

CONFIDENTIAL**DISCIPLINARY COMMITTEE [BENCH – II (2022-2023)]****[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-164/17-DD/194/2017-DC/1148/2019]****In the matter of:****Shri Sanjeev Gupta,**

Chief Operating Officer,

Marine Plus, Marine Manson,

#23-23-12, Sivalayam Temple, Ward Street,

Beach Road, Opp. Ore Berth Gate,

Visakhapatnam – 530001**....Complainant****Versus****CA. Deelipkumar Bhikubhai Desai, (M.No.010530)**

33/B, Kennady Bridge,

Mumbai – 400004**.....Respondent****MEMBERS PRESENT:****Mrs. Rani Nair, I.R.S. (Retd.), Government Nominee & Presiding Officer (Present in person)****Shri Arun Kumar, I.A.S. (Retd.), Government Nominee (Present in person)****CA. Cotha S Srinivas, Member (Present in person)****DATE OF FINAL HEARING : 07.11.2022 at Mumbai.****PARTIES PRESENT : None**

CHARGES IN BRIEF:-

1. The Committee noted that in the present case, the Respondent was held Prima-facie Guilty by the Director (Discipline) of Professional Misconduct falling within the meaning of Items (6) and (7) of Part I of the Second Schedule to the Chartered Accountants Act, 1949 on the following charge with respect to his Statutory Audit of M/s Coastal Marine Construction & Engineering Limited (hereinafter referred to as the "**Company**"):
 - a. The Respondent being Statutory Auditor of the Company for the financial year 2014-15 had not made disclosure in "Notes to Accounts" in accordance with Section 22 of Micro, Small and Medium Enterprises Development Act, 2006 regarding outstanding dues to the Complainant Company despite he was apprised of omission.

BRIEF FACTS OF THE PROCEEDINGS:

2. The Committee noted that this case was fixed earlier on multiple times on the following dates which are as under: -

I	30.09.2021	Part-Heard and adjourned.
II	19.01.2022	Fixed and adjourned.
III	23.08.2022	Fixed and adjourned.
IV	31.10.2022	Fixed and adjourned to provide last opportunity to parties.

- 2.1 The Committee also noted that with respect to hearing scheduled on 31st October 2022 an email was received from email id mistrydivya131@gmail.com in the name of the Respondent on 29th October 2022 mentioning that he had already made his submissions on 23rd July 2017. He further mentioned that the Complainant and Company have settled the matter and accordingly they are not participating in hearing.

- 2.2 The Committee noted that Office vide email dated 29th October 2022 replied to the email that no withdrawal request has been received from the Complainant and requested the Respondent to participate in hearing and may make his submissions. The Committee noted that the Respondent was also informed that in his absence the Committee may decide the case ex-parte. The Committee noted that despite the same, neither the Respondent appeared before it nor any response was received from him. The Committee, looking into the absence of both the parties and, on grounds of natural justice, decided to give final opportunity to the parties and accordingly adjourn the hearing to 7th November 2022.
- 2.3 The Committee noted that for the hearing scheduled on 7th November 2022 neither the Complainant nor the Respondent appeared before it. The Committee noted that the Respondent vide email dated 4th November 2022 in response to the notice merely intimated that due to some urgency he is out of town and will not be attending the hearing. The Committee noted that the Respondent vide such email had not specially asked for an adjournment. The Committee noted that this matter was earlier fixed four times and on three occasions the matter was adjourned in the absence of the Complainant and at the request of the Respondent. Accordingly, the Committee looking into the fact that reasonable and sufficient opportunities are already given to both the parties, but due to their continuous absence, decided to conclude the hearing ex-parte.

FINDINGS OF THE COMMITTEE

3. The Committee in absence of the defence of the Respondent noted his submissions made on 23rd July 2017 at prima-facie stage, wherein he inter-alia, stated as under:
- a. That he was auditor of said company for the FY 2014-15.
 - b. That during the financial year 2014-15, bills amounting to Rs 18,35,673/- were raised by the Complainant's Company on 4th March 2015 and were

booked in same financial year and was shown as payable to the Complainant Company (Page D-37 of prima-facie opinion).

- c. That disclosure requirement as per Section 15, 16 & 22 of the Micro Small and Medium Enterprises Development Act, 2006 is 45 days from the date of acceptance or the day of the deemed acceptance and during FY 2014-15, Bills were received on 4th March 2015; hence 45 days period was not over at the end of the year i.e. 31st March, 2015 and there is no question of his showing any interest separately as per Section 22 of MSME Act, 2006.
4. The Committee in this regard noted the relevant sections i.e. Section 15, 16 and 22 of Micro, Small and Medium Enterprises Development Act, 2006 which are as stated below:-

MSME disclosure requirements in Annual statement of accounts

Section 15: Liability of buyer to make payment.-

Where any supplier, supplies any goods or renders any services to any buyer, the buyer shall make payment therefore on or before the date agreed upon between him and the supplier in writing or, where there is no agreement in this behalf, before the appointed day:

Provided that in no case the period agreed upon between the supplier and the buyer in writing shall exceed forty-five days from the day of acceptance or the day of deemed acceptance.

