



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

[PPR/121C/15-DD/100C/INF/15-DC-873/18]

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/121C/15-DD/100C/INF/15-DC/873/18]

In the matter of:

**CA. Khushroo B. Panthaky (M.No.042423) of M/s. Walker Chandiok & Co. LLP, Mumbai
.... Respondent**

MEMBERS PRESENT:

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

DATE OF MEETING : 17.08.2021 (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. Khushroo B. Panthaky (M.No.042423) of M/s. Walker Chandiok & Co. LLP** (hereinafter referred to as the **Respondent**) was held **GUILTY** of professional misconduct falling within the meaning of Items (5),(6) and (7) of Part I of the Second Schedule of Chartered Accountant Act, 1949.

2. The Committee noted that the Respondent was present through video conferencing from his place. He was administered Oath. He submitted his detailed submissions inter-alia mentioning that error of judgment does not tantamount to professional misconduct. He however admitted that there were typographical errors on certain point(s). It was also pleaded by the Respondent that nothing significant has been stated in Technical Reviewer's Report.

CA Khushroo B Panthaky in Re:



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3. The Committee noted that balance confirmation from parties was neither taken by the Respondent nor he initiated any steps to confirm the same, more so when variation in trade payable towards the last three years was far greater when compared to the trade receivables. There are error(s) in the cash flow statement, therefore the consolidated financial statements could not be said to be free from material misstatement and this also proves the casual approach of the Respondent. The Committee while taking note of the submission of the Respondent was satisfied that there was no malafide intention on the part of the Respondent.

4. The Committee noted that if the effect of the misstatements brought before the Committee is considered in aggregation, its consequential effect would certainly exceed the allowable limits of materiality. The Committee further 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 punishment including fine is imposed on the Respondent.

5. 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 CA. Khushroo B. Panthaky (M.No.042423) be reprimanded with the fine of Rs.200,000/- (Two lakh Rupees) to be payable by him within period of 30 days of receipt of the order and in case of non-payment of fine, the name shall be removed for 30(Thirty) days.

sd/-

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

(approved & confirmed through email)

(CA. AMARJIT CHOPRA)
GOVERNMENT NOMINEE

sd-

(CA. BABU ABRAHAM KALLIVAYALIL)
MEMBER

प्रमाणित सत्य प्रतिलिपि / Certified true copy

Date: 19.1.2022

Place : New Delhi

CA Khushroo B Panthaky in Re:

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

CONFIDENTIAL**DISCIPLINARY COMMITTEE [BENCH – II (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/121C/15-DD/100C/INF/15-DC/873/ 18]****In the matter of:****CA. Khushroo B. Panthaky (M.No.042423) of M/s. Walker Chandiok & Co. LLP,
Mumbai in Re:****MEMBERS PRESENT:****CA. Atul Kumar Gupta, Presiding Officer****CA. Amarjit Chopra, (Govt. Nominee)****CA. Rajendra Kumar P, Member****DATE OF FINAL HEARING : 22.12.2020****PLACE OF FINAL HEARING : ICAI Bhawan, Delhi****PARTIES PRESENT :****Respondent : CA. Khushroo B. Panthaky****Counsel for Respondent : CA. A. P. Singh****CA. Lalit Kumar : Respondent's partner to assist him****Charges in Brief:**

1. In the instant matter, a letter dated 17th January, 2014 was received from Quality Review Board (QRB) of the Institute (hereinafter to be referred to as the "Informant") in the matter pertaining to the Statutory Audit of Glenmark Pharmaceuticals Limited (hereinafter referred to as the "Company") conducted by

CA. Khushroo B. Panthaky (M.No.042423)

Walker Chandiok & Co LLP (FRN 001076N) (hereinafter referred to as the “Respondent firm”) for the year ended on 31st March, 2012 submitting therewith a report dated 25th November, 2013 of the Technical Reviewer. Thereafter, an information case was initiated against the Respondent – CA. Khushroo B. Panthaky (M. No. 042423) whereby several charges were levelled against him which covers non-compliance with the accounting policies, disclosure of cash & cash equivalent figure in the Cash Flow Statement, Related Party Disclosure, non-compliance with the auditing standards and consolidated financial statement with respect to subsidiary of the abovesaid company. The Respondent maintained that he had complied with the accounting and auditing standards, guidance notes etc. in conducting the audit and wherever applicable he had applied his discretion in taking the judgement as permitted under the norms.

