THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA

(Set up by an Act of Parliament)

[PPR/P/43/2016-DD/46/INF/2016/DC/834/2018]

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.

[PPR/P/43/2016-DD/46/INF/2016/DC/834/2018]

In the matter of:

CA. S. Shankar (M. No. 040476),
of M/s Shankar and Kaplani, Mumbai (FRN. 11761W), Mumbai in Re: ..... Respondent

MEMBERS PRESENT:

1. CA. (Dr.) DebashisMitra, Presiding Officer
2. Shri Rajeev Kher, I.A.S. (Retd.), Government Nominee
3. CA. Amarjit Chopra, Government Nominee
4. CA. Rajendra Kumar P, Member
5. CA. Babu Abraham Kallivayalil, Member

DATE OF MEETING : 06.04.2021 (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 22.12.2020, the Disciplinary Committee was inter-alia of the opinion that **CA. S. Shankar (M. No. 040476)** (hereinafter referred to as the **Respondent**") was **GUILTY** of professional misconduct falling within the meaning of Clause (7) of Part I of the Second Schedule to the Chartered Accountant Act 1949.

2. The Committee noted that the Respondent was not present before it. The Committee noted that the Respondent vide letter dated 23rd March, 2021 had submitted that he did not wish to appear before the Committee. The Committee also noted the submissions of the Respondent submitted vide letter dated 01st February, 2021. The Committee accordingly decided to proceed ex-parte the Respondent.

[PPR/P/43/2016-DD/46/INF/2016/DC/834/2018]

3. The Committee noted that in present case the Respondent is negligent in the conduct of his professional duty which resulted not only in incorrect reporting but also non-compliance of criteria laid down under Section 45 IA of RBI Act 1934. The Committee looking into the gravity of charges alleged was of the view that the ends of justice shall be met if reasonable punishment is granted to him.

4. 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 i.e. CA. S. Shankar (M. No. 040476) of M/s Shankar and Kaplani, Mumbai (FRNo. 11761W), Mumbai be removed for a period of six months along with a penalty of Rs 25000/- (Rupees Twenty Five Thousand Only) shall also be payable by him within a period of 30 days and in case of non-payment of penalty in stipulated time, the name shall be removed for an additional 1 month over and above the original punishment of six months.

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

sd/-
(CA. RAJENDRA KUMAR P)
MEMBER

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

Certified to be true copy
Mukesh Kumar Mittal
Assistant Secretary,
Disciplinary Directorate
The Institute of Chartered Accountants of India
ICAI Bhawan, Vishwas Nagar, Shahdra, Delhi-110032

CONFIDENTIAL

DISCIPLINARY COMMITTEE [BENCH – II (2020-2021)]

[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. : [PPR/P/43/2016-DD/46/INF/2016/DC/834/2018]

In the matter of:

CA. S. Shankar (M. No. 040476), CA. Pawan Kumar Rungta (M. No. 042902) and CA. SwapnilTavate (M.No. 136666) of M/s Shankar and Kaplani, Mumbai (FRN. 11761W), Mumbai in Re: ..... Respondents

MEMBERS PRESENT:

CA. Amarjit Chopra, (Govt. Nominee), Presiding Officer
CA. Rajendra Kumar P, Member
CA. Pramod Kumar Boob, Member

DATE OF FINAL HEARING : 17.03.2020
PLACE OF FINAL HEARING : ICAI Bhawan, Delhi

PARTIES PRESENT :

Respondent	:	**CA. S. Shankar**
Counsel for Respondent	:	**CA. M.R. Vanketesh (For CA. S. Shankar and CA Pawan Kumar Rungta)**

Charges in Brief:-

1. The Committee noted that present case is based upon the information received from the Reserve Bank of India, Ahmedabad which has alleged that the Respondent Firm had made wrong certification for the year 2014-15 in respect of M/s Roselabs Finance Ltd. i.e. the Company which does not meet dual principle business criteria as required in terms of Non-Banking financial (Non- Deposit Accepting or Holding) Companies Prudential Norms (Reserve Bank) Directions, 2015. It is stated that the income from

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financial assets to total income (after netting of purchase) is only about 12%, hence the Company failed to meet the dual principle business criteria required for doing NBFC business and despite the same the Respondent Firm issued certificate that the Company is entitled to hold certificate of Registration as an NBFC.

2. The Committee noted that the whole issue is regarding fulfillment of criteria of NBFC, wherein the Respondent Firm on one hand is giving certificate that the income from financial assets to total income is 11.45% and on other hand they are certifying that the Company is entitled to hold Certificate of Registration. Accordingly the Respondent was held Guilty in the Prima facie opinion of the Director (Discipline). Further, when the Company failed to meet the principal business criteria, the Respondent Firm was required to submit exception report to RBI as mentioned in **para 5 of Notification No. DNBS(PD)CC No. 334/03.02.001/2013-14 dated July 1, 2013**. Since no such statements as stated above have been included in the audit report signed by the Respondents, hence, the Respondents are held guilty of professional misconduct falling within the meaning of Clause (7) of Part I of the Second Schedule of Chartered Accountant Act 1949 for violation of the "Non-Banking Financial Companies Auditor's Report (Reserve Bank) Directions, 2013.

Brief facts of the Proceedings:

3. The matter was earlier fixed and adjourned on the request of Respondent(s) on 21st August, 2019 and 25th November, 2019. On the day of final hearing on 17/03/2020, the Respondent CA. S. Shankar was present alongwith his Counsel CA. M.R. Venketesh. Further the said Counsel also represented other Respondent CA. Pawan Kumar Rungta. However, other two Respondent(s) namely CA. Pawan Kumar Rungta and CA. Swapnil Tavate were not present in person. CA. S. Shankar was put on oath. Thereafter on being asked by the Committee as to whether the Respondent is aware about the charge, the Respondent's Counsel replied in positive. Accordingly charges alleged were taken as read. On being asked by the Committee whether he accepts the charges levelled against him, the Respondent pleaded not guilty and wished to defend the charges. Thereafter the Respondent/his Counsel made detailed submissions in favour of his defence. After considering all papers available on record and after detailed deliberations and recording the submissions, the Committee decided to conclude the matter.

Findings of the Committee

4. The Committee noted that the Respondent CA Swapnil Tavate vide letter dated 4th August 2018 (received on 14th August, 2018) stated that he was in full time employment with Respondent Firm i.e. M/s Shankar and Kaplani and was not holding the certificate of practice during the said tenure. He further submitted that he was part of statutory audit team and his role was restricted to providing the complete information to the partners of the firm issuing the alleged certificate. In addition to the above the Respondent Firm vide written submission dated 09th November, 2019 in point no.2 also requested that the proceedings need to be considered to be maintainable only against one partner CA. S. Sankar and not against another partner(s) CA. Pawan Kumar Rungta and CA. Swapnil Tavate. The Committee further noted that during the course of hearing, CA. S. Shankar has himself agreed and placed his submission on record that he is the only member answerable to charge and CA. Swapnil has no role in this particular case. Accordingly, the Committee decided to exonerate CA. Pawan Kumar Rungta and CA. Swapnil in so far as this case is concerned.

5. The Committee noted the submission of the Respondent's Counsel wherein he submitted that CA. S. Shankar has already retired and presented before the Committee for his dignity. The reference was drawn by the Counsel that the Joint Secretary rank officer has not made the Complaint and hence the same is not maintainable. As far as the Respondents' professional work is concerned with respect to issuance of alleged report, the Counsel submitted that the Respondent has rightly issued the report from the available data. Further, the Counsel also wanted to summon and cross examine of RBI officials as according to him in absence of the same the Respondent will be deprived of his right of principal of natural justice.

6. The Committee clarified to the Respondent/his Counsel that this case is not a complaint case and rather is initiated from a letter received from RBI which is treated as Informant as prescribed Form 'I' is not filed by the RBI. The Committee noted that the Director (Discipline) by invoking his powers has rightly treated it as Information case within the meaning of Rule 7 of the Chartered Accountant (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007. As regards summoning the RBI officials, the Committee noted that all the documents to decide the matter are already on record and hence was of considered view that calling of RBI officials as witness is required in this case and hence the

request of the Counsel was not accepted to. Accordingly, the Committee advised the Counsel to submit his defence on merits of the case.

7. The Respondent's Counsel also argued on the fact that after issuance of a certificate of entitlement to continue to hold Certificate of Registration, there is a prescribed procedure to cancel the same. He further submitted that till such cancelation the Company is entitled to hold the certificate and hence the entitlement to continue to hold Certificate of Registration is irrespective of the fulfilment of the dual criteria of asset and income. He further submitted that failure in fulfilment of the dual criteria of asset and income cannot be used as a weapon to de-register and disqualify companies from holding their Certificate of Registration based on a particular year Financial Statement. He further argued that the RBI has power to cancel the certificate. The Committee on the same was of view that the responsibility of the auditor was to report as to whether the Company is entitled to continue the Certificate of Registration or not in terms of asset/income pattern. The Respondent was required to provide the actual information/ facts to RBI as to whether dual criteria is met and whether the Company is entitled to continue certificate of registration or not. The Committee further opined that responsibility of the Respondent to report to RBI was not dependent upon event of cancelation of certificate by RBI and the Responsibility of the Respondent is automatically triggered on the date when the Company failed to meet the principle of dual criteria.

8. The Committee observed from the Respondent's own certificate that the principle of dual pattern as required in the case of the NBFC was not fulfilled. Neither the income from financial assets was more than 50% of the gross income nor the financial assets are more than 50% of the total assets, which are mandatorily required for an NBFC to continue holding certificate of registration as required under section 45IA of RBI Act, 1934. So, accordingly, the Committee is of the opinion that the member is guilty of gross negligence. Further, the Respondent also failed in his duties with respect of submitting an exception report to RBI as mentioned in para 5 of Notification No. DNBS(PD)CC No. 334/03.02.001/2013-14 dated July 1, 2013. Since the Respondent CA. S. Shankar declared himself as member answerable and also the alleged certificate was signed by him, the Committee accordingly held him guilty under Clause (7) of Part I of Second Schedule to the Chartered Accountant Act, 1949.

9. Thus, while looking into the facts of the case vis-a-vis detailed submission made by the Counsel of the Respondent in his defence, the Committee found that the Respondent is negligent in the conduct of his professional duty which resulted not only in incorrect reporting but also non-compliance of criteria laid down under Section 45 IA of RBI Act 1934. In terms of the reasoning as above and in the considered opinion of the Committee, the Respondent i.e. CA. S. Shankar is held **GUILTY** under Clause (7) of Part I of Second Schedule to the Chartered Accountant Act, 1949.

(approved & confirmed through email)	**sd/-**	**(approved & confirmed through email)**
(CA. AMARJIT CHOPRA)	**(CA. RAJENDRA KUMAR P)**	**(CA. PRAMOD KUMAR BOOB)**
GOVERNMENT NOMINEE	**MEMBER**	**MEMEBER**
PRESIDING OFFICER		

DATE: 22/12/2020
PLACE: DELHI

Certified to be true copy
Jyotika Grover
Assistant Secretary,
Disciplinary Directorate
The Institute of Chartered Accountants of India,
ICAI Bhawan, Vishwas Nagar, Shahdra, Delhi-110032

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

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-170/2016/DD/194/16/DC/820/2018]

In the matter of:

Shri B.D. Kataria A-3, Indira S/B/H Sadhu Vaswani Nagar, Indore (M.P.)	**Shri U.D. Gulani,** Res: 615/A, Sadhu Vaswani Nagar Opp. Mukesh Bakery, Indore (M.P.)-452 001

.....Complainants

Versus

CA. Kamal Nayan Singhal (M.No. 071749)
M/s. K V N G & Associates (FRN No.002628C)
55, Murai Mohalla,
Sanyogitaganj,
INDORE – 452 001

.....Respondent

MEMBERS PRESENT:

1. **CA. (Dr.) Debashis Mitra, Presiding Officer**
2. **Shri Rajeev Kher, I.A.S. (Retd.), Government Nominee**
3. **CA. Amarjit Chopra, Government Nominee**
4. **CA. Rajendra Kumar P, Member**
5. **CA. Babu Abraham Kallivayalil, Member**

DATE OF MEETING : 06.04.2021 (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 10.02.2020, the Disciplinary Committee was inter-alia of the opinion that **CA. Kamal Nayan Singhal (M.No.071749)** (hereinafter referred to as the **Respondent**") was **GUILTY** of professional misconduct falling within the meaning of under Items (5), (7) and (8) of Part I of Second Schedule to the Chartered Accountant Act, 1949.

2. Before deciding the quantum of punishment in the matter, the Committee was briefed about the facts of the case. The Committee noted that the Respondent was present before the Bench through Video Conferencing mode and took oath as to the fact that he would speak only the truth and gave self-declaration as to he was being alone in the room from where he was appearing and was not recording the proceedings of the Committee. The Respondent admitted his mistake and submitted that there is no malafide intention on his part. He pleaded that the Committee may take a lenient view in this matter.

3. The Committee taking note of the submission of the Respondent and his pleading is satisfied that no malafide intention is established. The Committee looking into the gravity of charges alleged vis-a-vis admission of the Respondent before it and hence is of the view that the ends of justice shall be met if reasonable punishment is granted to him.

4. **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 Respondent i.e. CA. Kamal Nayan Singhal (M.No. 071749), be reprimanded, however, a penalty of Rs 25,000/- was to be**

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paid by him within a period of 30 days and in case of non-payment of fine with in stipulated time, his name shall be removed for 1 month.

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

sd/-
(CA. RAJENDRA KUMAR P)
MEMBER

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

Certified to be true copy

CA. Suneel Kumar
Assistant Secretary,
Disciplinary Directorate
The Institute of Chartered Accountants of In...
ICAI Bhawan, Vishwas Nagar, Shah...

CONFIDENTIAL

DISCIPLINARY COMMITTEE [BENCH – II (2019-2020)]

[Constituted under Section 21B of the Chartered Accountants (Amendment) Act, 1949]

Findings cum Order 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-170/2016/DD/194/16/DC/820/2018]

In the matter of:

Shri B.D. Kataria A-3, Indira S/B/H Sadhu Vaswani Nagar, Indore (M.P.)	**Shri U.D. Gulani,** Res: 615/A, Sadhu Vaswani Nagar Opp. Mukesh Bakery, Indore (M.P.)-452 001

.....Complainants

Versus

CA. Kamal Nayan Singhal (M.No. 071749)
M/s. K V N G & Associates (FRN No.002628C)
55, Murai Mohalla,
Sanyogitaganj,
INDORE – 452 001

.....Respondent

MEMBERS PRESENT:

CA. Atul Kumar Gupta, Presiding Officer

Shri Rajeev Kher, Government Nominee

CA. Amarjit Chopra, Government Nominee

CA. Chandrashekhar Vasant Chitale, Member

DATE OF FINAL HEARING : **21.10.2019**
PLACE OF FINAL HEARING : ICAI Bhawan, Lucknow

PARTIES PRESENT:

Complainant : Shri B.D. Kataria

[PR-170/2016/DD/194/16/DC/820/2018]

Respondent : CA. Kamal Nayan Singhal
Counsel for the Respondent : CA. Santosh Deshmukh

Charges in Brief:-

1. The Committee noted that in the Prima-Facie Opinion formed by Director (Discipline) in terms of Rule 9 of the Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007, the Respondent is held guilty under Clause (5), (7) and (8) of Part I of Second Schedule to the Chartered Accountant Act, 1949. The above said Clause (5) of Part I of Second Schedule which states as under :-

"(5) fails to disclose a material fact known to him which is not disclosed in a financial statement, but disclosure of which is necessary in making such financial statement where he is concerned with that financial statement in a professional capacity;"

Clause (7) of Part I Second Schedule of Chartered Accountant Act 1949 which states that:-
"(7) does not exercise due diligence, or is grossly negligent in the conduct of his professional duties;"

And Clause (8) of Part I of Second Schedule to the Chartered Accountant Act, 1949 states as under :-
"(8) fails to obtain sufficient information which is necessary for expression of an opinion or its exceptions are sufficiently material to negate the expression of an opinion;"

2. In this case the joint complainant, Shri BD Kataria and Shri UD Gulani (who expired in January 2019) alleged that the Respondent was appointed as the statutory auditor Pujya Seva Mandali Dharmshala Trust (hereinafter referred to as the **"Trust"**) as well as Sai Pritamdas Gobindram Academy (hereinafter referred to as the **"Academy 1"**) and Swami Pritamdas Gobindram Academy (hereinafter referred to as the **"Academy 2"**) wherein the complainants alleged irregularities in the balance sheet signed by the Respondent.

   i) As per the allegation and the PFO the Respondent has not exercised his due diligence and not able to reflect the liability for the dividend payable in the balance sheet so audited.

   ii) There is another allegation that there was misreporting for the purchase of building across the Trust and the Academy along with the difference in the value of purchase.

iii) The complainant also alleged for not qualifying the fact of abnormal advances given to staff and outsiders and for holding the cash in hand more than a sum of Rs.1000 following the bye-laws of the Trust.

Brief facts of the Proceedings

3. On the day of hearing, the Committee noted that Complainant was present. The Respondent along with his Counsel appeared before the Committee. The Respondent was put on oath. In the presence of the Complainant and with consent of Respondent, the charges were taken as read. On being asked to the Respondent whether he pleads guilty, he replied in negative. Thereafter, the Committee sought whether he wish to proceed with his defence. Thereafter, the Respondent placed his defence. After considering all papers available on record and pleadings, the Committee proceeded with the matter.

Findings of the Committee

4. On the matter stated above, the Committee enquired from the Respondent. The Respondent accepted inadvertently his mistake for not reflecting the liability towards the dividend payable. He submitted that as per the trial balance and other records Rs.25,000/- was reflected as a transfer entry of the deposit at Bank of India was carried forward from last year, inadvertently the entire interest was booked to deposit which could not be adjusted. Accordingly, the sum of Rs.25000 could not be deposited into appropriate head. He further submitted that though the mistake committed by him but a lenient view may be taken by the Committee on the said mistake.

5. The Committee noted that with regards to cross disclosure of purchase of building by the Swami Pritamdas Gobindram Academy (Academy-2) but reflected in the books of Pujya Seva Mandali Dharmshala Trust, the Respondent submitted that being the said Academy is running under the parent Trust that is Pujya Seva Mandali Dharmshala Trust and therefore the amount of purchase for building is being reflected in the balance sheet of Trust rather than in the Academy-2.

