not involved in the appointment. Moreover, at the time when the payments were made, Eskom's Tender Committee had already resolved to appoint McKinsey. During argument, counsel for the Institute suggested that Mr Singh's negligence comprised in his failure to have exercised a degree of conservatism or caution before approving the payments and that he should have made further enquires or perhaps obtained further advice before he did so. That of course is not the charge that has been proffered against him. Nor is that evidence of gross negligence.
97. We therefore cannot conclude that Mr Singh is guilty of Bylaw 34.2.
98. We similarly do not believe that Mr Singh's conduct falls within the purview of any of the types of conduct contemplated by Bylaw 34.12.

99. Charge 13 relates to Mr Singh's conduct in being instrumental in the appointment of McKinsey without following a proper procurement process. Mr Singh was not present at the meeting at which McKinsey was appointed. Nor would it have been his duty. That would have laid with Eskom's procurement department who was fully aware of the internal debate. To hold Mr Singh accountable for the failings of Eskom's procurement department would in our view be unfair.

100. In the circumstances, we do not find Mr Singh guilty of charges 12 and 13.

Charge 14

101. Charge 14 relates to Mr Singh's conduct in having approved payments in excess of R30 million to Trillion in circumstances where there was no contract between Eskom and Trillion and where the conditions set out in McKinsey's letter of 9 February 2016, had not been met.

102. On the documentary evidence provided by the Institute it was clear that there was no contract between Eskom and Trillion. It was equally clear that invoices were sent by Trillion to Mr Singh's email address and that he approved their payment.

103. He did so without ascertaining whether the payments could and should be made. They were substantial payments and as pointed out by [REDACTED], the erstwhile CFO of Trillion, Trillion could not have rendered any services as it had no employees.

104. Mr Singh as Eskom's Chief Financial Officer ought to have been more diligent. Does this lack of due diligence constitute gross negligence as suggested by

the Institute? We are of the view that it does. The amounts approved by Mr Singh were in excess of R30 million and the consequences of the payments were that they amounted to irregular expenditure contrary to the Public Finance Management Act. Mr Singh was, to put it mildly, the gatekeeper to Eskom's coffers and his conduct was more than mere carelessness in the circumstances,

105. We therefore conclude that Mr Singh is guilty of improper conduct within the meaning of Bylaws 34.2 and 34.10 in respect of charge 14.

106. Equally, Mr Singh's conduct was, whilst not discreditable, dishonourable or dishonest, irregular and tends to bring the profession into disrepute. We conclude that he is therefore also guilty of Bylaw 34.12.

Charges 15, 16 and 17

107. These charges relate to Mr Singh's conduct in firstly causing the issue of a Performance Guarantee in the amount of R1,68 billion in favour of Tegella and secondly in providing financial assistance to Tegetta in the amount of R600 million.

108. A striking feature of both these charges is the elaborate means that had been employed to enable Tegetta to make payment to the business rescue practitioners of Optimum Mine and the use of Eskom's funds to do so. The documentary evidence relied upon by the Institute showed that Tegetta was R600 million short in respect of the purchase price for Optimum Mine and that its acquisition of the mine was in jeopardy unless it was in a position to obtain that amount of funding. Two days later, Eskom on the instructions of Mr Singh,

advanced an amount of R659 million to Tegetta on the premise that it constituted a pre-payment for the supply of coal. But Tegetta was not yet the owner of Optimum Mine and Eskom had no supply agreement with Tegetta. The only reasonable inference to be drawn was that this amount was being paid in order to assist Tegetta to meet its obligations to the business rescue practitioners and the consortium of bankers to acquire Optimum Mine. This was an improper use of Eskom's funds.

109. The procurement of a Guarantee in favour of Tegetta in the amount of R1,68 billion was no different. It too had as its objective the assistance of Tegetta in circumstances where Eskom was financially not in a position to provide such a guarantee. It strained Eskom's financial resources and did not benefit Eskom at all. Moreover, no approval had been procured from the Minister of Public Enterprises for the issuing of such a substantial Guarantee.
110. On these facts, we find Mr Singh guilty of charges 15, 16 and 17 as contemplated by Bylaws 34.2, 34.10 and 34.12.

Charge 18

111. Charge 18 relates to Mr Singh's alleged improper relationship with the Gupta family and the fact that he had certain travelling expenses paid for by the Gupta family.
112. The charge sheet alleges that during 2014/2015, Mr Singh had travelled to and from Dubai at the expense of the Gupta family and their businesses. It is moreover alleged that these were not business trips that Mr Singh took on behalf of Eskom or Transnet and that he accordingly acted improperly in

engaging in an improper relationship with the Gupta family.