Brief facts of the Proceedings:

2. The Committee noted that on the day of final hearing i.e., on 22nd December, 2020, from the side of the Respondent, he himself was present along with his Counsel- CA. A. P. Singh and CA. Lalit Kumar - one partner of the Respondent to assist him in the proceedings. Everyone from the side of the Respondent i.e., he himself, his Counsel & his partner were present through video conferencing mode and all of them gave self-declarations 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 noted that earlier hearing of the matter took place on 21.08.2019, 25.11.2019, 18.08.2020, 28.08.2020, 06.10.2020, 27.10.2020, and 17.11.2020. The Counsel of the Respondent raised his objections with respect to procedural matters at the hearing held 25.11.2019. It is the grievance of the Respondent that considerable delay has been made in delivering the prima facie opinion. We find that the prima facie opinion dated 11.12.2017 was sent to the Respondent vide the office letter dated 4.1.2019. In this regard the Committee noted that as per the procedure the prima-facie opinion was considered by the respective Committee and thereafter copy of the same was sent to the Respondent in due course of time. Further, the Respondent also raised objections on the procedures followed by the Quality Review Board, referring the report to the Director Discipline and thereby the Director Discipline held the Respondent guilty of professional

CA. Khushroo B. Panthaky (M.No.042423)

misconduct. The Committee recorded objections of the Respondent and thereafter the Committee gave suitable reply to Respondent/ his Counsel and directed them to proceed on merit. The Committee discussed various aspects of the case, heard all the parties patiently and after considering the arguments/ submissions of the parties and documents on record, it arrived at a logical conclusion.

Findings of the Committee

3 The first charge against the Respondent is that he has overlooked the fact that certain accounting policies have not been followed. The Director (Discipline) in his prima facie opinion has held that the Respondent has failed to exercise due diligence for not following the laid down policy for sales returns. The Respondent has agreed with the observations of the QRB that the Company has not followed the prescribed accounting policy in respect of accounting of sales return and thereby a deviation took place. It is the laid down accounting policy of the Company that to have provisions based on an estimate of expected sales returns be recognized and recorded in the books. Our attention is drawn on audit team presentation to the Audit Committee Board and their presentation on this issue on 8.5.2012. On perusal, it is clear fact that no estimate was made by the management and only the actual figures of sales returns were considered. The Audit Committee Board opined that "*the management should make an estimate of the potential enquiries based on market information and past data.*" The Respondent through the audit team made certain estimation toward sales return however instead of reporting about deviation from accounting policy the Respondent recorded the same in the statement of unadjusted audit differences and made the same as a part of the management representation letter. The Respondent further submitted that no provision was made and no reporting was required since the same was not material. The Respondent further submitted that the audit team evaluated the impact of the error on the financial statements in accordance with the guidance contained in SA450 "Evaluation in misstatements identified during the audit". The Respondent further submits that he has followed SA705, SA260 and SA450 for not reporting the said deviation.

3.1 It is an accepted fact that the sales returns were recorded at actuals and we find that an amount of Rs. 699.51 million is the actual return for the year 2010-

12 and based on historical trend the estimate should have been 800.31 million thereby a difference of Rs.100.80 million arises for which no provision was made in the concerned financial statements.

3.2 It was incumbent upon the Respondent to submit to the management that the disclosed accounting policy was not been followed and should have insisted for change in accounting policy based upon the actual facts. The accounting policy which was disclosed was not been followed and in contrary the one which was followed was not disclosed. It was incumbent upon the Respondent to come out with the possible effect of the change in the accounting policy in the subsequent periods based upon the actual facts. The Respondent has failed to submit any evidence with regard to his insistence to the management to change the accounting policy based upon the actual facts. It is brought to the notice of the Committee that at least for 3 years the estimates were made on actuals and not as per the laid down accounting policy. The defence of the Respondent is that since the difference between the actual and estimate was not material, he/his team did not consider the same and thereby did not qualify his report. The Committee is not in agreement with the submission of the Respondent. The Committee opined that if it is the laid down accounting policy that the provision for sales returns shall be made on estimate, then the same should have been followed in letter and spirit. If the same is not followed, the Respondent should have qualified the audit report. Accordingly, the Committee held the Respondent guilty as far as this charge is concerned.