6. The Committee noted that the amount for purchase of building (which is as per the stamp value and stamp papers amounts to Rs.19,16,250/- as compared to reflected value amounts

to Rs.27,71,250) was paid by the Swami Pritamdas Gobindram Academy. The said Academy was having a separate financial statement and Pujya Mandali Dharmshala is also having a separate financial statement to which no liability was being reflected towards the Academy-2 whereas the alleged amount for purchase of said building was paid by the Academy-2. The Respondent submitted that since the Trust and the Academy are one and the same and transfer the money with each other was done on a regular basis therefore, there is no practice to reflect the inter-organisation liabilities or the assets among each other.

7. The Committee noted that there are two lapses on the part of Respondent. The one is for reflecting the inflated value of purchase of building from Rs.19,16,250/- to Rs.27,71,250/- and also wrongly disclosing the same in the entity which is other than that which has paid the consideration for the said purchase that is Swami Pritamdas Gobindram Academy.

8. The Committee noted that with regards to next charge which is related to advance to employees and other the complainant could not substantiate/narrate specific instance rather stated that advances given by the Management were duly certified and were as per books of accounts. The Respondent did not provide any clarification in such context.

9. The Committee noted that with regards to holding the cash in hand beyond the value i.e. Rs.1000 permissible under the bye-laws of the Trust. The Committee noted the non-compliance of SA-250 "Consideration of Laws and Regulations in an Audit of Financial Statements" by the Respondent and the Respondent did not qualify his report for the said non-compliance. Replying to above charge related to non-compliance of cash limit, the Respondent submits that the said limit of Rs.1000 was decided 20 years ago and looking the size of the society which increased tremendously over a period of 20 years, cash requirement of business has also increased. Accordingly, there was no reason to qualify our report. The Committee is of the view that for the facts above, it would have been right on the part of the Respondent to have obtained a management representation letter for the said non-compliance and have reported accordingly.

10. The Committee holds the Respondent guilty on all charges except as stated in para 9.

Conclusion

11. In view of the above findings, the Committee is of the view that the Respondent had failed to disclose a material fact known to him which is not disclosed in a financial statement regarding

the purchase of building by the Acadamy-2 at the same time was grossly negligent while performing his professional work and non-compliance of SA-250 with non-qualification of his audit report. Accordingly, in the considered opinion of the Committee, the Respondent is **GUILTY** under Clause(5), Clause(7) and Clause(8) of Part I of Second Schedule to the Chartered Accountant Act, 1949

Sd/-
(CA. ATUL KUMAR GUPTA)
PRESIDING OFFICER

Sd/-
(SHRI RAJEEV KHER)
GOVERNMENT NOMINEE

Sd/-
(CA. AMARJIT CHOPRA)
GOVERNMENT NOMINEE

Sd/-
(CA. CHANDRASHEKHAR VASANT CHITALE)
MEMBER

DATE: 10.02.2020
PLACE: NEW DELHI

Certified True Copy
Mukesh Kumar Mittal
Assistant Secretary
Disciplinary Directorate
The Institute of Chartered Accountants of India
ICAI Bhawan, I.P. Marg, New Delhi-110 002

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

[PR/155/17-DD/192/16-DC/1021/19]

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/155/17-DD/192/16-DC/1021/19]

In the matter of:

CA. Shripad S Puranik,
M/s SSPuranik& Associates,
Chartered Accountants,
A/201, Udayraj CHS Ltd., Shreenagar,
Colony Road, Goregaon West,
Mumbai – 400 104 **.... Complainant**

Versus

CA. Sanjay Nathalal Shah, (M.No.116251)
108, 1st Floor, Sujata Niketan CHS Ltd.,
Rani Sati Road, Near Railway Station,
Malad East,
MUMBAI-400 097 **..... Respondent**

MEMBERS PRESENT:

1. CA. (Dr.) DebashisMitra, Presiding Officer
2. Shri Rajeev Kher, I.A.S. (Retd.), Government Nominee
3. CA. Amarjit Chopra, Government Nominee
4. CA. Rajendra Kumar P, Member
5. CA. Babu Abraham Kallivayalil, Member

DATE OF MEETING : 06.04.2021 (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, the Disciplinary Committee was inter-alia of the opinion that **CA. Sanjay**

Nathalal Shah, (M.No.116251) (hereinafter referred to as the **Respondent**") was **GUILTY** of professional misconduct falling under Item (8) of Part I of the First Schedule and Item (1) of Part II of Second Schedule to the Chartered Accountants Act, 1949.

2. The Committee noted that the Respondent was not present before it. In his absence the Committee decided to proceed ex-parte the Respondent.

3. The Committee noted that although in this case the Respondent accepted the audit without ensuring that pending fee of the Complainant is duly paid, but looking into the admission of the Complainant that admitted that his fees are received from the clients only due to intervention of the Respondent, the Committee decided to take lenient view.

4. 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 Respondent i.e. CA. Sanjay Nathalal Shah, (M.No.116251) be reprimanded.

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

sd/-
(CA. RAJENDRA KUMAR P)
MEMBER

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

Certified to be true copy
Mukesh Kumar Mittal
Assistant Secretary,
Disciplinary Directorate
The Institute of Chartered Accountants of India
ICAI Bhawan, Vishwas Nagar, Shahdra, Delhi-110032

CONFIDENTIAL

DISCIPLINARY COMMITTEE [BENCH – II (2020-2021)]

[Constituted under Section 21B of the Chartered Accountants Act, 1949]

Findings under Rule 18(17) and 19(2) of the Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007.

File No. : [PR/155/16-DD/192/16-DC/1021/19]

In the matter of:

CA. Shripad S Puranik,
M/s S S Puranik & Associates,
Chartered Accountants,
A/201, Udayraj CHS Ltd., Shreenagar,
Colony Road, Goregaon West,
Mumbai – 400 104 **.... Complainant**

Versus

CA. Sanjay Nathalal Shah, (M.No.116251)
108, 1st Floor, Sujata Niketan CHS Ltd.,
Rani Sati Road, Near Railway Station,
Malad East,
MUMBAI-400 097 **..... Respondent**

MEMBERS PRESENT:
CA. Atul Kumar Gupta, Presiding Officer
CA. Amarjit Chopra, (Govt. Nominee)
CA. Pramod Kumar Boob, Member

DATE OF FINAL HEARING : 17.11.2020 (through Video Conferencing)

PARTIES PRESENT : Nil

Charges in Brief:-

1. In the instant matter, the charge against the Respondent was that he accepted and conducted tax audit of M/s Sejal Internal Ltd. (hereinafter to be referred to as the "Company") for F.Y. 2014-15 on 31.10.2015 despite knowing the facts that

the previous auditors had declined acceptance of audit for non-payment of fees. The Complainant also alleged that the Respondent also failed to seek NOC from the Complainant Firm. The Committee noted that accordingly the Respondent was held prime facie guilty of professional misconduct falling within the meaning Clause (8) of Part I of the First Schedule and Clause (1) of Part II of the Second Schedule of Chartered Accountant Act 1949.

Brief facts of the Proceedings:

2. The Committee noted that on the day of hearing i.e., on 17th November, 2020, neither complaint nor Respondent was present before it. The Committee also noted that earlier the case was adjourned at request of the Respondent on 27.10.2020. In the absence of both the parties the Committee decided to conclude the hearing ex-parte the Complainant and the Respondent.

Findings of the Committee

3. The Committee noted that the Respondent vide email dated 6th November, 2020 informed that the matter has been resolved between him & the Complainant and hence, he requested for cancellation of the matter pending against him. The Respondent also enclosed one unsigned letter of the Complainant marked to the Office. The Committee noted that the Office forwarded that communication from the Respondent vide an email dated 9.11.2020 to the Complainant seeking his confirmation if he wishes to withdraw the matter. In reply to the same the Complainant vide his email dated 15th November, 2020 informed that due to intervention of the Respondent he got instalment of Rs. 1.50 lacs as pending fee, He further mentioned that the Respondent ensured him about his payment of his fee. The Committee noted that the Complainant in that email nowhere mentioned about withdrawal of the case.

4. The Committee observed as regards both the charges the Respondent had neither submitted any written statement at PFO stage nor submitted any defence on Prima-facie opinion of the Director (Discipline). The Committee noted as per merits of the case it is evident that the Respondent accepted and conducted the

audit of the Company for F.Y. 2014-15 without ensuring that pending fee of previous auditor is paid. Further, there is no correspondence on record which establishes that the Respondent sought no objection from the Complainant before accepting the audit.

Conclusion

5. In terms of the reasoning discussed above and in the considered opinion of the Committee in the absence of any defence from the Respondent, it is concluded that the Respondent not only failed to communicate with previous auditor but also has accepted the appointment as Tax auditor when undisputed fees of the previous auditor i.e. the Complainant Firm was outstanding and thereby ignoring the Council Guidelines No. 1-CA (7)/02/2008 dated 8th August, 2008 in this regard. Hence, the Respondent is held guilty under the said charges for professional misconduct falling within the meaning of Item (8) of Part I of the First Schedule and Item (1) of Part II of Second Schedule to the Chartered Accountants Act, 1949.

sd/-	(approved & confirmed through email)	(approved & confirmed through email)
CA. ATUL KUMAR GUPTA	**CA. AMARJIT CHOPRA**	**CA. PRAMOD KUMAR BOOB**
(PRESIDING OFFICER)	**(GOVERNMENT NOMINEE)**	**(MEMBER)**

Certified to be true copy

Jyotika Grover
Assistant Secretary,
Disciplinary Directorate
The Institute of Chartered Accountants of India,
ICAI Bhawan, Vishwas Nagar, Shahdra, Delhi-110032

THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA

(Set up by an Act of Parliament)

[PPR/P/95/16-DD/5/INF/17-DC/933/18]

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.

[PPR/P/95/16-DD/5/INF/17-DC/933/18]

In the matter of:

CA. Avinash Lalwani (M.No.048715), Mumbai ..... **Respondent**

MEMBERS PRESENT:

1. CA. (Dr.) Debashis Mitra, Presiding Officer
2. Shri Rajeev Kher, I.A.S. (Retd.), Government Nominee
3. CA. Amarjit Chopra, Government Nominee
4. CA. Rajendra Kumar P, Member
5. CA. Babu Abraham Kallivayalil, Member

DATE OF MEETING : 06.04.2021 (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 22.01.2021, the Disciplinary Committee was inter-alia of the opinion that **CA. Avinash Lalwani (M.No.048715)** (hereinafter referred to as the **Respondent**") was **GUILTY** of professional misconduct falling within the meaning of Item (7) of Part I of the Second Schedule of Chartered Accountant Act 1949.

2. The Committee noted that the Respondent was present before the Bench through Video Conferencing mode and took oath as to the fact that he would speak only the truth and gave self-declaration as to he was being alone from where he was appearing and was not recording the proceedings of the Committee. The Respondent though accepted the mistake on his part, yet, he pleaded before the Committee for taking a lenient view while determining the quantum of punishment in his case.

3. The Committee looking into the gravity of charges alleged, vis-a-vis admission of the Respondent before it was of the view that the ends of justice shall be met if reasonable punishment is granted to him.

4. 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 i.e. CA. Avinash Lalwani (M.No.048715), be removed for a period of Three Months.

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

sd/-
(CA. RAJENDRA KUMAR P)
MEMBER

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

Certified to be true copy
Mukesh Kumar Mittal
Assistant Secretary,
Disciplinary Directorate
The Institute of Chartered Accountants of India,
ICAI Bhawan, Vishwas Nagar, Shahdra, Delhi-110032

CONFIDENTIAL

DISCIPLINARY COMMITTEE [BENCH – II (2020-2021)]
[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. : [PPR/P/95/16-DD/5/INF/17-DC/933/18]

In the matter of:
CA. Avinash Lalwani (M.No.048715), Mumbai ..... **Respondent**

MEMBERS PRESENT:
CA. Atul Kumar Gupta, Presiding Officer
CA. Amarjit Chopra, (Govt. Nominee)
CA. Pramod Kumar Boob, Member

DATE OF FINAL HEARING : **6.10.2020 (Through Video Conferencing)**

PARTIES PRESENT :

Respondent	:	**CA. Avinash Lalwani**
Counsel for Respondent	:	**Advocate Rahul Sarda**

Charges in Brief:-

1. The Committee noted that the present case before it against the Respondent had six charges in total in relation with audit being conducted by the latter for M/s Shukla Jewelries Ltd. (hereinafter referred as tot the "**Company**"). The Committee noted that the Directorate received the information from MCA about lapses on the part of the Respondent in conducting the said audit which the Respondent also confessed as negligence but not as lack of application of due diligence on his part. Noticeably, the Respondent was of the view that the said allegations on his part did not affect true & fair view in the case of financial picture being exhibited by the Company.
2. The Committee noted that charges against the Respondent were broadly & in brief were related to non-reporting of loan transactions with the Directors, non-disclosing

of EPS, non-compliance with the requirements of Schedule VI of the Companies Act, 1956, non-confirmation of balances with the sundry creditors & debtors of the Company, non-compliance with AS-18 and non-attachment of the Cash Flow Statement with the financials of the Company in question. It also noted that the Director (Discipline) in his prima facie opinion held the Respondent guilty of Professional Misconduct falling within the meaning of Item (7) of Part I of Second Schedule to the Chartered Accountants Act, 1949 for non-application of due diligence/ gross negligence on these above-mentioned grounds.

Brief facts of the Proceedings:

3. The Committee noted that the Respondent along with his Counsel was present before the Bench on the date of hearing i.e., 6th October, 2020 through Video Conferencing mode and both of them gave self-declarations as to they were being alone in the rooms from where they were appearing/attending the hearing and as to they were not recording the proceedings of the Committee. On being pointing out by the Committee that though, the Respondent himself had accepted the lapses on his part as alleged by MCA, yet, he was of the firm opinion that the said lapses were not affecting the true & fair view of the financials of the Company in question. Thereafter on being asked by the Committee as to whether the Respondent is aware about the charge, the Respondent's Counsel replied in positive. Accordingly charges alleged were taken as read. The Counsel for the Respondent offered to defend the case by presenting his arguments for each of allegations alleged against his client. On permitting by the Committee for the same, the Respondent/his Counsel made detailed submissions and argued vehemently in favour of his defence. After considering all papers available on record and after detailed deliberations and recording the submissions, the Committee decided to conclude the matter.

Findings of the Committee

4. As far as the first charge is concerned, it alleged that the Respondent failed to report loan transactions happened between the Company in question and its directors to which the Respondent submitted that it was just a typographical error and not a case of lack of due diligence. The Committee noted that the Respondent/ his Counsel had submitted that the Respondent applied due care in checking the relevant documents. Moreover, the Committee also noted that the Counsel for the Respondent argued that his client had duly reported the so-called alleged transactions with Directors in financials though, it accepted that it was not reported in FY 2008-09 & 2009-10 due to typographical error. The Committee, while analysing the documents on record &

the arguments presented by Counsel for the Respondent, observed that firstly, the Respondent had erroneously reported that no loans were taken from or given to Directors by the Company and second, he reported that the terms of the lending was not prejudicial to the company. Accordingly, it was of the opinion that the same error of non-reporting of loans was repeating in two subsequent years back to back i.e., 2008-09 & immediate next year 2009-10 which could not be due to typographical error but possibly due to error in copy & paste of content from one year to next year. Moreover, even on being asked by the Committee, the Respondent was not able to produce before it the relevant working papers if he had examined the terms of lending etc. Accordingly in absence of any documentary evidence from the Respondent, the Committee was of considered opined that the Respondent did not exercise due care as expected from a professional as was not diligent enough to examine the relevant documents with regards to the loan transactions between the Company & its Directors and in reporting of the same in his Audit Report as per the requirements of the Companies Act. Hence, it held him guilty within the meaning of Item (7) of Part I of Second Schedule to the Chartered Accountants Act, 1949 as far as this first charge is concerned.

5. For the second charge with regards to non-disclosure of Basic & Diluted EPS in the financials, the Respondent submitted that he had duly calculated the same, however, by typographical error it picked zero amount on consolidation from respective sheet. The Committee looking into the same accepted the defense taken by the Respondent as far as this charge is concerned & exonerated the Respondent for the lapse on this part of the charge.

6. Third charge relates to non-compliance with the requirements of Schedule VI of the Companies Act, 1956 with regards to non- disclosure of details of investments of the Company. The Committee observed that the Counsel for the Respondent pleaded that there was no any investment in government of trust securities. In other words, under the said heads as alleged, there was no entry to disclose as far as FY 2008-09, 2009-10 & 2010-11 were concerned. The Committee observed that the details of the investment was shown by the Respondent on the face of the Balance rather than enclosing separate annexure. The Committee in the light of documents on record and decided to exonerate the Respondent as far as this charge is concerned.

7. As regards fourth charge being discussed by the Committee with regards to alleged non-confirmation of balances of sundry creditors & debtors by the Respondent, the latter submitted that he had secured the balance confirmation from the parties, however, the same were not available with him at the time signing of Balance Sheet. He mentioned that he tried to secure confirmation of balances from the debtors & creditors of the Company & this was one of the other audit techniques performed by him in checking balance accuracy like vouching bills, subsequent transactions with them, checking bank reconciliations etc. He further emphasised that it was all subject to judgement of the auditor in deciding which audit technique to apply. The Counsel for Respondent also mentioned the fact that due to poor command of the Respondent over English language he intended to mention in his audit report the fact that though, he had obtained sufficient audit evidence as far as ensuring genuineness of the parties were concerned except obtaining the physical confirmations from the said parties which was lacking on the part of the Respondent. The Committee also questioned the Respondent with regards to role performed by the latter as required under SA 505 with regards to balance confirmations. The issue with regards to un-dated letters of confirmations received from the parties was also discussed by the Committee especially with regards to fact that out of the available confirmation letters not even a single letter was dated by the concerned parties and all were undated. Further the Respondent himself admitted that he did not secure externa evidence like confirmation from parties and relied on management only. The Committee on this charge noted that the Respondent failed to justify his role in securing audit evidence with regards to balance confirmation of sundry debtors & creditors. The Committee accordingly in respect of this charge hold the Respondent guilty of professional misconduct under Item (7) of Part I of Second Schedule to the Chartered Accountants Act, 1949.