Section 16: Date from which and rate at which interest is payable.-

Where any buyer fails to make payment of the amount to the supplier, as required under section 15, the buyer shall, notwithstanding anything contained in any agreement between the buyer and the supplier or in any law for the time being in force, be liable to pay compound interest with monthly rests to the supplier on that amount from the appointed day or, as the case may be, from the date immediately following the date agreed upon, at three times of the bank rate notified by the Reserve Bank.

Section 22: Requirement to specify unpaid amount with interest in the annual statement of accounts.-*Where any buyer is required to get his annual accounts audited*

under any law for the time being in force, such buyer shall furnish the following additional information in his annual statement of accounts, namely:—

- The principal amount and the interest due thereon (to be shown separately) remaining unpaid to any supplier as at the end of each accounting year;
- the amount of interest paid by the buyer in terms of section 16, along with the amounts of the payment made to the supplier beyond the appointed day during each accounting year;
- The amount of interest due and payable for the period of delay in making payment (which have been paid but beyond the appointed day during the year) but without adding the interest specified under this Act;
- The amount of interest accrued and remaining unpaid at the end of each accounting year; and
- the amount of further interest remaining due and payable even in the succeeding years, until such date when the interest dues as above are actually paid to the small enterprise, for the purpose of disallowance as a deductible expenditure under section 23.

- 4.1 From the above facts, The Committee noted that as per Section 15 of Micro, Small and Medium Enterprises Development Act, 2006, the Company is liable to make payment on or before the date agreed upon with the Complainant Company in writing and if there is no agreement on this behalf then before the appointed day. The definition of appointed day is given in MSMED Act, 2006 is as under:-

Section 2(b) “appointed day” means the day following immediately after the expiry of the period of fifteen days from the day of acceptance or the day of deemed acceptance of any goods or any services by a buyer from a supplier.

Explanation.—for the purposes of this clause,—

(i) “The day of acceptance” means,—

- (a) The day of the actual delivery of goods or the rendering of services; or
- (b) where any objection is made in writing by the buyer regarding acceptance of goods or services within fifteen days from the day of the delivery of goods or the rendering of services, the day on which such objection is removed by the supplier;

(ii) “the day of deemed acceptance” means, where no objection is made in writing by the buyer regarding acceptance of goods or services within fifteen days from the day of the delivery of goods or the rendering of services, the day of the actual delivery of goods or the rendering of services;

- 4.2 The Committee noted that the Complainant's Company raised bills dated 4th March, 2015 for which it was shown as creditor for Rs 18,35,673/- as on 31st March 2015 (Page D-37 of prima-facie opinion). The Committee noted that bill amounting to Rs 3,02,971/- was booked on dated 4th March, 2015 and bills amounting Rs 15,32,702/- (after deduction of TDS) were booked on 30th March, 2015 and total amount shown outstanding as on 31st March, 2015 as evidenced in Copy of account of Complainant Company in Company's books (Page D-65 and D-64 of prima-facie opinion).
- 4.3 The Committee noted that hence day of acceptance in this case was dated 4th March, 2015 and appointed day, following immediately after the expiry of the period of fifteen days from the day of acceptance was, 20th March, 2015.
- 4.4 The Committee also noted from copy of account of Complainant Company in Company's books (Page D-65 and D-64 of prima-facie opinion) that services for these bills relates to the period from 25th January, 2015 to 24th February, 2015, Hence, in the absence of any agreement, the company is liable to make payment to Complainant maximum on or before 20th March, 2015 but Company failed to do so. The Committee hence concluded that the Respondent failed to follow the guidelines of MSMED disclosure requirements in Annual Statements of Accounts of the company as per Section 22 of MSMED Act, 2006.
- 4.5 The Committee further noted that audit report for FY 2014-15 was signed by Respondent on dated 19th August, 2015 and Rs 18,35,675/- were shown outstanding to Complainant Company as per Payable Schedule annexed to Balance Sheet as on 31st March, 2015 out of which Rs 9,17,835/- was paid on 24th July, 2015 i.e. after the 45 days from the day of acceptance and balance Rs 9,17,837/- was showing outstanding as per Copy of Account of Complainant Company in Company books for the FY 2015-16 as submitted by the Respondent himself. The Committee noted that despite the same the Respondent failed to make appropriate remarks in his audit report.
- 4.6 Hence, from the above facts, the Respondent not only failed to report material misstatement in Financial Statements but also is grossly negligent in adherence of disclosure requirement relating to MSME in Annual Statements of Accounts as per Section 15, 16, and 22 of MSME Act, 2006.