4. The second charge relates to the cash flow statement for the financial year 2011-12. The Committee noted that a note to the cash flow statement states "*Cash and cash equivalent includes Rs.3.68 mn (PY Rs.3.66 mm) which are not available for use by the Company*". In this instant charge, the Director (Discipline) in the prima facie opinion has concluded that there is a gross negligence in professional conduct. The Respondent submits that there is no gross negligence as has been concluded by the Director (Discipline). The Respondent further submits that instead of the word 'includes' in the said note, the word 'excludes' should have been used and he further stated that this is the only mistake and not a case of gross negligence. In the opinion of the Committee, the said note should not have formed part of the cash flow

statement and if something was not available for use by the company, the said adjustment should have been reflected in the cash flow statement itself and not by way of a note. The Committee is of the view that the Respondent did not exercise proper due diligence required of a professional and hence is guilty on this charge as well.

5. The third charge relates to related party disclosure. It is brought to the notice of the Committee that a disclosure under AS18 has been wrongly reported. The Company had purchased fixed assets from Glenmark Generics Ltd. but in the disclosure as required under AS 18 it is found that instead of Glenmark Generics Ltd, the name of Glenmark Pharmaceuticals SA, Switzerland, is reported. The Respondent in his defense submits that though he has followed the requirement of disclosure as per AS18, there is an error in noting the name of the related party and the same not being material as the amount involved is Rs.1.13 million only. In the opinion of the Committee, the Respondent should have been vigilant while giving disclosure under AS18.

- 5.1 The Committee observed that such incorrect information contained in the Financial Statements indicates the casual approach on the part of both the management of the company in preparation of financial statement as well as on the part of Respondent while verifying the same during the audit. It is noted that similar to previous observation here again the Respondent agrees with the incorrect information contained in related party disclosure and defended his case in view of materiality threshold of Rs 125 million. It may be fair to argue on materiality grounds when it would be matter of some items to be reflected in Profit & Loss Account and Balance Sheet from the angle of true and fair view. However, in case of disclosures to be made these are statements of facts which need to be stated correctly both qualitatively and as well as quantitatively. It is worth noting that any information disclosed in notes to accounts happens to be material irrespective of its amount, therefore, it should have been disclosed separately. Hence, stating it to be immaterial, in view of absolute benchmark is not acceptable. Moreover, the Respondent was supposed to comply with the requirements of paras 11 & 13(a) of SA 200 (Revised) whereby he should have obtained the reasonable assurance about whether the financial statements as a whole were free from material misstatements, whether due to fraud or error,

thereby enabling the auditor to express an opinion on whether the financial statements were prepared, in all respects, in accordance with an applicable financial reporting framework and accordingly, he was supposed to report in his audit report according to his findings. In the instant case, as the disclosure of the related party has not been done by the entity in accordance with the requirements of AS-18, fair presentation of information contained in its financial statements was clearly lacking and the Respondent has not reported anything in this regard. In view of the above, the Respondent is held guilty of gross negligence when read with other misstatements as above after taking into the effect of misstatement in aggregate.

6. The fourth charge relates to employing direct confirmation procedures. SA 500 deals with Audit evidence. The said standard requires an auditor to perform Tests of controls and substantive procedures. In the instant case, it is found that the audit firm had sought direct confirmations in respect of balances with bank, loans from banks and trade receivables. However, confirmations in respect of the following were not obtained:

Sundry Creditors: Rs.1,375.47 mn

Advances from Customers: Rs.114.32 mn

Capital Advances : Rs.157.81 mn

Advance to vendors : Rs.630.57 mn

6.1 The Guidance Note on audit of liabilities outlines the direct confirmation procedure and lays down that confirmations shall be taken during the course of performing the audit and such confirmation shall be direct. The Respondent submits that his firm has exercised the required professional judgement and followed the confirmation procedures laid down in the said Guidance Note. In the opinion of the Committee, while SA 500 lays down several methods of seeking confirmations, the other methods shall be followed only if the direct confirmation procedures cannot be applied which is most reliable one. In the opinion of the Committee, the Respondent has not been able to bring out any reasoning as to why no direct confirmations have been obtained in respect of above-mentioned heads of Balance Sheet.

6.2 The Committee on considering the arguments of the Respondent's side, formed the opinion that it was the responsibility of the auditor to design and perform audit procedures in such a way to enable to obtain sufficient audit evidence so that a reasonable opinion could have been formed for forming an audit opinion. These evidences were to be obtained by performing Tests of controls and substantive procedures as per SA 500. These substantive procedures among others covered external confirmations. The Committee was convinced with the fact that evidences obtained from independent sources happens to reduce the audit risk. The Committee also considered the fact that though, selection of appropriate audits procedures was a matter of professional judgment, yet, in the extant case, the charge against the Respondent was against his professional judgement only.