8. The fifth charge against the Respondent was with regards to non-compliance with the requirements of AS-18 where certain disclosures like details of the transactions with related parties were supposed to be given, however, the same was lacking and the Respondent did not ensure reporting of the same in his audit report. The defense of the Respondent in this regard was that he ensured checking the transactions with the related parties, however, the same could not be reported due to typographical error on his part. The Committee also noted that the Respondent vide his submission dated 24.04.2019 submitted that the Company was closely held promoter Company and hence the matter may not be viewed seriously. The Committee discussed certain other aspects in relation with this particular charge noted that the details submitted by

the Respondent relating to related party was not in lines with the requirement of para 23 of AS-18. Accordingly due to admitted lapse by the Respondent, the Committee reached to the conclusion that the Respondent was guilty of professional misconduct falling within the meaning of Item (7) of Part I of Second Schedule to the Chartered Accountants Act, 1949.

9. The last allegation pertains to the issue of non – reporting of the fact of not attaching cash flow statement by the Company with the set of financial statements for three consecutive years one after the other. To defend his case as far this allegation is concerned, his Counsel submitted that the Respondent had duly prepared the Cash Flow Statement, however, it got skipped to attach with the financial statement at the end of Company. He further submitted that the Respondent had written a letter to the Company in this regard to address the issue. He added that attaching of the Cash Flow statement was the responsibility of the management and not that of the Respondent. He further added that though, he accepted his mistake on this part that the cash flow statement actually got skipped to be annexed with the Balance Sheet, yet, according to him the same was duly attached later on. On being questioned by the Committee if he had the letter's acknowledgment with him, he replied that the same was duly serviced on the Company but on which date it was acknowledged by the latter was not sure. The Committee noted the submissions of the Counsel cannot be accepted as there is no proof regarding submission of the letter. The Committee also noted that the same error continued for three years. Hence, looking into continuous lapse the Committee decided to hold Respondent guilty of professional misconduct falling within the meaning of Item (7) of Part I of Second Schedule to the Chartered Accountants Act, 1949.

Conclusion

10. While looking into the facts of the case vis-v-vis detailed submission made by the Counsel of the Respondent in his defence, the Committee found that the Respondent - CA. Avinash Lalwani (M.No.048715) **GUILTY** under Item (7) of Part I of Second Schedule to the Chartered Accountant Act, 1949.

sd/-	[approved & confirmed through e-mail]	[approved & confirmed through e-mail]
CA. ATUL KUMAR GUPTA	**CA. AMARJIT CHOPRA**	**CA. PRAMOD KUMAR BOOB**
(PRESIDING OFFICER)	**(GOVERNMENT NOMINEE)**	**(MEMBER)**

DATE: 22/01/2021

PLACE: NEW DELHI

Certified to be true copy

Assistant Secretary,
Disciplinary Directorate
The Institute of Chartered Accountants of India

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

[PR 91/13-DD/116/2013/DC/506/2016]

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 91/13-DD/116/2013/DC/506/2016]

In the matter of:
Shri Madhav Mohan Mathur
Managing Director
M/s. N K (Organic Inorganic) Industries Pvt. Ltd.
117/Q/20, Rajeev Puram
Kanpur - 208 019 ..... **Complainant**

Versus

CA. Anugrah Srivastava ...(M. No. 073264)
B-26, Sarvodaya Nagar
Kanpur -208 005 .....**Respondent**

MEMBERS PRESENT:

1. **CA. (Dr.) Debashis Mitra, Presiding Officer**
2. **Shri Rajeev Kher, I.A.S. (Retd.), Government Nominee**
3. **CA. Amarjit Chopra, Government Nominee**
4. **CA. Rajendra Kumar P, Member**
5. **CA. Babu Abraham Kallivayalil, Member**

DATE OF MEETING : 06.04.2021 (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 16.12.2019, the Disciplinary Committee was inter-alia of the opinion that **CA. Anugrah Srivastava (M. No. 073264)** (hereinafter referred to as the **Respondent**") was **GUILTY** of professional misconduct falling under Item (2) of Part IV of First Schedule and Item (7) of the Part I of Second Schedule of Chartered Accountant Act 1949.

2. The Committee noted that the Respondent vide his email dated 1st April, 2021 submitted that he did not wish to attend the hearing and had already surrendered his Certificate of Practice in January, 2020. He further submitted that the case may be decided on merits. Therefore, the Committee in absence of the Respondent, decided to complete the proceedings ex-parte.

3. The Committee looking into the gravity of charges alleged, seriousness of the present case vis-a-vis non-appearance of the Respondent, and the fact that he had already surrendered his Certificate of Practice in January, 2020, is of the view that the ends of justice shall be met if severe punishment is granted to him.

4. **The Committee noted that the Respondent is held guilty by Disciplinary Committee and keeping in view the facts and circumstances of the case, material on record and submissions of the Respondent, the Committee ordered that the name of the Respondent i.e. CA. Anugrah Srivastava (M. No. 073264) be removed for a period of One year along with a penalty of Rs 1,00,000/- (Rupees One Lakh only) shall also be payable by him within a period of 30 days and in case of non-payment of penalty in stipulates time, the name shall be removed for an additional 3 months over and above the original punishment of one year.**

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

sd/-
(CA. RAJENDRA KUMAR P)
MEMBER

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

Certified to be true copy
Mukesh Kumar Mittal
Assistant Secretary,
Disciplinary Directorate
The Institute of Chartered Accountants of India,
ICAI Bhawan, Vishwas Nagar, Shahdra, Delhi-110032

CONFIDENTIAL

DISCIPLINARY COMMITTEE [BENCH – II (2019-2020)]

[Constituted under Section 21B of the Chartered Accountants (Amendment) 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 91/13-DD/116/2013/DC/506/2016]

In the matter of:

Shri Madhav Mohan Mathur
Managing Director
M/s. N K (Organic Inorganic) Industries Pvt. Ltd.
117/Q/20, Rajeev Puram
Kanpur - 208 019 ..... **Complainant**

Versus

CA. Anugrah Srivastava ...(M. No. 073264)
B-26, Sarvodaya Nagar
Kanpur -208 005 .....**Respondent**

MEMBERS PRESENT:

CA. Atul Kumar Gupta, Presiding Officer
CA. Amarjit Chopra, Member (Govt. Nominee)
CA. Rajendra Kumar P, Member
CA. Chandrasekhar Vasant Chitale, Member

DATE OF FINAL HEARING : 06.08.2019

PLACE OF FINAL HEARING : ICAI Bhawan, New Delhi

PARTIES PRESENT :

Complainant	**: Shri Madhav Mohan Mathur**
Respondent	**: CA. Anugrah Srivastava**
Counsel For the Respondent	**: Shri Rejeev Malhotra**

Charges in Brief:-

1. The Committee noted that in the Prima-Facie Opinion formed by Director (Discipline) in terms of Rule 9 of the Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007, the Respondent is guilty under Clause (2) of Part IV of First Schedule and Clause (7) of Part I Second Schedule of Chartered Accountant Act 1949 which states as under :-

   "(2) in the opinion of the Council, brings disrepute to the profession or the Institute as a result of his action whether or not related to his professional work."

   And the aforesaid clause (7) states that:-

   "(7) does not exercise due diligence, or is grossly negligent in the conduct of his professional duties;"

2. In this case the allegations against the Respondent are as follows :-

   2.1 The Respondent has made wrong certification dated 07th July, 2009 regarding the list of directors and shareholders of M/s. Mahindra Machine Manufacturers Pvt. Ltd. (MMM). The Respondent certified the name of Shri Prabhakar Singh Rathore and Smt. Ranjana Singh as Directors and shareholders. As per the Complainant, Ms. Reena Srivastava and Rajesh Kumar Singh were also on Board as on the date of certificate.

   2.2 Ms. Reena Srinivastava (wife of the Respondent) was the Director of the Company and at the same time, the Respondent was the auditor of the Company. Moreover, Managing Director of MMM is having two different PAN and DIN in two different names i.e. Mr. Prabhaker Singh and Mr. Prabhukar Rathore and the Respondent firm managed to get these two PAN and two DIN in two different names for the same person which is ill-legal.

2.3 The next charge against the Respondent is that Mr. Amit Singh and Ms. Kanchan Rathore were appointed as Directors and this Form 32 was signed by Mr. Prabhaker Singh on 4th October, 2010 after having already resigned on 1st September, 2010. Mr. Amit Singh was appointed as Director of the Company on 15th July, 2010, however he had signed Form 20B and this Form 20B was submitted for the Annual Return of the year 2004, 2005, 2006 and 2007.

2.4 The next charge against the Respondent that the registered address given in these Form 20B is wrong and by using forged and illegal documents, fabricated by the Respondent Firm, MMM and its Directors were somehow able to get a loan of about Rs.25 lakhs.

Brief facts of the Proceedings:

3. On the day of hearing i.e. 06/08/2019, the Complainant was present. And also CA. Anugrah Sivastava (the Respondent) along with his counsel appeared before the Committee. Both the Complainant and the Respondent was put on oath. Thereafter, the Committee asked the Complainant to brief the charges. The Complainant briefs the charges from the Prima-Facie Opinion. On being asked to the Respondent whether he pleads guilty, he replied in negative. Thereafter, the Committee sought whether he wishes to proceed with his defence. Thereafter, the Respondent placed his defence. After considering all papers available on record, the Committee decided to proceed with the matter.

Findings of the Committee

4. On the matter stated above, this Committee noted that, the Counsel for the Respondent submitted that the sale agreement relied upon by the

Complainant on which he entered in to an agreement (marked as Annexure-1 on W-20 of PFO) was much beyond the date when the Complainant entered in to agreement with the M/s Mahendra Machines Manufactures (P) Ltd. And the data was on public domain such as MCA website which can be access by anyone including the Complainant.

5. The Committee categorically asked about the allegations pertaining to such an extent that Mrs. Reena Srivastava the wife of the Respondent was Director in the aforesaid Company and drew the attention of the Respondent on FORM 23AC (Annexed as Page 'R-46') wherein the name of Mrs. Reena Srivastava was reflected as Director of M/s Mahendra Machines Manufactures (P) Ltd. The Respondent in his reply submitted that there was a conspiracy done and MR. Sarvesh Srivastava who was in the possession of the Respondent's Digital Signature Certificate (DSC) has misuse his signatures and Uploaded this FORM in year 2011. The Committee further pointed out to the letter written by Mrs. Reena Srivastava (Annexed as 'R-60') wherein she herself written that her name was reflected from 01/09/2006. To corroborate this the Committee also consider the FORM DIN-2 on record (Annexed as W-68) wherein the appointment date was reflected 01/09/2006 and is being signed by Mrs. Reena Srivastvasa. To this also the Respondent denied that his wife was never the Director in the said Company but the signature appearing on record as mentioned was forged by Mr. Sarvesh Srivastava (Company Secretary for the abovementioned Company). The Committee further noted that that no FIR has been filed by the Respondent or his wife neither on the Company nor any individual for forging and misusing her name.

6. The Committee also noted that the Respondent was having two Permanent Account Number (PAN) and two Director Identification Number (DIN) with his own name. Replying to this the Respondent agreed to the fact that he is having two PAN and two DIN as he officially changed his name through the Court approval due to numerology.

7. The Committee also noted that obtaining two PAN is an offence under the Income Tax Act, 1961 and taking two Director Identification Number (DIN) is offence under the Companies Act, 1956.

8. The Committee further observed that the Respondent mentioned in his oral submission that he ceases to be the Auditor of the Company as he had not done any audit after 31/03/2009. The Committee observed from the records that the Annual General Meeting (AGM) was not held for the alleged period 2008-09 and afterwards also so technically the Respondent never resigned nor removed from the post of Auditor from the aforesaid Company where his wife Mrs. Reena Srivastava was the Director. Therefore, mis-statement by the Respondent before the Committee could not be satisfactorily answered by him.

9. The Committee also observed that the Company has not filed his annual returns for past three years and the Respondent being the Auditor has not qualified the Audit report as Directors are disqualified which shows the gross negligence of the Respondent. Wherein the Auditor did not apply due diligence while preparing the Financial statements of the Company.

Conclusion

10. In view of the above the committee after noting the Respondent submissions and looking into entire scenario, the Committee held the Respondent was Grossly Negligent in performing his professional duties. Accordingly, in the considered opinion of the Committee, the Respondent is **GUILTY** under Clause (2) of Part IV of First Schedule and Clause (7) of the Part I of Second Schedule of Chartered Accountant Act 1949.

Sd/-
(CA. ATUL KUMAR GUPTA)
PRESIDING OFFICER

Sd/-
(CA. AMARJIT CHOPRA)
GOVERNMENT NOMINEE

Sd/-
(CA. RAJENDRA KUMAR P)
MEMBER

Sd/-
(CA. CHANDRASEKHAR VASANT CHITALE)
MEMBER

DATE : 16th December, 2019
PLACE : New Delhi

Certified Copy

Ajay Kumar Jain
Deputy Secretary
Disciplinary Directorate
The Institute of Chartered Accountants of India
ICAI Bhawan, I.P. Marg, New Delhi-110 002

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

[PR/318/2015/DD/76/2016/DC/682/2017]

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/318/2015/DD/76/2016/DC/682/2017]

In the matter of:

Shri Ashok Mathur,
Superintending Engineer (MM)
Office of the Superintending Engineer (MM),
Jaipur VidyutVitran Nigam Limited,
Old Power House, Near Ram Mandir, Bani Park,
Jaipur 302 006 ..... **Complainant**

Versus

CA. Ankit Daga (M.No.419176),
89-A, Shakti Nagar,
Gopal Pura Bye Pass,
Near Triveni Nagar,
Jaipur 302 015 ..... **Respondent**

MEMBERS PRESENT:
1.CA. (Dr.) Debashis Mitra, Presiding Officer
2.Shri Rajeev Kher, I.A.S. (Retd.), Government Nominee
3. CA. Amarjit Chopra, Government Nominee
4. CA. Rajendra Kumar P, Member
5. CA. Babu Abraham Kallivayalil, Member

DATE OF MEETING : 06.04.2021 (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 10.02.2020, the Disciplinary Committee was inter-alia of the opinion that **CA. Ankit Daga (M.No.419176)** (hereinafter referred to as the **Respondent**") was **GUILTY** of professional misconduct falling within the meaning of clause 7 of Part I of the Second

Schedule and clause 2 of Part IV to the First Schedule of Chartered Accountant Act 1949 read with Section 22 of said Act.

2. The Respondent was present before it through Video Conferencing mode and took oath as to the fact that he would speak only the truth and gave self-declaration as to he was being alone in the room from where he was appearing and was not recording the proceedings of the Committee. The Respondent submitted that he was new in practice at that time and did not keep sufficient documents in his defence. He also admitted his mistake before the Committee and felt sorry for the professional misconduct on his part.

3. The Committee looking into the gravity of charges alleged, seriousness of the present case vis-a-vis admission of the Respondent before it that he failed to retain proper working papers was of the view that the ends of justice shall be met if adequate punishment is granted to him.

4. 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 i.e. CA. Ankit Daga (M.No.419176), be removed for a period of One Year.

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

sd/-
(CA. RAJENDRA KUMAR P)
MEMBER

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

Certified to be true copy

Mukesh Kumar Mittal
Assistant Secretary,
Disciplinary Directorate
The Institute of Chartered Accountants of India,
ICAI Bhawan, Vishwas Nagar, Shahdra, Delhi-110032

CONFIDENTIAL

DISCIPLINARY COMMITTEE [BENCH – II (2019-2020)]

[Constituted under Section 21B of the Chartered Accountants (Amendment) 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/318/2015/DD/76/2016/DC/682/2017]

In the matter of:

Shri Ashok Mathur,
Superintending Engineer (MM)
Office of the Superintending Engineer (MM),
Jaipur Vidyut Vitran Nigam Limited,
Old Power House, Near Ram Mandir, Bani Park,
Jaipur 302 006 ..... **Complainant**

Versus

CA. Ankit Daga (M.No.419176),
89-A, Shakti Nagar,
Gopal Pura Bye Pass,
Near Triveni Nagar,
Jaipur 302 015 ..... **Respondent**

MEMBERS PRESENT:

CA. Atul Kumar Gupta, Presiding Officer
Sh. Rajeev Kher, I.A.S. (Retd.), Govt. Nominee
CA. Amarjit Chopra, Government Nominee
CA. Rajendra Kumar P, Member

DATE OF HEARING	**: 16.12.2019**
PLACE OF HEARING	**: ICAI Bhawan, New Delhi**

PARTIES PRESENT:

Complainant	**: Shri Satya Prakash Gupta alongwith Shri Ashok Mathur**

Brief facts of the Proceedings:

1. The Superintending engineer (MM), Jaipur Vidut Vitaran Nigam Limited, Jaipur has filed a complaint against CA. Ankit Daga alleging the following:

1.1 It is to intimate that M/s Prakash Transformers & Switchgears Pvt. Ltd., Jaipur has furnished / uploaded fake C.A. Certificate issued by the Respondent for supply of 1068 nos. in the Financial year 2011-12, 1110 nos. In the Financial year 2012-13 and 681 nos. in the Financial year 2013-14 of various ratings three Phase Distribution Transformers sold to private parties instead of Govt. utilities as defined in Electricity Act, 2003.

1.2 In this connection, the Company was asked to furnish copy of purchase orders, Invoices, Receipted Challans and proof of Excise Duty paid etc. in support of above supplies made to various Discoms/Utilities.

1.3 In response to this, the firm replied that due to typographical error inadvertently in the C.A. certificate in which they included quantity sold to private utilities in supplies made to utilities and mistakenly uploaded the same in C.A. Certificate.

1.4 Further the Committee noted that the Respondent was present on hearing held on earlier occasions either in person or represented through his counsel.

FINDINGS:

2. The Director (Discipline) has held the Respondent guilty in his prima facie opinion. The Respondent is thus before this Committee represented by his counsel.

3. The Respondent before submitting his case has moved two applications before the Committee. One is production of certain documents and calling as witness Mr. Ashok Mathur, the Superintendent Engineer who has filed the said complaint.