CONCLUSION

5. In view of the above findings stated in above paras vis a vis material on record, the Committee in its considered opinion hold the Respondent is **GUILTY** of Professional Misconduct falling within the meaning of Items (6) and (7) of Part I of the Second Schedule to the Chartered Accountants Act, 1949.

sd/-

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

PRESIDING OFFICER & GOVERNMENT NOMINEE

sd/-

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

GOVERNMENT NOMINEE

sd/-

(CA. COTHA S. SRINIVAS)

MEMBER

DATE: 29.12.2022

PLACE: NEW DELHI

प्रमाणित सत्य प्रतिलिपि / Certified true copy

मुकेश कुमार मिश्रा / Mukesh Kumar Mittal
सहायक सचिव / Assistant Secretary
अनुशासनात्मक निदेशालय / Disciplinary Directorate
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THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA
(Set up by an Act of Parliament)

[PR-164/17-DD/194/2017-DC/1148/2019]

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-164/17-DD/194/2017-DC/1148/2019]

In the matter of:

Shri Sanjeev Gupta,
Chief Operating Officer,
Marine Plus, Marine Manson,
#23-23-12, Sivalayam Temple, Ward Street,
Beach Road, Opp. Ore Berth Gate,
Visakhapatnam – 530001

....Complainant

Versus

CA. Deelipkumar Bhikubhai Desai, (M.No.010530)
33/B, Kennady Bridge,
Mumbai – 400004

.....Respondent

MEMBERS PRESENT:

1. CA. Ranjeet Kumar Agarwal, Presiding Officer (Present in person)
2. Mrs. Rani Nair, I.R.S. (Retd.), Government Nominee (Present in person)
3. Shri Arun Kumar, I.A.S. (Retd.), Government Nominee (Present in person)
4. CA. Sanjay Kumar Agarwal, Member (Present in person)
5. CA. Sridhar Muppala, Member (Present through video-conferencing mode)

DATE OF MEETING : 28.03.2023 (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 29.12.2022, the Disciplinary Committee was, inter-alia, of the opinion that **CA. Deelipkumar Bhikubhai Desai, (M.No.010530)** (hereinafter referred to as the **Respondent**) was **GUILTY** of professional misconduct falling within the meaning of Item (6) and Item (7) of Part I of the Second Schedule to the Chartered Accountants Act, 1949.

2. The Committee noted that the charge against the Respondent was that the Respondent being Statutory Auditor of the Company for the financial year 2014-15 had not made disclosure in "Notes to Accounts" in accordance with Section 22 of the Micro, Small and Medium Enterprises Development Act, 2006 regarding outstanding dues to the Complainant Company despite he being apprised of the omission.



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3. The Committee noted that the Respondent was not present despite the notice duly served upon him. The Committee noted that no intimation was received from the Respondent in response to the notice served upon him. The Committee further noted that this matter was earlier fixed on 16th March 2023 and the Respondent vide email dated 13th March 2023 had sought adjournment on account of medical reasons.

4. The Committee in the absence of any intimation/ request for adjournment from the Respondent, decided to proceed with this case ex-parte while considering the material available on record. The Committee on the merits noted that the present matter relates to the non-reporting of technical lapse in adhering to the requirements of the law. The Committee further noted that the Complainant never appeared before the Committee during the hearing stage, despite giving him reasonable opportunities to do so. This strengthens the earlier submissions of the Respondent that the dispute between the auditee Company and the Complainant company has been duly resolved.

5. Accordingly, the Committee, looking into the technicality of the matter, non-cooperation from the Complainant and *vis-a-vis* gravity of the charge levelled, decided to give minimum punishment to the Respondent.

6. Therefore, keeping in view the facts and circumstances of the case, material on record, and submissions of the Respondent before it, the Committee ordered that the Respondent CA. Deelipkumar Bhikubhai Desai, (M.No.010530), be reprimanded.

sd/-

(CA. RANJEET KUMAR AGARWAL)
PRESIDING OFFICER

sd/-

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

sd/-

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

sd/-

(CA. SANJAY KUMAR AGARWAL)
MEMBER

sd/-

(CA. SRIDHAR MUPPALA)
MEMBER

DATE: 13th MAY, 2023
PLACE: NEW DELHI

सही प्रतिलिपि होने के लिए प्रमाणित
Certified to be true copy
सीए नीतिका गुप्ता / CA. Nitika Gupta
सहायक निदेशक / Assistant Director
अनुशासनात्मक निदेशालय / Disciplinary Directorate
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