6.3 The Committee noted that figures of purchases, sales, trade payable and trade revivable provided by the Respondent are as under:

(Rs. In Million)

	2009-10	2010-11	2011-12
Sales	10296.87	12122.48	16158.16
Trade Receivables	3300.92	1893.44	3587.43
Purchases	3066.51	3482.68	4486.73
Trade Payables	798.29	1345.91	1480.43

On perusal of facts it is revealed that variation in trade payable towards the last three years was far greater when compared to trade receivables.

6.4 The Respondent failed to provide appropriate reasons to justify judgment exercised by him. Therefore, mere submitting that confirmations were obtained for inter-company balances and ledgers were scrutinized cannot be construed as sufficient to indicate audit evidence were obtained to confirm the balances as shown in the financial statement.

6.5 The Committee further observed that as per para A1 read with para 6 of the SA 500, an audit evidence is necessary to support the auditor's opinion and to report & these happens to be cumulative in nature and are primarily obtained from the audit

procedures performed during the course of the audit. Moreover, as per para A6 of SA 500 on 'Audit Evidence', an auditor is required to conclude whether sufficient appropriate audit evidences are obtained to reduce audit risk to an acceptably low level and thereby enabling the auditor to draw a reasonable conclusion on which he shall form his opinion. In addition to this, the Committee also noted that as per SA 500, an external confirmation represents audit evidences secured from the third party either through the paper or electronic mode. External confirmation needs to be secured to reduce the audit risk to an acceptable level. Noting, no confirmation of balances had been secured by the Company and the Respondent as an auditor in the case of creditors, advances to and from parties. The Committee further noted that Respondent failed to take confirmation from debtors whose balances were showing credit figures and similarly the creditors whose balances were showing debit figure. Therefore, the Committee concluded that the Respondent did not exercise due diligence in the audit of the auditee company and did not plan the audit in such a way to apply additional substantive audit procedures where internal control of the auditee company in the case of a large number of party balances were not confirmed by the auditee company and hence he is held guilty of professional misconduct as far as this charge is concerned.

7. The fifth charge for consideration by the Committee was related to "Consolidated Financial Statements (IFRS) as under:

Related Company	Charge
With respect to Glenmark Pharmaceutical Ltd., Brazil (IFRS) for FY 2011-12 – Balance Sheet	Incorrectly consolidated amount of "Provision" to tune of 1,275,568 BRL (INR 36.4 mn) in the consolidated Balance Sheet of Glenmark Pharmaceuticals (India) Limited.
With respect to Glenmark Pharmaceutical Ltd., Brazil (IFRS) for FY 2011-12 – Cash Flow Statement	a. Loss on sale of property, Plant and Equipment to the tune of 234,380 BRL (INR 16.22 mn) incorrectly consolidated into "Misc. Provisions"- under operating activities b. Proceeds from sale of property, Plant and Equipment to the tune of 96,841 BRL

	incorrectly netted off with and shown as single figure of Rs. 84.38 as Purchase of property, Plant and Equipment c. Interest received – Investing activities of Rs. 2.77 mn incorrectly consolidated in the Consolidated Cash Flow Statement without the statement of Profit & loss or Cash Flow of the subsidiary reflecting any such amount.
With respect to Glenmark Generics Ltd., India (IFRS) for FY 2011-12 – Cash Flow Statement	a. Interest Expense-operating activities of Rs. 571.39 mn has been incorrectly consolidated as Rs. 624.42 mn in Consolidated Cash Flow Statement b. Interest paid on borrowings- Financial activities of Rs. 572.25 mn has been incorrectly consolidated as Rs. 625.28 mn in Consolidated Cash Flow Statement

7.1 The Respondent, in his defense before the Committee submitted that the amount was not material in case of Glenmark Pharmaceutical Ltd., Brazil. As regards Glenmark Generics Ltd., India he submitted that difference was on account of debtors discounting (without recourse agreement) charges of Rs 53.03 mn which was erroneously included in the Cash Flow Statement. However, he further goes on to claim that this had a compensating effect as it was added in operating activities and subtracted in financing activities, therefore, as per the submissions of the Respondent there was no change in the net cash equivalents reported and hence, he pleaded not guilty as far as this charge was concerned. The Respondent's side further submitted that the amount involved in the alleged charge was less than the materiality levels. His submissions, among others, included that the amount of error of Rs. 53.03 million noted by the reviewer was below the materiality threshold for consolidated financial statements of Rs. 200 million and therefore, clearly, not material.