4. The Respondent draws the attention of the Committee to page C-2 of Form I which has been signed by Mr. Ashok Mathur in the capacity as Superintendent Engineer. He has also signed the verification clause in the said form I. The Respondent submits that the complaint is void ab initio as it is not with a proper authorization. The Respondent submits that Jaipur Vidyut Nigam Limited is a company in which the majority of the shares are held by Government of Rajasthan and since it is a Government complaint, a person who can file a complaint should be of a rank of Jt. Secretary and above and that the Respondent is not aware whether the Superintendent Engineer is equal of the position of the Jt. Secretary. The Committee clarifies that Jaipur Vidyut Limited is a State Government owned organization and not a government department and hence any person authorized by the company can prefer to file a complaint. The Superintendent Engineer being the authorized to file the complaint, claim of the Respondent fails.

5. The Respondent has also claimed to produce Mr. Ashok Mathur, the said signatory as a witness. The crux of the matter is that the Respondent has given a certificate to M/s Prakash Transformers and Switch Gears Limited who have participated in a tender floated by Jaipur Vidyut Nigam Limited. It is the claim of the Respondent that the Complaint has been filed based on the zerox copy of the certificate issued by the Respondent and that the Respondent doubts the authenticity of the said photocopy as the original certificate has not been placed on record.

6. The Complainant has alleged that the Respondent has given a wrong certificate to M/s. Prakash Transformer and Switch Gears P. Ltd. Regarding supply of three phase distribution of transformer. The said certificate dated 5.6.2014 wherein the quantity and value of transformers of various capacities manufactured and sold by the said company to various government departments during the year 2011-12, 2012-13 and 2013-14. It is the claim of the Respondent that though he has signed the papers, the same is not has certification, which fact is not correct as the third page of the certificate signed by the Respondent contains the following certification:

"The above particulars are true and correct based on explanation, record and books of accounts produced before us. Further, the above certification issued on request of the company."

7. The Respondent submits that the first two pages of the certificates have been changed without his knowledge and that it is the act of the company to whom he had issued the said certificate. The Respondent in his reply to the prima facie complaint has produced a different certificate. It is found by the DD that the font size on the first two pages is different in comparison to third page of the said certificate.

8. The Committee instructed the office to summon the complainant and produce the original issued by the Respondent for verification. Mr. Ashok Mathur who has since been promoted and Shri Satya Prakash Gupta a person holding the office of Superintendent Engineer currently appeared before the Committee and produced the original. It is important to note here that the Respondent was conspicuous by the absence. It is the Respondent who has asked for the original certificate to be produced for his verification. And the Committee feels that in his own interest he should have appeared before the Committee. The Respondent in turn sought an adjournment which he had done in the previous occasions also. The Committee is not inclined to grant an adjournment. The committee has verified the originals of the certificate and the relevant pages as claimed false by the Respondent. The Committee is not in doubt that the same tallies with the photocopy of the certificate annexed to the complaint and thereby the claim of the Respondent that the first two pages have been falsified fails.

9. The Committee has found that the claim made by the complainant is correct as the financial data of M/s Prakash Transformers & Switchgears Pvt. Ltd., Jaipur is not in agreement with the data certified by the Respondent.

CONCLUSION:

In conclusion and in the considered view of the Committee, Respondent is held guilty of professional misconduct falling within the meaning of clause 7 of Part I of the Second Schedule and also clause 2 of Part IV to the First Schedule read with Section 22 of the Act.

Sd/-
(CA. ATUL KUMAR GUPTA)
PRESIDING OFFICER

Sd/-
(CA. AMARJIT CHOPRA)
GOVERNMENT NOMINEE

Sd/-
(SHRI RAJEEV KHER)
GOVERNMENT NOMINEE

Sd/-
(CA. RAJENDRA KUMAR P)
MEMBER

DATE : 10.02.2020

PLACE : New Delhi

Certified True Copy
Mukesh Kumar Mittal
Assistant Secretary
Disciplinary Directorate
The Institute of Chartered Accountants of India
ICAI Bhawan, I.P. Marg, New Delhi-110 002

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

[PR/131/2016/DD/187/2016/DC/986/2019]

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/131/2016/DD/187/2016/DC/986/2019]

In the matter of:

Shri S. D. Khetani,
Mangharam Khetani Complex,
E-Shastri Nagar,
Jodhpur – 342 002.

..... Complainant

Versus

CA. Suresh Kumar Goklani (M.No.075009),
11/704, Chopasani Housing Board,
Jodhpur – 342 008.

..... Respondent

MEMBERS PRESENT:

1. **CA. (Dr.) Debashis Mitra, Presiding Officer**
2. **Shri Rajeev Kher, I.A.S. (Retd.), Government Nominee**
3. **CA. Amarjit Chopra, Government Nominee**
4. **CA. Rajendra Kumar P, Member**
5. **CA. Babu Abraham Kallivayalil, Member**

DATE OF MEETING : 06.04.2021 (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 10.02.2020, the Disciplinary Committee was inter-alia of the opinion that **CA. Suresh Kumar Goklani (M.No.075009)** (hereinafter referred to as the **Respondent**") was **GUILTY** of professional misconduct falling within the meaning of Item (7) of Part I of the Second Schedule to the Chartered Accountant Act 1949.

2. The Committee noted that the Respondent was present before the Bench through Video Conferencing mode and took oath as to the fact that he would speak only the truth and gave self-declaration as to he was being alone in the room from where he was appearing and was not recording the proceedings of the Committee. The Committee while hearing the defense of the Respondent noted that though, the Respondent had admitted the professional misconduct on

his part, yet, the latter emphasized that there was no harm or financial loss caused to anyone due to the lapse. Therefore, he requested the Committee to consider his case mercifully and take a lenient view.

3. The Committee noted that the Respondent audited the financials of the Trust without the same being signed by the Trustee and had signed the financials without ascertain as to whether previous financials are accepted by the management or not. The Committee looking into the gravity of charges alleged vis-a-vis admission of the Respondent before it was of the view that the ends of justice shall be met if reasonable punishment is granted to him.

4. 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 i.e. CA. Suresh Kumar Goklani (M.No.075009) be removed for a period of three months along with a penalty of Rs 50,000/- to be payable by him within a period of 30 days. The Committee further ordered that in case of failure of payment of such penalty by the Respondent in stipulated time, his name shall be removed for an additional period of one month in addition to the original three months punishment.

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

sd/-
(CA. RAJENDRA KUMAR P)
MEMBER

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

Certified to be true copy
A. Aruna Sarma
Sr. Executive Officer,
Disciplinary Directorate
The Institute of Chartered Accountants of India,
ICAI Bhawan, Vishwas Nagar, Shahdra, Delhi-110032

DC/986/2019 [PR/131/2016/DD/187/2016/DC/986/2019]

CONFIDENTIAL

DISCIPLINARY COMMITTEE [BENCH – II (2019-2020)]

[Constituted under Section 21B of the Chartered Accountants (Amendment) 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/131/2016/DD/187/2016/DC/986/2019]

In the matter of:

Shri S. D. Khetani,
Mangharam Khetani Complex,
E-Shastri Nagar,
Jodhpur – 342 002. ..... **Complainant**

Versus

CA. Suresh Kumar Goklani (M.No.075009),
11/704, Chopasani Housing Board,
Jodhpur – 342 008. ..... **Respondent**

MEMBERS PRESENT:

CA. Atul Kumar Gupta, Presiding Officer
Sh. Rajeev Kher, I.A.S. (Retd.), Govt. Nominee
CA. Amarjit Chopra, Government Nominee
CA. Rajendra Kumar P, Member

DATE OF HEARING : **09.04.2019**

PLACE OF HEARING : **ICAI Bhawan, New Delhi**

PARTIES PRESENT:

Complainant : **Shri S. D. Khetani**

Respondent : **CA. Suresh Kumar Goklani**

Charges in Brief:-

1. The Respondent made 15 years fake Accounts of a registered Charitable Trust (Smt. Kalawati Lakhani Religious & Charitable Trust) only in 2 days. In respect of financial statements, the Complainant sent a letter dated 24th September, 2015 to the Respondent seeking clarification on the following issues on the financial statement prepared by the Respondent as under:-

   i. *"There was no signature of any concerned trustee of the Trust on the financial statement.*
   ii. *All the financial statements of year 2010 to 2012 were made on 22.10.2013 and the financial statements of year 2013 to 2015 were made on 13.09.2015 and the same raised question as to whether books of accounts were prepared regularly.*
   iii. *What urgency was told by Mr. Ashok Lohani to prepare these financial statements of this trust in one day.*
   iv. *According to the registration order and trust deed why did not the Respondent contact President/Working Trustee before preparing these financial statements.*
   v. *Have the Respondent got any copy of unanimously passed resolution from the Trust-board for preparing the above mentioned financial statements.*
   vi. *Have the Respondent got any authorized appointment letter, provided by this registered Charitable Trust-Board for functioning as an Auditor.*
   vii. *Which Trustee of the Trust-Board had contacted the Respondent for preparing these financial statements.*
   viii. *Were any resolution passed by the Trust-board regarding renting out the shops of this registered trust.*
   ix. *Had any audit report was prepared regarding these financial statements.*
   x. *Are these accounts of trust submitted to Income Tax Department for I.T. Returns.*
   xi. *Is any PAN Card No. of this trust available*
   xii. *Is there any financial statement / audit report available prior to 2000*
   xiii. *Please provide the explanations in the financial statements prepared by the Respondent about worship expenses, meal expenses and flour expenses in this Religious & Charitable Trust.*

xiv. *Please also explain about worship expenses in financial statements. What is the meaning of (-58) in the year 2004 and (-284) in the year 2005".*

Brief facts of the Proceedings:

2. The Committee noted that the Complainant and the Respondent were present and appeared before it.

The Complainant and the Respondent were put on oath. The Complainant explained the charges in brief. On being asked whether the Respondent pleads guilty, he replied in negative.

2.1 The Committee directed the Respondent to proceed ahead with his defence. The Respondent submitted that:-

2.1.1 The true facts of the case is that he had been appointed for checking and confirmation of the accounts and preparation of Income & Expenditure Account and Balance Sheet of Smt. Kalawati Lakhani Religious & Charitable Trust by Shri Ashok Lohani who was said to be one of the trustees of the above named Trust.

2.1.2 Further, in this regards Shri Ashok Lohani gave the Respondent a Trust Deed and a written application wherein the Respondent checked and confirmed that Shri Ashok Lohani is the Trustee of the Trust. After accepting the work a copy of Accounts of the Trust was provided to him which he has to be checked.

2.1.3 The Income & Expenditure Account and Balance Sheet of the same were prepared on the basis of data provided by Shri Ashok Lohani. As per the Respondent, the Audit Report or Income Tax Return for the same were neither prepared nor filed by him.

2.1.4 The Respondent affirmed that the prescribed procedure was followed at the time of checking accounts. Mr. Ashok Lohani or any legal authority never did any complaint about his work including the complainant Shri S.D. Khetani.

2.1.5 Further, the Respondent submitted that he does not know the Complainant and he never did any work for the Complainant. In this regard, his first objection is that the third party i.e., the Complainant does not have any locus standi to call him to give answers for any questions about professional work done by him for any client.

2.1.6 As far as the question of the Complainant is concerned, the Respondent stated that no questions is related to his work and all the questions are related to the internal disputes between the Complainant and between his client Shri Ashok Lohani, which is not his concern.

2.1.7 In furtherance, the Respondent brought on record copy of Tally prepared Balance Sheet and Profit & Loss Account which were signed by Shri Ashok Kumar, based on which Certificates were issued by the Respondent.

2.1.8 Further, during the hearing, he admitted his mistake that he signed the financial statements without getting approved the same from the trustee of auditee trust.

2.1.9 Thereafter, the Respondent made his final submissions and after recording the submissions of both the parties. The Committee concluded the hearing in the captioned matter.

Finding of the Committee

3. The Committee noted that the above charge of the Complainant as explained in para 1 above. In respect of above, the Respondent stated that the true facts of the case are that he had been appointed for checking and confirmation of the accounts and preparation of Income & Expenditure Account and Balance Sheet of Smt. Kalawati Lakhani Religious & Charitable Trust by Shri Ashok Lohani who was said to be one of the trustees of the above named Trust.

Further, Shri Ashok Lohani gave him Trust Deed and a written application in this regard. He checked the Trust deed and confirmed that Shri Ashok Lohani is the Trustee of the Trust. After accepting the work Shri Ashok Lohani gave him the copy of Accounts maintained under English System of Accounting. He checked the accounts which were given to him by Shri Ashok Lohani itself.

On the basis of the data provided by Shri Ashok Lohani, he prepared the Income & Expenditure Account and Balance Sheet of the same and timely gave it to Shri Ashok Lohani. He did not prepare the Audit Report or Income Tax Return for the same and had not filed these Accounts before any authority. He does not know the Complainant and he never did any work for the complainant. The Complainant does not have any locus standi to call him to give answers for any questions about professional work done by him for any client. As far as the question of the complainant is concerned, the Respondent stated that no questions is related to his work.

and all the questions are related to the internal disputes between the Complainant and Shri Ashok Lohani, which is not his concern.

3.1 After considering the charge and defence of the Respondent, the Committee perused the documents certified by the Respondent and noted that the Respondent certified the balance sheet and Income & Expenditure Account for different years on his letter heads with stamps *"Checked & found correct in conformity with records produced"*.

Further, the Committee noted that the Balance Sheet and Income & Expenditure Account of the Trust is on letter head of the Respondent and the said certification on letter head is clear violation of Guidance Note 4, eighth edition, 2011 on "Preparation of financial statements on Letter-heads and stationery of auditors", which states as under:-

"Financial statements of some enterprises are prepared on letter-heads and stationery of their auditor carrying the latter's names and address. The Committee wishes to point out that the above practice is liable to be misinterpreted and, as such, should be avoided. The members are, therefore, requested to note and follow the above recommendation".

3.2 The Committee was of the view that as letter-heads and stationery of the Respondent has been used for preparation of accounts of the Trust, it proves that the Respondent has prepared the accounts of the Trust himself and then has audited the same. Hence he has not acted independently while auditing the accounts of the Trust.

3.3 Moreover, the Committee noted that the accounts of the Trust are not signed by any Trustee of the Trust. When the Committee questioned from the Respondent, he replied that the same has been certified based upon data of Tally which was signed by Shri Ashok Kumar.

However, he accepted this mistake and admitted that he has realized this mistake now and same would not be repeated in future.

3.4 Last charge against the Respondent is that he has certified the financial statements of the Trust for 16 years. The Balance Sheet of the Trust for Financial Years 1999-2000 has been certified on 22/10/2013 and for Financial Years 2012-2013 to 2014-2015 on 13/09/2015.

In respect of above, the Committee was of the opinion that the Respondent has certified these accounts in one go without exercising due diligence which are essential for performing attest function.

Furthermore, the Committee noted that there is no resolution on record which show that these accounts have been accepted by the Management of the Trust and Respondent also failed to clarify that from where he has taken opening balances for certification of Balance Sheets of the Trust.

Moreover, as the Respondent has also accepted his mistake before the Committee, Thus, the Committee was of the View that the Respondent is guilty of professional misconduct for not exercising due diligence in certification work of the trust.

Conclusion:

4. Thus in conclusion, in the considered opinion of the Committee, the Respondent is held **GUILTY** of 'Professional Misconduct' falling within the meaning of Clause (7) of Part I of the Second Schedule to the Chartered Accountant Act 1949.

Sd/-
(CA. ATUL KUMAR GUPTA)
PRESIDING OFFICER

Sd/-
(CA. AMARJIT CHOPRA)
GOVERNMENT NOMINEE

Sd/-
(SHRI RAJEEV KHER, I.A.S. (Retd.)
GOVERNMENT NOMINEE

Sd/-
(CA. RAJENDRA KUMAR P)
MEMBER

DATE : 10.02.2020

PLACE :New Delhi

Certified True Copy
Mukesh Kumar Mittal
Assistant Secretary
Disciplinary Directorate
The Institute of Chartered Accountants of India
ICAI Bhawan, I.P. Marg, New Delhi-110 00

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

[PR-323/15/DD/45/2016-DC/1243/2019]

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-323/15/DD/45/2016-DC/1243/2019]

In the matter of:

Shri S.P. Kumar, ROC, UP & Uttarakhand, Kanpur
O/o The Registrar of Companies,
10/499 B, Allenganj,
Khalasi Lines
Kanpur – 208 002. (U.P.) ..... **Complainant**

Versus

CA. Naresh Batra (M.NO.072128)
of M/s. Naresh Batra & Associates, Chartered Accountants,
Lucknow),
Office No. 111, Second Floor,
Eldeco Magnum Plaza,
Lucknow – 226010. ..... **Respondent**

MEMBERS PRESENT:

1. CA. (Dr.) Debashis Mitra, Presiding Officer
2. CA. Amarjit Chopra, Government Nominee
3. CA. Babu Abraham Kallivayalil, Member
4. CA. Rajendra Kumar P, Member

DATE OF MEETING : 13.05.2021 (Through 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 02.09.2020, the Disciplinary Committee was inter-alia of the opinion that **CA. Naresh Batra**

(M.NO.072128) (hereinafter referred to as the **Respondent**") was **GUILTY** of professional misconduct falling within the meaning of Item (7) of Part I of the Second Schedule to the Chartered Accountant Act 1949.

2. The Committee noted that the Respondent was present before the Bench through Video Conferencing mode and took oath as to the fact that he would speak only the truth and gave self-declaration as to he was being alone in the room from where he was appearing and was not recording the proceedings of the Committee. The Committee, while hearing the defense of the Respondent noted that Respondent relied upon his written submission and Email dated 04th / 10th May, 2021, though, the Respondent had to an extent admitted the professional misconduct on his part, yet, mentioning that he had filed RTI with the ICAI seeking various details regarding his hearing on 02nd September 2020 as his matter was heard ex-parte. The Respondent also mentioned that he already brought on record his medical certificate due to which he was unable to present himself before the Committee during the hearing stage. He requested before the Committee to relook his matter and give him one more opportunity to present his case. He further stated that there was no harm or financial loss caused to anyone due to the lapse. Therefore, he requested the Committee to consider his case mercifully and take a lenient view.