113. The documentary evidence relied upon by the Institute demonstrates that Mr Singh had travelled to and from Dubai during 1 May 2014 to 11 June 2015 and that these trips and his accommodation in Dubai were paid for by Trillion, a Gupta owned or associated company.
114. None of the trips undertaken by Mr Singh and upon which the Institute relies, were undertaken whilst employed at Eskom. That is because Mr Singh only joined Eskom during August 2015.
115. The documentary evidence was moreover inferentially based. In order to find guilt on this charge, we would have require oral evidence of a more substantial nature than merely the reliance on certain emails evidencing communications between a hotel chain in Dubai and Trillion.
116. We cannot on that basis find Mr Singh guilty of having engaged in any improper relationship with the Gupta family whilst employed by Eskom or having compromised his objectivity, independence, professional judgment or integrity at the time.
117. We therefore do not find Mr Singh guilty of charge 18.

SANCTION

118. It was impressed upon us by the Institute that Mr Singh's conduct was of such a severe nature that the most appropriate sanction would be to disqualify him from membership amongst other ancillary sanctions. This submission was premised in part on the allegation that Mr Singh had acted grossly negligently

and had either deliberately misled the Board in certain instances or had acted dishonestly in other instances.

119. We have, in evaluating each of the charges proffered against Mr Singh, found that he has been grossly negligent in some respects and dishonest in at least one respect.
120. Cumulatively though, we find that Mr Singh's conduct and breaches of the Institute's Code of Conduct were serious. He held an important position both at Transnet and at Eskom and his conduct resulted in these public institutions suffering substantial financial prejudice. There was a clear lack of accountability and the overall impression we gained was that Mr Singh took decisions on behalf of both entities without thoroughly investigating or considering their ramifications. He ignored concerns that were raised by subordinates and this culminated in additional costs being incurred by the institutions.
121. The Institute demands of its chartered accountants that they exercise not only due diligence and care but that they demonstrate objectivity and integrity in their professional conduct. Mr Singh regrettably did not adhere to these standards.
122. No mitigatory evidence was led on behalf of Mr Singh. We thus have only aggravating factors to consider. One such factor is Mr Singh's election not to participate in these proceedings. It suggests an indifference to any finding by this Committee and concomitantly to whether the CA designate has any value to him. Had it meant something to him, he would have made every effort to ensure that his CA designate be retained and that he could continue to

practice as a member of the Institute.

123. We have in addition to consider the public interest and whether or not it would be in the public interest to sanction Mr Singh in respect of any of the charges on which he has been found guilty and if so, to what extent.

124. Having considered the seriousness of the charges upon which Mr Singh has been found guilty, the interests of the profession as well as the public interest, we are of the view that the following sanction would be appropriate:

124.1. Mr Singh be excluded from membership;

124.2. Mr Singh's name and the findings of this Disciplinary Committee be published on the Institute's website, in Accounting SA and in the media;

124.3. a contribution of 50% of the Institute's costs.⁸

CONCLUSION

125. We have throughout the body of this decision, set out our findings in respect of each of the charges proffered against Mr Singh and our reasons therefore. For convenience, we reiterate our conclusions on the issue of guilt in respect of each charge below.

126. We find Mr Singh guilty of:

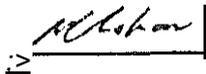
126.1. Charge 2 within the meaning of Bylaws 34.2;

We requested the Institute to provide us with the costs that had been incurred in presenting the charges to the Committee. Regrettably, the Institute failed to do so. In the absence thereof, we **have exercised our discretion to award 50% of the Institute's costs as being a fair and reasonable contribution**

- 126.2. Charge 3 within the meaning of Bylaws 34.10;
 - 126.3. Charge 5 within the meaning of Bylaws 34.10;
 - 126.4. Charge 6 within the meaning of Bylaws 34.2 and 34.10;
 - 126.5. Charge 7 within the meaning of Bylaws 34.2 and 34.10;
 - 126.6. Charge 8 within the meaning of Bylaws 34.2 and 34.10;
 - 126.7. Charge 9 within the meaning of Bylaws 34.2, 34.10 and 34.12;
 - 126.8. Charge 11 within the meaning of Bylaws 34.2;
 - 126.9. Charge 14 within the meaning of Bylaws 34.2, 34.10 and 34.12;
 - 126.10. Charge 15 within the meaning of Bylaws 34.2, 34.10 and 34.12;
 - 126.11. Charge 16 within the meaning of Bylaws 34.2, 34.10 and 34.12;
 - 126.12. Charge 17 within the meaning of Bylaws 34.2, 34.10 and 34.12.
127. We do not find Mr Singh guilty in respect of charges 10, 12, 13 and 18.
128. We make no finding in respect of the alternative charges in respect of charges 1 and 4.
129. We impose the following sanction:
- 129.1. exclusion from membership;
 - 129.2. Mr Singh's name and the findings of this Disciplinary Committee be published on the Institute's website, in Accounting SA and in the media;

129.3. a contribution of 50% of the Institute's costs.

DATED AT SANDTON ON THIS 14th DAY OF AUGUST 2020.


MACHOHAN SC
Chairperson



S VAN HEERDEN

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