7.2 The Committee, on considering the arguments presented by the Respondent observed that the irregularities as charged under this particular charge pertains to wrong classification in Consolidated Balance Sheet and Consolidated Cash Flow Statement. Noting, though, the Respondent admitted the lapses on his part yet, chose to defend himself on the ground of materiality and hence, claimed not guilty for this charge. The Committee observed that if all the matters reported in this section was to be considered in aggregate, it indicated that the casual approach was exercised while consolidating the figures in the Consolidated Balance Sheet and the Respondent also remained failed to verify the same. It has been further observed that almost all the charges alleged are majorly defended by taking the plea of materiality limit, which shows the casual approach adopted by the Respondent while performing audit of the Company. It appears that the Respondent has fixed an absolute value to define the material items and has done audit or reported items only in respect of such items which are above that threshold limit. In this regard the categorically noted in this regard paragraphs of Performance materiality as per Standard on Auditing (SA) 320 on Materiality in Planning and Performing an Audit as under:

"A12. Planning the audit solely to detect individually material misstatements overlooks the fact that the aggregate of individually immaterial misstatements may cause the financial statements to be materially misstated, and leaves no margin for possible undetected misstatements. Performance materiality (which, as defined, is one or more amounts) is set to reduce to an appropriately low level the probability that the aggregate of uncorrected and undetected misstatements in the financial statements exceeds materiality for the financial statements as a whole. Similarly, performance materiality relating to a materiality level determined for a particular class of transactions, account balance or disclosure is set to reduce to an appropriately low level the probability that the aggregate of uncorrected and undetected misstatements in that particular class of transactions, account balance or disclosure exceeds the materiality level for that particular class of transactions, account balance or disclosure. The determination of performance materiality is not a simple mechanical calculation and involves the exercise of professional judgment. It is affected by the auditor's understanding of the entity, updated during the performance of the risk assessment procedures; and the nature and extent of misstatements identified in previous audits

and thereby the auditor's expectations in relation to misstatements in the current period. "

Further Para 6 in this regard states as under:

"

The materiality determined when planning the audit does not necessarily establish an amount below which uncorrected misstatements, individually or in aggregate, will always be evaluated as immaterial. The circumstances related to some misstatements may cause the auditor to evaluate them as material even if they are below materiality. Although, it is not practicable to design audit procedures to detect misstatements that could be material solely because of their nature, the auditor considers not only the size but also the nature of uncorrected misstatements, and the particular circumstances of their occurrence, when evaluating their effect on the financial statements."

It was observed by the Committee that many items falling below the said limit have been left out stating that it was the responsibility of the management for preparation of financial statement. Notingly, though, as claimed by the Respondent that the Audit Report was prepared in compliance with financial reporting framework applicable on the enterprise, yet notingly leaving a certain portion of it on the grounds of materiality was not acceptable as it depicted the casual approach adopted by the Respondent and affecting the true and fair view for the stakeholders of the financial statements. The Committee also observed that if the effect of the misstatement as mentioned in various allegations, is considered in aggregation, its consequential effect would certainly cross the allowable limits of materiality.

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- 7.3 As far as this particular charge under consideration is concerned, there was error in cash flow statement in the consolidated financial statements which was also admitted by the Respondent, yet, he pleaded not guilty. As there was error(s) in cash flow statement, the consolidated financial statements could not be said to be free from material misstatement and this also proves the casual approach adopted by the Respondent in respect of the consolidation. Besides the Committee found the Respondent did not ensure adherence with requirements of AS-21 in respect of Consolidated Financial Statements. Hence,

the Committee concluded him to be guilty of professional misconduct under this charge as well.

Conclusion

8. In terms of the reasoning discussed above and in the considered opinion of the Committee, it concluded that the Respondent i.e. **CA. Khushroo B. Panthaky (M.No.042423)** is guilty of Professional Misconduct falling within the meaning of Items (5), (6) &(7) of Part I of the Second Schedule to the Chartered Accountants Act, 1949.

sd/-

(CA. ATUL KUMAR GUPTA)
PRESIDING OFFICER

approved & authorized the
Presiding Officer to sign

(CA. AMARJIT CHOPRA)
GOVERNMENT NOMINEE

sd/-

(CA. RAJENDRA KUMAR P)
MEMBER

DATE: 12TH 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