3. The Committee clarifies to the Respondent that RTI seeking various information/documents was filed by him is with the Institute. The Committee also clarified to the Respondent that the erstwhile Committee had given fair opportunity in his case to present himself before the Committee to which the Respondent failed to appear and the present Committee has no power to relook the matter decided by the then Committee.

4. Thereafter, keeping in view the facts and circumstances of the case, material on record and submissions of the Respondent before it, the Committee was of considered view that there was only a technical lapse to which no harm or loss was caused to anyone. Moreover

considering the Respondent's age and also his health conditions and also his request to take lenient view, the Committee ordered that the Respondent i.e. CA. Naresh Batra (M.NO.072128) to be reprimanded.

sd/-
(CA. (Dr.) DEBASHIS MITRA)
PRESIDING OFFICER

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

sd/-
(CA. RAJENDRA KUMAR P)
MEMBER

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

Certified to be true copy
CA. Suneel Kumar
Assistant Secretary,
Disciplinary Directorate
The Institute of Chartered Accountants of Ind
ICAI Bhawan, Vishwas Nagar, Shahdra, Delhi

CONFIDENTIAL

DISCIPLINARY COMMITTEE [BENCH – I (2020-2021)]

[Constituted under Section 21B of the Chartered Accountants Act, 1949]

Findings under Rule 18(17) of the Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007

Ref. No. PR-323/15/DD/45/2016-DC/1243/2019

In the matter of:

Shri S.P. Kumar,
Registrar of Companies,
UP & Uttarakhand,
O/o The Registrar of Companies,
10/499-B, Allenganj,
Khalasi Lines
Kanpur- 208 002 (U.P.) .....**Complainant**

Versus

CA. Naresh Batra (M.No.072128)
Office No. 111, Second Floor
Eldeco Magnum Plaza
LUCKNOW - 226010 .....**Respondent**

MEMBERS PRESENT (Through Video Conferencing):

CA. Nihar N Jambusaria, Presiding Officer,
Shri Jugal Kishore Mohapatra, I.A.S. (Retd.) (Government Nominee),
Ms. Rashmi Verma, I.A.S. (Retd.) (Government Nominee),
CA. G. Sekar, Member,
CA. Pramod Jain, Member

DATE OF FINAL HEARING : 02.09.2020
PLACE OF FINAL HEARING : Through Video Conferencing

PARTIES PRESENT:

Complainant's representative - Shri Sudhir Kapoor (Through VC)

BRIEF OF THE DISCIPLINARY PROCEEDINGS:-

1. The Committee noted that on the day of hearing held on 2nd September, 2020, the Complainant's representative was present. The Respondent was not present. The Respondent's Counsel vide his e-mail dated 30.08.2020 stated that due to ill health of the Respondent, no personal hearing is sought and he requested to decide the case based on documents / written statement of the Respondent. In view of above, the Committee decided to continue with the hearing ex-parte the Respondent. The Complainant's representative was put on oath. The Complainant's representative stated that the Committee may go ahead based on documents on record. The Committee posed questions to the Complainant's representative and after hearing submissions of the Complainant's representative and on perusal of documents on record, the Committee decided to conclude the hearing in the above matter. With this, the hearing in the above matter was concluded.

CHARGES IN BRIEF AND FINDINGS OF THE DISCIPLINARY COMMITTEE:-

2. In the extent matter, the following charges were levelled against the Respondent:-

2.1 The first charge against the Respondent is that he acted as auditor of M/s Pioneer Trans- Energy Limited (hereinafter referred to as the **"Company"**) despite being disqualified u/s 226(3)(e) of the Companies Act, 1956. It was alleged that the Respondent along with his family members was holding 104650 shares of the Company constituting 8.30% paid up share capital of the Company. Out of the above, 35,750 shares were held in the name of Mr. Naresh Batra HUF of which the Respondent was the Karta, therefore he stands disqualified to act as auditor of the said Company in terms of the provisions of Section 226 (3) (e) of the Companies Act, 1956.

2.2 The next charge against the Respondent is regarding giving false information in the Audit report dated 31.08.2010 that the Company has incurred losses whereas there was profit as per Profit & Loss Account of the Company.

2.3 The third charge against the Respondent is that being an auditor of the Company, he never filed Form 23B for his appointment.

3. In respect of first charge relating to disqualification of the auditor, the Respondent submitted in his written submissions that the shares were held by the HUF of the Respondent and the Respondent being the Karta was only one of the coparceners in the HUF. Thus, the shares were held as Trustee / nominee and accordingly, as per proviso to the Section 226(3)(e), the provisions of Section 226(3)(e) is not applicable. He submitted that shares held by HUF (through Karta) were not shares held by the Karta in his Individual name and accordingly, he was not beneficial owner of the shares. The Respondent submitted that the HUF of the Respondent which held 2.90% and the family members of the Respondent which held 5.59% of the total shares of the Company, the entire holding come to 8.49% which is less than the substantial interest in the Company being 20%. He never held shares but the HUF along with family members held less than 20% shares. Accordingly, the Respondent prayed that this charge be dropped.

3.1 In this regard, on perusal of the provisions of Section 226(3)(e) of the Companies Act, 1956 relating to disqualification of auditor, the Committee noted that the said section stipulate as under:-

" None of the following persons shall be qualified for appointment as auditor of a company:
(e) a person holding any security of that company after a period of one year from the date of commencement of the Companies (Amendment) Act, 2000.

***Explanation** - For the purposes of this section, "security" means an instrument which carries voting rights.*

***Provided** that any shares held by such person as nominee or trustee for any third person and in which the holder has no beneficial interest shall be excluded in computing the percentage of shares held by him for the purpose of this clause.*

The Committee also noted that the Companies Act, 1956 does not directly refer to the HUF becoming a shareholder or promoter of the Company, but since an HUF does not enjoy a separate legal entity, it cannot become a member / shareholder in its own name. A HUF can purchase shares in a Company through its Karta. In other words it is only the Karta who becomes a shareholder of the Company and not the other members of the HUF. Accordingly, since the Respondent was the Karta of Naresh Batra HUF, his contention that he was not having any security in his name but it was his HUF who was holding shares of the Company does not seems to be tenable. As the Respondent was holding the shares of the Company as a Karta of Naresh Batra HUF, the Respondent should have desisted from conducting the audit of the said Company as the same may affect his independence of mind while conducting the audit. Further, it is also relevant to quote the following para from the Code of Ethics given under Clause (4) of Part-I of Second Schedule to the Chartered Accountants Act, 1949,

"Public conscience is expected to be ahead of the law. ***Members, therefore, are expected to interpret the requirement as regards independence much more strictly than what the law requires*** *and should not place themselves in positions which would either compromise or jeopardize their independence. Members must take care to see that they do not land themselves in situations where there could be conflict of interest and duty".*

Going by the definition of Section 226 (3) (e) of the Companies Act, 1956 as given above, the Companies Act,1956 by not specifying any percentage of shareholding for the said disqualification seems to debarring a member from accepting the audit if he holds any kind/amount of interest in the auditee concern. Thus, in view of the above observations, since the Respondent as a Karta of HUF was holding shares in the Company, he was disqualified to be appointed as auditor of the Company as there was conflict of interest and accordingly, he should not have accepted the position of auditor. Under such circumstances, the act of the Respondent conducting audit of the Company appears to be an act of negligence on his part causing violation of the provisions of the Companies Act, 1956. Accordingly, the Committee held the Respondent guilty of professional misconduct falling within the meaning of Clause (7) of Part I of Second Schedule to the Chartered Accountants Act, 1949.

4. In respect of second charge of giving false information in the Profit & Loss Account of the Company, the Respondent submitted that it was a typographical error and the entire figure of the financial statement signed by the Respondent reflects true & fair view of the state of affairs of the Company. The Respondent submitted that the shareholders of the Company would go through the entire financial statements when they go to the report as the report is on the financial statements of the Company. He had prepared the audit report with due diligence and as per rules but due to inadvertence and oversight, it was mentioned in audit report that the Company had incurred losses.

4.1 The Committee observed that in audit report dated 31st August, 2010 for the year ending 31st March, 2010, the Respondent had reported as under vide para 2(f) (ii) :-

" in our opinion and to the best of our information and according to the explanation given to us, the said accounts, read with the notes to accounts, give the information required by the Companies Act, 1956 in the manner so required give a true and fair view:

*ii) In the case of Profit & Loss Account of the loss of the company for the year ending on that date." **(D-3).***

Though the Respondent submitted that it was an unintentional error on his part yet while certifying the financial statement, he was required to be cautious. It is observed that the net profit of Rs.25,89,710 was shown in the Profit & Loss Account and hence, mentioning of the word "loss" instead of "Profit" in his audit report **(D-3)** gives a totally different and opposite view of the financial affairs of the Company. It appears that the Respondent signed his audit report in casual manner without verifying its contents with the financial statement and the same shows negligence on the part of the part of the Respondent. Accordingly, the Committee decided to hold the Respondent guilty with respect to above charge, falling within the meaning of Clause (7) of Part I of Second Schedule to the Chartered Accountants Act, 1949.

5. In respect of next charge relating to non filing of Form 23B with ROC, the Respondent admitted his mistake that Form 23B was not filed with ROC. He also submitted that the same would not tantamount to misconduct as there was no change in auditor from previous year and he was a continuing auditor. In this regard, the Committee has gone through the requirement of provisions of Section 224 (1) and (1A) of the Companies Act, 1956 which read as under:-

Section 224(1) " Every company shall, at each annual general meeting, appoint an auditor or auditors to hold office from the conclusion of that meeting until the conclusion of the next annual general meeting and shall, within seven days of the appointment, give intimation thereof to every auditor so appointed".

(1A) Every auditor appointed under subsection (1), shall within thirty days of the receipt from the company of the intimation of his appointment, inform the Registrar in writing that he has accepted, or refused to accept, the appointment.

From the aforesaid provisions, it is clear that filing of Form 23B regarding appointment of auditor with the Registrar is mandatory. Since the Respondent admitted his mistake, there was non-compliance of the requirement of Section 224(1A) of the Companies Act, 1956. Accordingly, the Company decided to hold the Respondent guilty of professional misconduct falling within the meaning of Clause (7) of Part I of Second Schedule to the Chartered Accountants Act, 1949.

Conclusion:-

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

sd/-
(CA. NIHAR N JAMBUSARIA)
PRESIDING OFFICER

[approved and confirmed through e-mail]
(SHRI JUGAL KISHORE MOHAPATRA, I.A.S.(RETD.)), GOVERNMENT NOMINEE

[approved and confirmed through e-mail]
(MS. RASHMI VERMA, I.A.S. (RETD.))
GOVERNMENT NOMINEE

sd/-
(CA. G. SEKAR)
MEMBER,

sd/-
(CA. PRAMOD JAIN)
MEMBER

Certified to be true copy
Anurag Sharma
Assistant Secretary,
Disciplinary Directorate
The Institute of Chartered Accountants of India,
ICAI Bhawan, Vishwas Nagar, Shahdra, Delhi-110032

THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA

(Set up by an Act of Parliament)

[PR-20/17-DD/217/2017/DC/989/2019]

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-20/17-DD/217/2017/DC/989/2019]

In the matter of:

Shri Sanjay Kumar
Authorised Representative
M/s Omron Healthcare India Pvt Ltd
6th floor, B-Block,Sewa Tower,
Plot no. 19, Sector-18,Udyog Vihar,
Maruti Industrial Complex
Gurgaon-122008. **.....Complainant**

Versus

CA. Vishal Dhingra (M. No. 408383)
H. no. 1054,FF,
Shakti Khand 4,
Indirapuram
Ghaziabad-201010 **.....Respondent**

MEMBERS PRESENT:

1. **CA. (Dr.) Debashis Mitra, Presiding Officer**
2. **Shri Rajeev Kher, I.A.S. (Retd.), Government Nominee**
3. **CA. Amarjit Chopra, Government Nominee**
4. **CA. Rajendra Kumar P, Member**
5. **CA. Babu Abraham Kallivayalil, Member**

DATE OF MEETING : 06.04.2021 (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 10.02.2020, the Disciplinary Committee was inter-alia of the opinion that **CA. Vishal Dhingra (M. No. 408383)** (hereinafter referred to as the **Respondent**") was **GUILTY** of professional misconduct falling within the meaning of Item (4) of Part II of the Second Schedule and Item (2) of Part IV of First Schedule of Chartered Accountant Act 1949.

2. The Committee noted that the Respondent was present before the Bench through Video Conferencing mode and took oath as to the fact that he would speak only the truth and gave self-declaration as to he was being alone in the room from where he was appearing and was not recording the proceedings of the Committee. The Respondent presented his defense and requested the Committee for considering his case with a lenient view. The Respondent, though, admitted the professional misconduct on his part, yet, he emphasized that there was no harm or financial loss caused to anyone due to the lapse.

3. The Committee noted that act of embezzlement of funds through raising questionable invoices and making payment to entities that only exist merely on paper leads to serious erosion of trust. Further, in the present case the Complainant Company is a Japanese company and the managerial personnel who run the company are also of Japanese origin, hence it considered the present matter more seriously. Accordingly, the Committee is of the view that the ends of justice shall be met if severe punishment is granted to him.

4. 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 i.e. CA. Vishal Dhingra (M.No.408383) be removed for a period of Five years.

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

sd/-
(CA. RAJENDRA KUMAR P)
MEMBER

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

Certified to be true copy
A. Aruna Sarma
Sr. Executive Officer
Disciplinary Directorate
The Institute of Chartered Accountants of India,
ICAI Bhawan, Vishwas Nagar, Shahdra, Delhi-110032

CONFIDENTIAL

DISCIPLINARY COMMITTEE [BENCH – II (2019-2020)]

[Constituted under Section 21B of the Chartered Accountants (Amendment) 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-20/17-DD/217/2017/DC/989/2019]

In the matter of:

Shri Sanjay Kumar
Authorised Representative
M/s Omron Healthcare India Pvt Ltd
6th floor,B-Block,Sewa Tower,
Plot no. 19, Sector-18,Udyog Vihar,
Maruti Industrial Complex
Gurgaon-122008. **.....Complainant**

Versus

CA. Vishal Dhingra (M. No. 408383)
H. no. 1054,FF,
Shakti Khand 4,
Indirapuram
Ghaziabad-201010 **.....Respondent**

MEMBERS PRESENT:

CA. Atul Kumar Gupta, Presiding Officer

CA. Amarjit Chopra, Government Nominee

CA. Rajendra Kumar P, Member

CA. Chandrashekhar Vasant Chitale, Member

DATE OF FINAL HEARING : 16.12.2019

PLACE OF FINAL HEARING : ICAI Bhawan, Delhi

PARTIES PRESENT:

Complainant	: **Shri Sanjay Kumar, Authorised Representative**
Counsel for the Complainant	: **Shri Rajendra Dangwal (Advocate)**
Counsel for the Respondent	: **Shri R.K.Lamba (Advocate)**

Charges in Brief

1. The Committee noted that in the Prima-Facie Opinion formed by Director (Discipline) in terms of Rule 9 of the Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007, the Respondent is guilty under Clauses (4) of Part II of the Second Schedule and Clause (2) of Part IV of First Schedule of Chartered Accountant Act 1949. Clause (4) of Part II of Second Schedule states as under:-

   "(4) expresses his opinion on financial statements of any business or enterprise in which he, his firm, or a partner in his firm has a substantial interest;"

   And Clause (2) of Part IV of First Schedule states as under:-

   "(2) in the opinion of the Council, brings disrepute to the profession or the Institute as a result of his action whether or not related to his professional work"

2. M/s. Omron Health Care India Pvt. Ltd. through their authorised representative Mr. Sanjay Kumar has filed a complaint against CA Vishal Dhingra. CA Vishal Dhingra, the Respondent was in employment with the Complainant during the period 2012-2016. The Complainant has alleged that during the course of his employment the Respondent committed offences resulting in embezzlement of an amount to the tune of Rs.2,64,51,474/-. As consequence of this, the Respondent was terminated from the services of the Complainant's Company.

3. It is also alleged by the Complainant that the Respondent conspired with an ex-employee and created fake and non-existing advertising firms and embezzled money by issuing forged cheque against fake invoices/vouchers. The Respondent using his position as head of accounts of the Complainant's Company approved fake vouchers and invoices resulting in a monetary gain to a non-existing advertising firm created by him. The Respondent is the custodian of the Complainant's cheque books misused his authority by forging signatures of the Managing Director of the Complainant's Company

on the cheques and embezzled money into fake non-existing advertising firm created by him.

Brief facts of the Proceedings

4. The hearing was held on 09th April, 2019, 15th May, 2019, 09th July, 2019, and 06th August, 2019 and on 21st October, 2019. On the date of final hearing i.e. 16/12/2019, the Complainant represented by the authorised representative and their counsel and the Respondent along with his counsel was present on the date of the personal hearing. The parties were already on oath as the matter was part heard and adjourned on above-mentioned dates. The Committee wanted to know from the Respondent whether he is aware of the charges and whether he would like to plead guilty. The Respondent replied that he is aware of the charges leveled against him and he does not want to plead guilty. Having heard the Respondent's reply to the Committee on perusal of papers on record found that the Respondent did not file any written reply at the PFO stage when the opportunity was granted to him. The Respondent informed that he was not in good condition and that the company was continuously after him to settle the case. The Committee records its displeasure against the very casual manner in which the Respondent has treated this complaint at the PFO stage. The Committee directed the Respondent to proceed with his defence.

Findings of the Committee

5. The Respondent submitted written representation/objections and certain contents of the same are reproduced below:

> *"That, at the outset, the respondent craves that blasphemous and insipid insinuations created and orchestrated by Shri Sanjay Kumar Authorised Representative, M/S Omron Healthcare India Pvt Ltd are the expressions of their frustrations evolving from prejudices on account of inconvenient disclosures.*
>
> *The respondent hereinafter places relevant facts and circumstances corroborated by evidence, in tendering on contents of Complaint u/s 21 of the Chartered Accountants Act, 1949 [as amended by the Chartered Accountants (Amendment) Act, 2006 for due consideration of the Disciplinary Committee of ICAI.*
>
> *Before appending my reply on the Prima Facie Opinion certain facts relating to the conduct of the Complainant Company which we would like to bring on the record for the kind consideration of Disciplinary Committee of ICAI.*

a) That it is submitted that Respondent joined the Complainant Company vide letter of Appointment dated 06th May, 2011. Copy of the Appointment letter dated 06th May, 2011 is enclosed as Annexure-I. The Respondent joined the Complainant Company as per the stipulated date as Account Assistant Manager. In the said appointment letter no scope of work as employee was determined and mentioned.

b) That the Respondent was discharging the role of Account Assistant Manager as per role/responsibilities assigned by Mr Shinya Tomoda, the then Managing Director of the Complainant Company. It is also apprised that all internal systems and procedures were laid down and implemented by the Complainant Company as per the directions of their parent company.

c) That the Complainant Company kept all the financial powers relating to maintenance & followance of cheque book register, cheque books, deposition of statutory liabilities, filing, submitting & uploading of statutory returns including TDS Returns and allied financial responsibilities with Mr Shinya Tomoda, Managing Director. It is also apprised that no other person other than Mr Shinya Tomoda, Managing Director was responsible for all the financial transaction, release of payment(s) and other financial liabilities.

d) That Complainant Company was subject to Internal Audit carried out by their own team comprising of all Japanese personnel in which no Indian professional was involved. These Internal Audit functions were very stringent and in-depth in nature."

6. The Complainant has through various evidences submitted before the Committee in the form of invoices, copies of photographs, payment vouchers highlighted the wrong doing of the Respondent. It may be seen from the records in the form of PAN card and other details placed before the Committee by the Complainant, various payments were made to M/s. Arora Advertising for the invoices raised by them for various services mainly signboard provided by the said advertising agency. The available photocopies reflects only the name of M/s Arora Advertising is mentioned in the invoice and no other mandatory information like address, contact number, TAN details of the firm are mentioned on the invoices raised by the said M/s Arora Advertising and the manner in which the invoices has been raised i.e. no Value Added Tax VAT (12.5%) were charged in these invoices which was mandatory required under Sales Tax Law. This points a needle of suspicion towards conduct of the Respondent. The Sample Copy of invoice are annexed below:-

45

34

Arora Advertising

[illegible]

INVOICE

Date	[illegible]2014
Advertiser	Omron Healthcare India Private Limited
Address of Advertiser	Sewa Corporate Park, M. G. Road, Gurgaon -122002
Advertiser Product	Healthcare Product
Invoice Number	[illegible] Signboard/02
Order Number	NIL

S. No.	PARTICULARS	QTY. (Sq. Ft.)	RATE	AMOUNT
1	Signboard	5		40,750
			Sub Total	
			Grand Total	40,750

[illegible]

[illegible]

[illegible]

Arora Advertising

[illegible]

INVOICE

Date	[illegible]2015
Advertiser	Omron Healthcare India Private Limited
Address of Advertiser	Sewa Corporate Park, M. G. Road, Gurgaon -122002
Advertiser Product	Healthcare Product
Invoice Number	1306040
Order Number	NIL

S. No.	PARTICULARS	QTY. (Sq. Ft.)	RATE	AMOUNT
1	Signboard	7	35	65500
			Sub Total	65500
			Grand Total	65500

[illegible]

[illegible]

[illegible]

24

Annexure - E

Arora Advertising

[illegible]

INVOICE

Date	[illegible]
Advertiser	[illegible]
Address of Advertiser	[illegible]
Advertiser Product	[illegible]
Invoice Number	[illegible]
Order Number	[illegible]

S. No.	PARTICULARS	QTY. (Sq. Ft.)	RATE	AMOUNT
1	Signboard	5	[illegible]	[illegible]
			[illegible]	[illegible]
			[illegible]	[illegible]

39

Arora Advertising

[illegible]

INVOICE

Date	[illegible]
Advertiser	[illegible]
Address of Advertiser	[illegible] Corporate Park, M. G. Road, Gurgaon-[illegible]
Advertiser Product	Healthcare Product
Invoice Number	[illegible]
Order Number	NIL

S. No.	PARTICULARS	QTY. (Sq. Ft.)	RATE	AMOUNT
1	Signboard	6		41,215
			S. TAX	
			Total	41,215

[illegible]

The Committee while specifically enquired from the Respondent about various payments amounting to Rs.1,77,49,696/- made to M/s Arora Advertising and his connection in any manner to this M/s Arora Advertising, the Respondent confessed before the Committee that the said M/s Arora Advertising belongs to his father Mr. Vinod Kumar.

7. The Committee also noted various hotel bills that are placed on records by the Complainant in the form of compilation dated 05-04-2019 wherein the numbers of hotel bills were annexed in the name of Mr. Manoj Kumar Maharana. The Committee noted that the hotel bills of various hotels having the same room rent with the same room number at various dates without any service charges/tax deducted in most of the bills of various 4-star rating hotels amounting to Rs.18,89,985/-. The Sample copies are annexed as follows:

241 (2)

Oberoi Hotels & Resorts

INVOICE

[illegible]
[illegible] Road
[illegible] Shimla - 171 012
Himachal Pradesh, India
Fax +(91)-(177)-[illegible]
Dated - 15/09/2013

No. - 5505

Name :- Manoj Kumar Maharana

Date of Arrival :- 21/08/2013 Time :- 1.30 A.M.

Date of Departure :- 25/08/2013 Time :- 10.15 P.M.

Room No 1001

PARTICULARS	AMOUNT Rs.	P.
ROOM RENT PER DAY 3000 TOTAL 2 DAYS	6000	00
FOOD & BEVERAGES		
TELEPHONE		
LAUNDRY		
EXTRA BED		
TRAVEL DESK	4700	
MISC.		
TOTAL	[illegible]	00
[illegible]		00
G.TOTAL	[illegible]	00
ADVANCE		
BALANCE	[illegible]	00

[illegible] CHECK OUT TIME 12.00 NOON
[illegible]

244 (8)

Oberoi Hotels & Resorts

INVOICE

[illegible]
[illegible]
[illegible] Shimla - 171 012
Himachal Pradesh, India
Fax +(91)-(177)-[illegible]
Dated: 15/12/2013

No. 1012

Name :- Manoj Kumar Maharana

Date of Arrival :- 21/11/2013 Time :- 12.30 A.M.

Date of Departure :- 23/11/2013 Time :- 07.15 P.M.

Room No 1201

PARTICULARS	AMOUNT Rs.	P.
ROOM RENT PER DAY 2900 TOTAL 2 DAYS	5800	00
FOOD & BEVERAGES		
TELEPHONE		
LAUNDRY		
EXTRA BED		
TRAVEL DESK	[illegible]	
MISC.		
TOTAL	[illegible]	00
[illegible]		[illegible]
G.TOTAL	[illegible]	[illegible]
ADVANCE		
BALANCE	[illegible]	00

[illegible] CHECK OUT TIME 12.00 NOON
[illegible]

8. The Committee noted with displeasure that with regards to below mentioned bill of Redission Blue Hotels, it is observed while comparing both the bills annexed below that Bill No. 18239 is the bill for the month 13-12-2013 dated 28-07-2013 which is practically impossible. Even the Room Number 990 is same in both the bills also the checkout time is same 10.40 pm in both the bills and no service charge is charged by the hotel while stay in the hotel for 3 days. even the Room rent charged by the hotel is nowhere matched with the prevailing market rates is as low as Rs.2900/- per day . The Committee while comparing both below mentioned bills finds it to be manipulated and fabricated bills wherein the formats of various bills of different hotels across pan India are also similar which is practically not possible.

433

Radisson

INVOICE

Airport Road
Amritsar – 143001
Punjab India
Fax: +91-183-661[illegible]

No.: 15001

Dated: - 28/07/2013

Name :- Manoj Kumar Maharana

Date of Arrival :- 26/07/2013 Time :- 8.40 A.M.
Date of Departure :- 28/07/2013 Time :- 10.14 P.M.

Room No 990

PARTICULARS		AMOUNT Rs.	P.
ROOM RENT PER DAY 4900 TOTAL 3 DAYS		14400	00
FOOD & BEVERAGES			
TELEPHONE			
LAUNDRY			
EXTRA BED			
TRAVEL DESK		4250	
MISC	TOTAL	18650	00
	S.C. 0%		00
	G.TOTAL	18650	00
	ADVANCE		
	BALANCE	18650	00

E.&O.E. CHECK OUT TIME 12.00 NOON
[illegible]

434

Radisson

INVOICE

Airport Road
Amritsar – 143001
Punjab India
Fax: +91-183-661[illegible]

No.: 18239

Dated: - 28/07/2013

Name :- Manoj Kumar Maharana

Date of Arrival :- 13/12/2013 Time :- 12.40 A.M.
Date of Departure :- 15/12/2013 Time :- 10.14 P.M.

Room No 990

PARTICULARS		AMOUNT Rs.	P.
ROOM RENT PER DAY 2900 TOTAL 3 DAYS		8700	00
FOOD & BEVERAGES			
TELEPHONE			
LAUNDRY			
EXTRA BED			
TRAVEL DESK		3670	
MISC.	TOTAL	12370	00
	S.C. 0%		00
	G.TOTAL	12370	00
	ADVANCE		
	BALANCE	12370	00

E.&O.E. CHECK OUT TIME 12.00 NOON
(This is computer generated no signature is required.)

9. The Committee noted that the Complainant draws attention of the Committee on the charge that the Respondent along with Mr. Manoj Kumar Maharana has forged the signature of Mr. Masuda and Mr. Tomoda. To substantiate this charge the Complainant place on record Expert Witness Report admissible U/s 45 of Indian Evidence Act dated 02-07-2016 issued by SIFC India (Forensic Science Laboratory) annexed as 'Annexure-6' on page no. 1339 of compilation received dated 05-04-2019. The extract of result is reproduced as follows:-

RESULT AND OPINION

"After doing the in-depth analysis of the provided documents, we have observed dissimilarities in the signatures which are significant and sufficient to reach a definite conclusion. All the described dissimilarities are unique and fundamental in its nature and beyond range of natural variation. The writing habits between the signatures lead to a conclusion that the writer is different in both the set of documents marked as questioned(Q-1 to Q-8) and the specimen (S-1 to S-4)."

10. During the course of proceeding, the Committee directed to summon the other Director of M/s Omron Healthcare India Pvt Ltd. located at Japan at that time. The Complainant sought adjournment to produce the same as witness on the next hearing. However, during the next date of hearing instead of producing the Director of the Company before the Committee either personally or through video conferencing the Respondent submitted a letter from the Complainant Company signed by Mr. Sanjay Kumar, the authorised representative. The Complainant vide said letter dated 19.8.2019 informed the Director (Discipline) the following:

"We would like to bring to your kind attention that the dispute between the company and CA. Vishal Dhingra has been resolved and as such the company does not wish to pursue this complaint any further. Therefore, request to withdraw this complaint."

11. The Complainant also submitted a settlement agreement dated 7.8.2019 wherein through the settlement agreement between the Complainant company and the Respondent alongwith two others have settled the dispute. The following clauses from the said settlement agreement merit reproduction:

"In the year 2016, after an extensive internal Investigation, it was discovered that on account of certain unauthorized actions of the Second Party, the First Party suffered substantial monetary loss of around INR 2,65,00,000 (Rupees Two Crores Sixty-Five Lacs).

Subsequently, pursuant to a criminal complaint filed by the First Party on 25 July 2016, a FIR dated 23 December 2016 bearing no. 0678/2016 was registered against Mr. Dhingra and Mr.

Maharana by the SHO, Police Station, DLF Phase II, Gurgaon under Sections 120B, 408, 467, 468 and 471 of the Indian Penal Code, 1860 (FIR).

In the meanwhile, Mr. Dhingra and Mr. Maharana obtained bail by submitting a Bail Bond of INR 40,00,000 (Rupees Forty Lacs) before the District Court, Gurgaon (District Court). Thereafter, INR 10,00,000 (Rupees Ten Lacs) was subsequently released by the District Court in favour of the First Party, upon the consent of Mr. Dhingra and Mr. Maharana (Released Bail Bond Amount). As such, as of date, an amount of INR 30,00,000 (Rupees Thirty Lacs) is currently deposited as Bail Bond before the Court (Remaining Bail Bond Amount). Thereafter, in September 2017, pursuant to the FIR, a charge sheet was filed by the concerned police authorities against the Second Party, in the District Court (Charge Sheet).

The legal proceedings arising out of or in relation to the FIR and the Charge Sheet are collectively referred to herein as the Legal Proceedings.

Additionally, on 30 June 2017, a complaint was filed by the First party against Mr. Dhingra before the Institute of Chartered Accountant (ICAI) under Section 21 of the Chartered Accountants Act, 1949 in accordance with Rule 3(1) of Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Case) Rules, 2007 (ICAI Complaint). The proceedings arising out of the ICAI Complaint are presently on-going before the ICAI.

Further, in May 2019, the First Party filed a civil suit for injunction, damages and rendition of accounts against the Second Party before the District Court, Gurgaon bearing CS No. 1803/2019 (Civil Suit). The proceedings in the Civil Suit are presently on-going.

In this background, sometime between the period from the year 2017 to 2019, the Second Party approached the First Party with a request to settle the above-mentioned disputes. While the actual loss suffered by the First Party is around INR 2,65,00,000 (Rupees Two Crores Sixty Five Lacs), pursuant to the negotiations held between the Parties, the Second Party have offered to pay and the First Party has accepted to receive the Settlement Amount as defined and detailed hereinbelow, as a full and final settlement of their disputes, in the manner and subject to the conditions set out in this Agreement."

12. After hearing both the sides and taking the above settlement agreement on record and the Respondent being a party to the said settlement Deed proves his guilt beyond doubt. The Respondent has made the payment to the Company in consequence of the settlement deed is a proof that he has been a party to embezzlement of funds through various questionable means and opted for settlement via compensation mode.

13. The Committee takes note of the letter of withdrawal of complaint filed by the Complainant. The Committee has perused the material placed before it, heard the Complainant and the Respondent on various dates and is convinced that Respondent has committed serious breach of trust. The Complainant Company is a Japanese

company and the managerial personnel who run the company are also of Japanese origin. They have invested in India with enormous trust and belief in the country and its people. Acts of embezzlement of funds through raising questionable invoices and making payment to entities that only exist merely on paper leads to serious erosion of trust not only in its people but nation at large. Thus in view of the Committee notwithstanding the settlement agreement, the Respondent deserves no mercy. The letter of withdrawal of complaint filed by the Complainant is set aside and the Respondent is held guilty of professional misconduct.

Conclusion

14. In view of the above findings, and reasoning as stated in above Para, the Committee is of the considered opinion, that the Respondent is held **GUILTY** under Clauses (4) of Part II of the Second Schedule and Clause (2) of Part IV of First Schedule of Chartered Accountant Act 1949.

Sd/-
(CA ATUL KUMAR GUPTA)
PRESIDING OFFICER

Sd/-
(CA. AMARJIT CHOPRA)
GOVERNMENT NOMINEE

Sd/-
(CA. RAJENDRA KUMAR P)
MEMBER

Sd/-
(CA. CHANDRASEKHAR V. CHITALE)
MEMBER

DATE:10.02.2020
PLACE: New Delhi

Certified True Copy
Mukesh Kumar Mittal
Assistant Secretary
Disciplinary Directorate
The Institute of Chartered Accountants of India
ICAI Bhawan, I.P. Marg, New Delhi-110 002

THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA

(Set up by an Act of Parliament)

[PPR/P/61/15-DD/6/INF/16-DC/729/17]

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.

[PPR/P/61/15-DD/6/INF/16-DC/729/17]

In the matter of:

CA. Kishore Purushottam Joshi (M.No.034760), Mumbai in Re: .... Respondent

MEMBERS PRESENT:

1. CA. (Dr.) Debashis Mitra, Presiding Officer
2. Shri Rajeev Kher, I.A.S. (Retd.), Government Nominee
3. CA. Amarjit Chopra, Government Nominee
4. CA. Rajendra Kumar P, Member
5. CA. Babu Abraham Kallivayalil, Member

DATE OF MEETING : 06.04.2021 (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 the Disciplinary Committee was inter-alia of the opinion that **CA. Kishore Purushottam Joshi (M.No.034760)** (hereinafter referred to as the **Respondent**") was **GUILTY** of professional misconduct falling within the meaning of Items (7) and (9) of Part I of the Second Schedule of Chartered Accountant Act 1949.

2. The Committee noted that the Respondent was not present before it. However, it also noted that there was one email on record from the side of the Respondent dated 1st April, 2021 whereby he had submitted that he has already been debarred by SEBI for conducting audit of listed Companies for a period of one year. He further expressed his confidence and faith in the Disciplinary Committee and stated that he did not wish to attend the hearing. However, he invited the attention of the Committee that while deciding the quantum of punishment in his case, besides the abovesaid fact that he had already been punished by SEBI in the instant matter, it should also kept in mind that he was a senior citizen. Therefore, he requested for deciding the case on merits and with mercy. Thereafter, after bringing these facts before the Committee, the office briefed it about the other relevant facts of the case and after understanding the facts of the case, the Committee decided to proceed ex-parte against the Respondent.

3. The Committee looking into the gravity of charges alleged, seriousness of the present case vis-a-vis acceptance of SEBI order by the Respondent debarring him for accepting any audit or attestation assignment of any listed company for a period of one year was of the view that the ends of justice shall be met if severe punishment is granted to him.

4. 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 i.e. CA. Kishore Purushottam Joshi (M.No.034760) be removed for a period of Five Years.

8

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

sd/-
(CA. RAJENDRA KUMAR P)
MEMBER

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

Certified to be true copy
A. Aruna Sarma
Sr. Executive Officer,
Disciplinary Directorate
The Institute of Chartered Accountants of India,
ICAI Bhawan, Vishwas Nagar, Shahdra, Delhi-110032

CONFIDENTIAL

DISCIPLINARY COMMITTEE [BENCH – II (2020-2021)]

[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. : [PPR/P/61/15-DD/6/INF/16-DC/729/17]

In the matter of:

CA. Kishor Purushottam Joshi (M.No.034760), Mumbai in Re: .... Respondent

MEMBERS PRESENT:

CA. Atul Kumar Gupta, Presiding Officer
Shri Rajeev Kher, I.A.S. Retd. (Govt. Nominee)
CA. Amarjit Chopra, (Govt. Nominee)
CA. Pramod Kumar Boob, Member

DATE OF FINAL HEARING : 09.10.2020 (Through Video Conferencing)

PARTIES PRESENT :

Respondent : NOT PRESENT

Charges in Brief:-

1. The Committee noted that present case is based on information received from SEBI wherein it is charged regarding non-application of due diligence in the audit of M/s Coral Hub Ltd (hereinafter referred to as **"CHL"**) by the Respondent especially in the light of allegation of inflated turnover and profit figure for the Financial Year 2008-09 and 2009-10. The Committee noted that

the Respondent as accordingly held prima-facie Guilty of Professional misconduct under Items (7) and (9) of Part I of Second Schedule to the Chartered Accountant Act, 1949.

Brief facts of the Proceedings:

2. On the day of final hearing i.e., on 9th of October, 2020, the Committee noted that the Respondent was not present before it rather an email dated 30th July, 2020 was received from the Respondent informing that he neither wish to appear before the Committee nor did he wish to appoint his authorised representative to defend his case and would like to obey the order of the Disciplinary Committee whatsoever it would deem fit so. He further added that as the matter was very old and the promoters of the auditee company were no more traceable, SEBI had passed an order directing him to not to accept and perform any audit or attestation assignment of any listed company and intermediaries registered with SEBI for a period of one year. In view of the same, he requested to excuse him from personal appearance and pass suitable order in line with that of SEBI and oblige a senior citizen.

After considering all the documents available on record and considering the Respondent's written request, the Committee decided to conclude the matter.

Findings of the Committee

3. The Committee noted that brief of present matter is that M/s. Vishal Information Technology Ltd. was incorporated on 2nd May 1994 as a private limited Company and later it became a public company on March 13, 2000. It came out with an IPO on August 2, 2008 and got listed on NSE and BSE on August 11, 2008. The name of Vishal Information Technology Ltd. (hereinafter referred to as **"VITL"**) was later changed to M/s Coral Hub Ltd (hereinafter referred to as **"CHL"**) on July 26, 2010. CHL was promoted by M/s Tutis Technologies Ltd. (hereinafter referred to as **"TTL"**). TTL is also a listed Company whose main business was in the area of Biometric Security Solutions. The Company had expertise in the areas of data digitization, E-publishing and digital library. The Company's scrip was under suspension for

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trading in NSE since June 27, 2012 and in BSE since 21-03-2013 for non-compliance of listing agreement. The Company remained failed to file its quarterly audited/unaudited financial results after the quarter ended June 30, 2012 on both the stock exchanges i.e. BSE and NSE. Last audited yearly financial statement of CHL was filed on BSE for the period ended 30 June 2010 on 14 Sep 2010. In the above context, an anonymous complaint (dated nil) was received by SEBI which inter-alia alleged that Revenue and Profit of CHL was manipulated and fabricated. The said compliant was taken up for further investigation by SEBI.

4. The Committee noted that SEBI, in its findings, observed that the amount of sales and profits reported by CHL (Standalone financials excluding that of its subsidiaries) for 2008-2009 and 2009-2010 as reported in the Annual Report 2009-10 were inflated. To verify the veracity of sales made to customers, the details of amounts received from them were sought from the Company. However, the desired relevant details were not to SEBI. In view of the above, the investigation team visited corporate office of the Company on March 07, 2013 and found that the corporate office was no longer in existence. To proceed further in the investigation, SEBI decided to verify the veracity of sales reported by CHL in respect of the clients who have contributed to more than 20% to sales during 2008 - 09 and 2009-10. In the absence of information from the Company, external confirmations and statements given by certain entities was relied upon.

5. The Committee noted that Statement of the Respondent was recorded by SEBI on February 12, 2013. He stated that he had not verified contracts for work of the Company. The Respodnent further stated that he relied on revenue shown by G.S. Chandrasekhar and Suthesh Nair, both being CA professionals. Further he failed to provide working papers for the Audit of CHL. In view of the above, the SEBI informed that the Company and its directors had shown inflated figures for sales for (FY 2009 and FY 2010). The inflated figure was to the extent of approx. 38.22 Cr for FAO UN, and approx. Rs.32.98 Cr for NDS USA LLC which contributed a total of approx Rs.71.21 Cr which in turn was 51.90% of the total sales for the Financial Year 2009 and 2010.

Correspondingly the figures of profit and profit carried over in the Balance Sheet were also inflated. SEBI, thereafter, referred the case to ICAI for necessary action against the Respondent (being statutory auditor of the said company) in relation with the possible irregularities in the audit of the said company in question.

6. Based on above the Committee noted that in the instant case before it pertains to matter wherein CHL had not complied with the listing agreement of the NSE & BSE by not filing its annual reports. Consequently, the scrips of the Company were suspended for trading on the exchange. It noted that the charge against the Respondent was non-application of due diligence in the audit of CHL especially in the light of allegation of inflated turnover and profit figure. Noticeably, the Respondent denied doing audit of this company for the FY 2009-10, though, he accepted that he carried out audit work for FY 2008-09 with due diligence. The Committee understood that SEBI was carrying out investigation against the said company in question i.e, CHL and could not find even its registered office leave about getting the explanation from its promoters about possible inflated figures of turnover and revenue and profits who were also reportedly missing. Therefore, the case was brought before the Disciplinary Committee of ICAI to take appropriate action against the statutory auditor of the said company who is the Respondent in the instant matter.

7. The Committee observed that for the FY 2008-09, the Respondent did not submit any conclusive evidence to refute the charges of inflated revenue & profits of CHL either before SEBI in its investigation proceedings or before the Disciplinary Committee of ICAI. This is sufficient to draw an analogy of implied acceptance of charge by the Respondent.

8. The Committee also noted that though, the Respondent had outrightly denied conducting audit of CHL for FY 2009-10, yet, he failed to prove with concrete documentary evidences the fact of his signatures on the audit report for FY 2009-10.Therefore, his defense was not strong enough simply by denying the fact of not conducting audit of CHL for FY 2009-10 and not providing any evidence where he would have taken any retractive action even after bringing this fact into his knowledge by SEBI. Further, the Committee noted that the

Respondent in statement given to SEBI on 12.02.2013 in reply to question no. 13 (page A-167 of PFO) accepted of conducting audit of F.Y. 2008-19 and 2009-10. Therefore, overall, the Committee opined that the Respondent lacked in application of due diligence that was supposed to put in conducting the audit of CHL for FY 2008-09 and he also lacked in proving his stand of not taken up audit of the said company for the FY 2009-10.

9. Moreover, the Committee also observed that there existed one SEBI order against the Respondent debarring him of accepting any audit or attestation assignment of any listed company for a period of one year. This SEBI order was also accepted by the Respondent which further strengthens the analogy that the Respondent had admitted professional misconduct on his part.

10. Therefore, thoroughly considering the documents on record, stand/ request of the Respondent and the observations made in the above-said paras, the Committee decided to hold him guilty of professional misconduct falling within the meaning of item (7) & (9) of Part I of Second Schedule to the Chartered Accountants Act, 1956.

Conclusion

11. Thus, while looking into the facts of the case and in terms of the reasoning observed above, the Committee held the Respondent i.e. **CA. Kishor Purushottam Joshi (M.No.034760) GUILTY** under Items (7) and (9) of Part I of Second Schedule to the Chartered Accountant Act, 1949.

sd/-
(CA. ATUL KUMAR GUPTA)
PRESIING OFFICER

(approved and confirmed through e-mail)
(SHRI RAJEEV KHER I.A.S. RETD.)
GOVERNMENT NOMINEE

(approved and confirmed through e-mail)
(CA. AMARJIT CHOPRA)
GOVERNMENT NOMINEE

(approved and confirmed through e-mail)
(CA. PRAMOD KUMAR BOOB)
MEMBER

Certified to be true copy
Jyotika Grover
Assistant Secretary,
Disciplinary Directorate
The Institute of Chartered Accountants of India,
ICAI Bhawan, Vishwas Nagar, Shahdra, Delhi-110032

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

[PR/33/16-DD/97/16-DC/1028/19]

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-PR/33/16-DD/97/16-DC/1028/19]

In the matter of:

Sh. Arrikat Thomas Abrahim,
Director, M/s Syssoft Infotech (India) Private Limited,
B 403, Uranus Sai Baba Galaxy,
Opp. Oshiwara Bus depot,
New Link Road
Goregaon (West),
MUMBAI - 400 104 .... **Complainant**

Versus

CA. K.V. Shankaran (M. No. 033960)
M/s K V Shankaran & Associates (FRN 109900W),
Chartered Accountants,
C-909, Mahavir Trinkets,
Opp. Kanjur Marg Railway Station,
Kanjur Marg West,
MUMBAI - 400 078 ..... **Respondent**

MEMBERS PRESENT:

1.CA. (Dr.) Debashis Mitra, Presiding Officer
2. CA. Amarjit Chopra, Government Nominee
3. CA. Babu Abraham Kallivayalil, Member
4. CA. Rajendra Kumar P, Member

DATE OF MEETING : 27.05.2021 (Through Video Conferencing)

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

11.02.2021 the Disciplinary Committee was inter-alia of the opinion that **CA. K.V. Shankaran (M. No. 033960)** (hereinafter referred to as the **Respondent**") was **GUILTY** of professional misconduct falling within the meaning of Item (10) of Part I of the Second Schedule and Item (2) of Part IV of the First Scheduleof Chartered Accountant Act 1949.

2. The Committee noted that the Respondent was present before the Bench through Video Conferencing mode from Mumbai office of ICAI. The Respondent was administered Oath. The Respondent submitted that his only source of income is from his practice. He, however, admitted professional misconduct on his part and regretted for the same. He further mentioned that he had returned Rs 4 lakh to the Company which was taken as loan by him for higher studies of his son who was going to USA. The Committee asked him about his scope of work to which the Respondent submitted that he was handing taxation and audit matters. The Respondent admitted that he had no evidence to prove that he took money as advance fee and was solely based on mutual understanding. Therefore, he requested the Committee to consider his case mercifully and take a lenient view.

3. The Committee noted that the Respondent had confessed before the service tax authority that the amount collected as Service tax liability was not deposited to government exchequer and was used for personal purpose. The Committee noted that the Respondent had accepted that he had taken loan from the auditee which is not allowed as the same impairs his independence as an auditor. The Committee also noted that the Respondent in another case against him vide ref. No. PR-295/2014-DD/313/2014/DC/550/2017 was awarded punishment of removal of name for period of 05 (Five) years along with the fine of Rs.1,00,000/- (One Lakh Rupees) on charge of taking blank cheques and depositing the same in his bank account for personal use and also utilized the cash given for service tax payments and embezzled the money by using the same for his personal benefit. The Committee, accordingly, was of considered view that the Respondent is a habitual offender and ends of justice shall be met if severe punishment is granted to the Respondent.

4. **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 i.e. CA. K.V. Shankaran (M.No.033960) from the register of members for 05(Five) Years along with fine of Rs. 1,00,000/- (One lakh Rupees), In case of failure of payment of fine,**

name be removed further for 06(Six) months. The Committee further clarified that this punishment to run concurrently with the punishment awarded vide Ref. No. PR/295/14/DD/313/14-DC/550/17(supra).

sd/-
(CA. (Dr.) DEBASHIS MITRA)
PRESIDING OFFICER

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

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

sd/-
(CA. RAJENDRA KUMAR P)
MEMBER

Certified to be true copy
Jyotika Grover
Assistant Secretary,
Disciplinary Directorate
The Institute of Chartered Accountants of India,
ICAI Bhawan, Vishwas Nagar, Shahdra, Delhi-110032

CONFIDENTIAL

DISCIPLINARY COMMITTEE [BENCH – II (2020-2021)]
[Constituted under Section 21B of the Chartered Accountants Act, 1949]

Findings under Rule 18(17) and 19(2) of the Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007.

File No. : [PR/33/16-DD/97/16-DC/1028/19]

In the matter of:

Sh. Arrikat Thomas Abrahim,
Director, M/s Syssoft Infotech (India) Private Limited,
B 403, Uranus Sai Baba Galaxy,
Opp. Oshiwara Bus depot,
New Link Road
Goregaon (West),
MUMBAI - 400 104 **.... Complainant**

Versus

CA. K.V. Shankaran (M. No. 033960)
M/s K V Shankaran & Associates (FRN 109900W),
Chartered Accountants,
C-909, Mahavir Trinkets,
Opp. Kanjur Marg Railway Station,
Kanjur Marg West,
MUMBAI - 400 078 **..... Respondent**

MEMBERS PRESENT:
CA. Atul Kumar Gupta, Presiding Officer
CA. Amarjit Chopra, (Govt. Nominee)
CA. Pramod Kumar Boob, Member

DATE OF FINAL HEARING : 17.11.2020 (through Video Conferencing)
PARTIES PRESENT : Nil

Charges in Brief:-

1. In the instant matter, the Committee noted that the Respondent was held prima-facie guilty of Professional and/or Other Misconduct falling within the meaning of

Clause (10) of Part I of the Second Schedule and Clause (2) of Part IV of the First Schedule to the Chartered Accountants Act, 1949 read with section 22 of said Act on the charge of keeping of client money without opening separate bank account and misused that money by forging the blank signed cheques.

Brief facts of the Proceedings:

2. The Committee noted that on the day of hearing i.e., on 17th November, 2020, neither complaint nor Respondent was present before it. The Committee also noted that earlier the case was adjourned at request of the Respondent on 27.10.2020. In the absence of both the parties the Committee decided to conclude the hearing ex-parte the Complainant and the Respondent.

Findings of the Committee

3. The Committee noted that in present case M/s Syssoft Infotech (India) Private Limited (hereinafter referred to as the "**Company**") issued cheque for payment of service tax liability to the Respondent but he did not pay the same to Service tax Department and encashed the same in personal account. The Committee further noted that the Respondent had confessed before service tax officials that he did not pay service tax as he was in need of funds for personal matter and had forged blank signed cheques. He further promised to repay the funds to the Company and accordingly had repaid only 4,00,000/- till date i.e. 03.12.2015.

4. The Committee observed that the Respondent had neither submitted any written statement at PFO stage nor submitted any defence on Prima-facie opinion of the Director (Discipline). The Committee noted that on such serious charge absence of submission by the Respondent clearly indicates that he is not having anything in his defence and accepts the charge.

5. The Committee also noted that against same Respondent another company viz., M/s Alsecure & Protection Services India had made complaint had also filed case against him with the Directorate bearing case no. PR/295/2014-DD/313/2014. In

that case too the Respondent was held guilty due to his admission on record regarding misuse of money received for deposit the service tax for personal use.

Conclusion

6. In terms of the reasoning discussed above and in the considered opinion of the Committee in the absence of any defence from the Respondent, it is concluded that the Respondent is guilty under the said charges for Professional and/or Other Misconduct falling within the meaning of Item (10) of Part I of the Second Schedule and Item (2) of Part IV of the First Schedule to the Chartered Accountants Act, 1949 read with section 22 of said Act.

sd/-	(approved & confirmed through email)	(approved & confirmed through email)
CA. ATUL KUMAR GUPTA	**CA. AMARJIT CHOPRA**	**CA. PRAMOD KUMAR BOOB**
(PRESIDING OFFICER)	**(GOVERNMENT NOMINEE)**	**(MEMBER)**

DATE: 11TH FEBRUARY, 2021
PLACE: DELHI

Certified to be true copy
Jyotika Grover
Assistant Secretary,
Disciplinary Directorate
The Institute of Chartered Accountants of India,
ICAI Bhawan, Vishwas Nagar, Shahdra, Delhi-110032

THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA

(Set up by an Act of Parliament)

[PR-175/2014/DD/201/14/DC/634/2017]

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-175/2014/DD/201/14/DC/634/2017]

In the matter of:

Shri Suraj T Nanda
3, Manju, 286-A, Sher-E-Punjab
Opp. Maratha Sahkari Coop Bank,
Near Tolani Naka,
Mahakali Road, Andheri (E)
Mumbai - 400 093 .....**Complainant**

Versus

CA. Haresh Ramji Joshi (M. No. 033489)
Shop No. 9, First Floor,
Hi-Life Mall, P M Road, Santacruz (West)
Mumbai – 400 054 .....**Respondent**

MEMBERS PRESENT:

1. **CA. (Dr.) Debashis Mitra, Presiding Officer**
2. **CA. Amarjit Chopra, Government Nominee**
3. **CA. Babu Abraham Kallivayalil, Member**
4. **CA. Rajendra Kumar P, Member**

DATE OF MEETING : 27.05.2021 (Through Video Conferencing)

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 02.02.2021 and in terms of the decision taken in meeting held on 27th January, 2021, the Disciplinary Committee was inter-alia of the opinion that **CA. Haresh Ramji Joshi (M. No. 033489)** (hereinafter referred to as the **Respondent**") was **GUILTY** of professional misconduct falling within the meaning of Item (2) of Part IV of the First Schedule and Item (7) of Part I of the Second Schedule of Chartered Accountant Act 1949.

2. The Committee noted that the Respondent was present before the Bench through Video Conferencing mode through Mumbai office of ICAI. The Respondent was administered Oath. The

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Jyotika Grover
Assistant Secretary
Disciplinary Directorate
The Institute of Chartered Accountants of India
ICAI Bhawan, Vishwas Nagar

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Respondent relied upon his written submission and his email communication dated 23rd April, 2021. The Respondent admitted that there was only clerical mistake/typographical error on his part. The Respondent denied that the shares allotted on the same day of AGM was factually incorrect and shares were allotted in cash, so statement that no inflow of funds in the account of the Company as there was no bank account was factually incorrect. The Respondent also requested the Committee to relook his matter while considering his submissions. The Respondent raised the issue of typographical error in Committee report and accordingly mentioned that errors in his report are also accidental and unintentional. Regarding lacuna in entry of audit fee he stated that since company has no business no profit and loss was prepared this mistake has occurred and was debited to cash account. He further stated that there was no mala-fide intention on his part, and he acted in good faith. Therefore, he requested the Committee to consider his case mercifully and take a lenient view.

3. The Committee informed the Respondent that the present Committee has no power to take a fresh decision as it is the award of punishment which is the subject matter. The Committee questioned him with respect to various points such as mismatch of date in the Audit report and Balance sheet; inconsistency in dates of AGM's; filing of Form No. 2 with ROC consistently for 5 years by mentioning that share capital is Rs. one lakh; allotment of shares in cash on the same day of more so, when the company was not having any business; debiting cash account by crediting audit fee in balance sheet for several years etc. The Respondent failed to justify the same and accepted his mistake. The Committee looking into the gravity of charges alleged vis-a-vis the conduct of the Respondent was of the view that ends of justice shall be met if reasonable punishment is granted to him.

4. 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 i.e. CA. Haresh Ramji Joshi (M. No. 033489) be removed for a period of 01 (One)Year.

sd/-	(confirmed & approved through email)
(CA. (Dr.) DEBASHIS MITRA)	**(CA. AMARJIT CHOPRA)**
PRESIDING OFFICER	**GOVERNMENT NOMINEE**
(confirmed & approved through email)	sd/-
(CA. BABU ABRAHAM KALLIVAYALIL)	**(CA. RAJENDRA KUMAR P)**
MEMBER	**MEMBER**

Certified to be true copy
Jyotika Grover
Assistant Secretary,
Disciplinary Directorate
The Institute of Chartered Accountants of India,
ICAI Bhawan, Vishwas Nagar, Shahdra, Delhi-110032

CONFIDENTIAL

DISCIPLINARY COMMITTEE [BENCH – II (2020-2021)]

[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-175/2014/DD/201/14/DC/634/2017]

In the matter of:

Shri Suraj T Nanda
3, Manju, 286-A, Sher-E-Punjab
Opp. Maratha Sahkari Co-op Bank,
Near Tolani Naka,
Mahakali Road, Andheri (E)
Mumbai - 400 093 .....**Complainant**

Versus

CA. Haresh Ramji Joshi (M. No. 033489)
Shop No. 9, First Floor,
Hi-Life Mall, P M Road, Santacruz (West)
Mumbai – 400 054 .....**Respondent**

MEMBERS PRESENT AS ON 08.09.2020:

CA. Atul Kumar Gupta, Presiding Officer
CA. Amarjit Chopra, Govt. Nominee
CA. Rajendra Kumar P, Member
CA. Pramod Kumar Boob, Member

DATE OF FINAL HEARING : 08.09.2020 (through Video Conferencing)

PARTIES PRESENT:

Complainant	:	**Shri Suraj T Nanda**
Counsel for Complainant	:	**CA. Ajit Anekar, Advocate**
Respondent	:	**CA. Haresh Ramji Joshi**
Counsel for the Respondent	:	**CA. G.D. Gokhle**

CHARGES IN BRIEF:

1. In the instant matter, the Complainant happens to be an undisputed shareholder of M/s Allwyn Colour and Construction Private Limited (hereinafter to be referred to as **"the Company"**), while on the other hand, the Respondent was the Statutory Auditor of the said Company. Broadly, the charges against the Respondent are mentioned as under –

   1.1 In the first charge, allegedly, the Respondent in connivance with the Directors of the Company - M/s. Allwyn Colour and Construction Private Limited, had allotted 9990 fresh equity shares, of which 170 equity shares were already allotted in the past. Moreover, he certified as issued, subscribed and paid up share capital of the Company as Rs.1,00,000/- divided into 10,000 equity shares of Rs.10/- each as Statutory Auditors in the Balance Sheets of the Company for 5 years i.e., for financial year ending 31st March, 2007 to 31st March, 2011 on a single date itself and that too with retrospective effect dated 02nd February, 2000.

   1.2 In the next charge, allegedly, the Respondent has filed **Form No.23B** for acceptance of his appointment as statutory auditor of the Company with the Registrar of Companies, Maharashtra, in one go in a single date itself i.e., on 5th September, 2012 and that too for all the five financial years i.e. 31st March, 2007 to 31st March, 2011. Similarly, he certified **Form No. 23AC** for filing of the Balance Sheet of the Company for five years i.e. 31st March, 2007 to 31st March, 2011 the same day - 7th September, 2012 i.e. again on a single date itself; and also certified **Form No. 20B** on a single date i.e. 31st August, 2012 for filing of the Annual Returns of the Company for five years i.e. as on 30th September, 2007 to 30th September, 2011.

BRIEF FACTS OF THE PROCEEDINGS:

2. On the day of hearing i.e., on 8th September, 2020, the Committee noted that the Complainant & the Respondent both were present before it along with their respective counsels through video conferencing mode. The parties introduced themselves to the Bench and thereafter gave self-declaration as to the fact that they were being alone in their respective rooms from where they were

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appearing and were not recoding the proceedings of the committee being not permitted to do so.

2.1 The Committee, initiated the proceedings of the day in the present matter before it and noted the arguments presented by the Complainant's side and submissions made by the Respondent's side and cross questioned the parties to clarify the things. The Committee lent a very patient hearing to the parties and deliberated to connect the dots to arrive at a logical conclusion in both the charges alleged against the Respondent whereby the latter, allegedly, conspired with the management/ Directors of the Company to increase the capital of the said Company without complying with the statutory provisions of the Companies Act, bypassed the provisions of Articles of Association of the Company etc. and carried out certain certification work including filing of the same with RoC, of a long range of time period of 5 years in a single back date.

2.2 The Committee considered various aspects relating to the matter, documents on record and arguments & submissions of the parties and then concluded the hearing by reserving its decision in the matter and to pronounce its decision at a later date.

2.3 Thereafter this matter was placed in meeting dated 22nd January, 2021 for consideration of the facts and arriving at a decision by the Committee.

MEMBERS PRESENT ON 27.01.2021:

CA. Atul Kumar Gupta, Presiding Officer
Shri Rajeev Kher, I.A.S. Retd., Government Nominee
CA. Amarjit Chopra, Govt. Nominee
CA. Rajendra Kumar P, Member
CA. Pramod Kumar Boob, Member

FINDINGS OF THE COMMITTEE:

3. The Committee noted that the Company in question was incorporated in the year 1982 & the same was a defunct company for many years for non-filing of Balance Sheet & Annual Returns with the RoC and for not complying with the

minimum capital requirement as required by the provisions of the Companies Amendment Act, 2000.

3.1 The Committee also noted that the Company had filed the Balance Sheet & Annual returns for five continuous years i.e., FY 2006-07 to FY 2010-11 all at a once on a single date i.e., on 7th September, 2012 for all the five Balance Sheets and on 4th September, 2012 for all the five Annual returns. Noticeably, no filing with the RoC was made by the Company in between 2001 & 2005.

3.2 Noticeably, these Balance Sheets & Annual returns as mentioned above in Point No. 3.1 were not duly signed by the Directors & its Auditor, rather were filed with sd/- copy impersonating their signatures.

3.3 It is also noted that the Company did not give even a single day's notice to its shareholders and on the same date, all the Balance Sheets were signed and were approved in the AGM. Surprisingly, it was also noted that though, the shares were allotted on the same day of the day of AGM, there was no corresponding inflow of funds in the account of the Company as there was no Bank Account of the Company at all. This fact was also admitted by the Respondent. Moreover, there was a mismatch in between the two figures of share capital as reported in the Balance Sheet & the one reported to the Registrar of Companies.

3.4 The Committee noted that though, the Respondent's side defended his case by submitting due diligence on his part and even later accepted these charges as silly mistake on his part but denied having any role of any alleged conspiracy or fraud by shaking hands together with the Directors of the company.

4. The Committee observed that the accounts of the company for all five years in question were prepared all at once and were signed the same day on the date of AGM itself for which notice of not even a single day was given to by the Company to its shareholders. It also observed that fresh 9,990 equity shares were issued by the company which included the earlier already issued & paid up 170 shares. Besides, all these actions were carried out with

retrospective effect from year 2000. Noticeably, against the said issue of fresh equity shares, no corresponding cash was received in the books of the Company.

5. It was also observed by the bench that amount under the head audit fees payable was increasing each year by the same amount as the cash balance on the right-hand side of the Balance Sheet. When there were reportedly no transactions above the line in the Profit & Loss Account, then, how cash balance could increase with simultaneous increase in audit fees & that too with the same figure. This raised doubts on the conduct of the Respondent in the audit of the said company. It is also surprising to note that there were no supporting documents on record against the issue of share capital and the Respondent could not brought anything in this regard before the committee.

6. The Committee also noted the arguments presented by the Counsel of the Complainant that the case was not as simple and immaterial as it appeared where only a few hundreds of fresh equity shares with face value of Rs 10 each were issued without complying with the provisions of Companies Act etc., but the issue behind it was way too big off the light of the scene being presented by the Respondent. He stated that against the nominal number of shares counting into a few hundred in the year 1985, there happens to have been standing units allocated to its shareholders' which in turn represented the property worth crores of rupees. Therefore, he goes on to emphasis that even a small change in the shareholding pattern from the original one without proportionate allocation of fresh shares to the existing ones would cause huge loss to them as their share in the units would come down which in turn deteriorate their share in the property running into crores. The Committee evaluated the impact of this fact very sensitively and invited attention of the Respondent's side as well in this regard when the latter mentioned the allegations as silly mistakes on his part.

CONCLUSION :

7. In view of the above observation, considering the arguments, counter arguments & submissions of the parties and documents on record, the Committee held the Respondent guilty of professional and/ or other misconduct falling within the meaning of Item (2) of Part IV of the First Schedule and Item (7) of Part I of the Second Schedule to the Chartered Accountants Act, 1949.

sd/-
(CA. ATUL KUMAR GUPTA)
PRESIDING OFFICER

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

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

sd/-
(CA. RAJENDRA KUMAR P)
MEMBER

(approved & confirmed through email)
(CA. PRAMOD KUMAR BOOB)
MEMBER

DATE: 2ND FEBRUARY, 2021
PLACE: DELHI

Certified to be true copy
Assistant Secretary,
Disciplinary Directorate
The Institute of Chartered Accountants of India,
ICAI Bhawan, Vishwas Nagar, Shahdra, Delhi-110032

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

[PR/60/19-DD/90/19-DC/1326/20]

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/60/19-DD/90/19-DC/1326/20]

In the matter of:

Shri Vinayak Bardolia,
31,Shantiniketan Society,
Sumul Dairy Road,
Surat- 395 008 --- **Complainant**

-Vs-

CA. Nitin Madhusudanji Mantri (M.No.132470),
404, Kautilya Takshashila Complex,
S. No. 5, Hissa No. 2, Near Vision School,
Mumbai Pune Bengaluru Highway, Narhe,
Pune- 411 041 ---- **Respondent**

MEMBERS PRESENT:

1. **CA. (Dr.) Debashis Mitra, Presiding Officer**
2. **CA. Amarjit Chopra, Government Nominee**
3. **CA. Babu Abraham Kallivayalil, Member**
4. **CA. Rajendra Kumar P, Member**

DATE OF MEETING : 27.05.2021 (Through Video Conferencing)

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 11.02.2021, the Disciplinary Committee was inter-alia of the opinion that **CA. Nitin Madhusudanji Mantri (M.No.132470** (hereinafter referred to as the **Respondent**") was **GUILTY** of professional misconduct falling within the meaning of Item (7) of Part I of the Second Schedule of Chartered Accountant Act 1949.

2. The Committee noted that the Respondent was present before the Bench through Video Conferencing mode from his place and took oath as to the fact that he would speak only the truth and gave self-declaration as to he was being alone in the room from where he was appearing and

was not recording the proceedings of the Committee. The Respondent accepted the finding of the Committee and admitted the professional misconduct on his part. He, however, requested the Committee to consider his case mercifully and take a lenient view.

3. The Committee was of considered view that there was a lapse to which no harm or loss was caused to anyone. Moreover, considering the Respondent request to take a lenient view, the Committee is of the opinion that the ends of justice shall be met if adequate punishment is granted to him.

4. **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 i.e. CA. Nitin Madhusudanji Mantri (M.No.132470) be removed for a period of 01 (One)Month.**

sd/-
(CA. (Dr.) DEBASHIS MITRA)
PRESIDING OFFICER

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

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

sd/-
(CA. RAJENDRA KUMAR P)
MEMBER

Certified to be true copy
Jyotika
Jyotika Grover
Assistant Secretary,
Disciplinary Directorate
The Institute of Chartered Accountants of India,
ICAI Bhawan, Vishwas Nagar, Shahdra, Delhi-110032

CONFIDENTIAL

DISCIPLINARY COMMITTEE [BENCH – II (2020-2021)]

[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/60/19-DD/90/19-DC/1326/20]

In the matter of:

Shri Vinayak Bardolia,
31,Shantiniketan Society,
Sumul Dairy Road,
Surat- 395 008 --- **Complainant**

-Vs-

CA. Nitin Madhusudanji Mantri (M.No.132470),
404, Kautilya Takshashila Complex,
S. No. 5, Hissa No. 2, Near Vision School,
Mumbai Pune Bengaluru Highway, Narhe,
Pune- 411 041 ---- **Respondent**

MEMBERS PRESENT:

CA. Atul Kumar Gupta, Presiding Officer
Shri Rajeev Kher, I.A.S. Retd. (Govt. Nominee)
CA. Amarjit Chopra, (Govt. Nominee)
CA. Rajendra Kumar P, Member

DATE OF FINAL HEARING : 11.09.2020

PLACE OF FINAL HEARING : ICAI Bhawan, Delhi

PARTIES PRESENT :

Complainant	:	**Shri Vinayak Bardolia**
Counsel for the Complainant	:	**Shri Dhiren R. Dave**
Respondent	:	**CA. Nitin Madhusudanji Mantri**
Counsel for the Respondent	:	**CA. Sharad Vaze**

Charges in Brief:-

1. In the instant matter, the Complainant alleged that the Respondent along with his relatives paid Rs 43 Lakhs to M/s Rudrapriya Fabrics Private Limited (hereinafter referred to as **"the Company"**) against a loan transaction, while, on the other hand, the Company in collusion with the Respondent allotted him & his relatives the shares in the said Company amounting to Rs 50 Lakhs. Moreover, allegedly, the Respondent neither checked the relevant documents in relation with share allotment nor did he check the actual receipt of money in the company. The Respondent, on the other hand, denied the charges against him and chose to defend his case.

Brief facts of the Proceedings:

2. The Committee noted that on the day of hearing i.e., on 11h of September, 2020, from the side of the Complainant, he himself was present along with his Counsel Shri Dhiren R. Dave, while on the other hand, the Respondent - CA. Nitin Madhusudanji Mantri was also present to defend his case along with his Consel - CA. Sharad Vasude. Both the parties along with their Counsels were present through video conferencing mode and all of them gave self-declaration that they were alone in the room from where they were appearing/attending the hearing and that they were not recording the proceedings of the Committee. The Committee heard the Complainant and the Respondent.

Findings of the Committee

3. The Committee heard the Complainant and his allegations against the Respondent. It is on record that shares of Rs.50 lakhs were allotted to the Complainant. This claim of the Complainant that he has paid only Rs.43 lakhs and did not pay Rs.7 lakhs. The Complainant submitted before the Bench that when he has not paid the balance of Rs. 7 lakhs, how the share worth Rs.50 lakhs be allotted to him. The Complainant also submits that amount of Rs.43 lakhs he has paid is only as unsecured loan and not towards share capital. The Complainant alleges that the Respondent is hand in glove with the Company and

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with his connivance documents have been filed before the relevant authority by the Company.

3.1 The Committee wanted the Complainant to submit any document that would prove his claim that the amount of Rs.43 lakhs given by him to the Company was only towards loan and not towards share capital. The Complainant was silent and could not produce any evidence before the Committee to prove his claim. The Committee records its strong displeasure that the Complainant is relying on mere oral statement and is not able to prove his claim without proper documentary evidence. The Committee views the Complainant with the needle of suspicion but as there is no power available under the Act to the Committee to proceed against the Complainant, the Committee can only record its helplessness as far as the Complainant is concerned. In short, the conduct of the Complainant is not beyond doubt.

3.2 The Committee enquired from the Complainant that if he was aggrieved with the action of the Company on allotting shares to him & his relatives against their loan transaction then why did he chose to pay another instalment of Rs 7 Lakhs to the company in November, 2014 and even accepted Directorship in the same company. To this the Complainant submitted that he was not informed about the fact that shares had been allotted to him against his payment of Rs 43 Lakhs. Moreover, he denied any consent in accepting the Directorship in the said company.

3.3 The Respondent is a member of ICAI and thus the Committee enquired from him what were the relevant records that he took connivance of with respect to the issue of share capital. The Respondent's Counsel stated that his client checked Board Resolution and such other documents. The Committee noted that the Respondent could not verified with relevant documentary evidences like scrutiny of shareholders' Register, inflow of money equivalent to the amount of share capital issued or any other document in this regard to substantiate if this was a transaction for issue of capital only.

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3.4 The Committee after hearing the Complainant and the Respondent, records that though the Complainant could not substantiate his claim, the Respondent also did not employ proper due diligence. The Respondent's work and action is cause of worry. The Respondent has submitted before the Committee that he has not verified documents like bank statement for receipt of money, shareholders register, minutes etc. which are primarily required for the purpose of certification. The Respondent has submitted that he has relied upon only Board resolution for the purpose of certification and nothing more. As a chartered accountant, the Respondent should have employed due diligence and conducted and indepth enquiry on the matter related to allotment of shares worth Rs.50 lakhs for which a sum of Rs.43 lakhs only was received by the company.

Conclusion

4. In terms of the reasoning discussed above and in the considered opinion of the Committee, it concluded that the Respondent i.e. **CA. Nitin Madhusudanji Mantri (M.No.132470)** is guilty of Professional Misconduct falling within the meaning of Item (7) of Part I of the Second Schedule to the Chartered Accountants Act, 1949.

sd/-	(approved & confirmed through email)
(CA. ATUL KUMAR GUPTA)	**(SHRI RAJEEV KHER I.A.S. RETD.)**
PRESIING OFFICER	**GOVERNMENT NOMINEE**
(approved & confirmed through email)	**sd/-**
(CA. AMARJIT CHOPRA)	**(CA. RAJENDRA KUMAR P)**
GOVERNMENT NOMINEE	**MEMBER**

DATE: 11TH FEBRUARY, 2021
PLACE: DELHI

Certified to be true copy
Jyotika Grover
Assistant Secretary,
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ICAI Bhawan, Vishwas Nagar, Shahdra, Delhi-110032