



DISCIPLINARY COMMITTEE [BENCH-III (2024-2025)]

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

ORDER UNDER SECTION 21B(3) OF THE CHARTERED ACCOUNTANTS ACT, 1949 READ WITH RULE 19(1) OF THE CHARTERED ACCOUNTANTS (PROCEDURE OF INVESTIGATIONS OF PROFESSIONAL AND OTHER MISCONDUCT AND CONDUCT OF CASES) RULES, 2007

PR/G/81/2022/DD/89/2022/DC/1678/2022

In the matter of:

**Registrar of the Companies, Vijayawada,
On behalf of Ministry of Corporate Affairs,
Union of India,
Goli Complex, Door No. 29-7-33,
Vishuvardhana Rao Street, Surya Rao Pet,
Vijayawada - 520 002 (Andhra Pradesh)**

.....Complainant

Versus

**CA. Macharla Rosaiah (M.No. 223435)
New No. 648A,
Old No. 641A, Veenus Complex,
Poonamallee High Road, Aminjikarai,
Chennai - 600 029**

.....Respondent

MEMBERS PRESENT:

**CA. Charanjot Singh Nanda, Presiding Officer (Present in Person)
Smt. Anita Kapur, Government Nominee (Present through Video Conferencing Mode)
Dr. K. Rajeswara Rao, Government Nominee (Present through Video Conferencing Mode)
CA. Piyush S. Chhajed, Member (Present in person)**

Date of Hearing : 19th March 2024

Date of Order : 8th May, 2024

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 8th June 2023, the Disciplinary Committee was, inter-alia, of the opinion that **CA. Macharla Rosaiah** (hereinafter referred to as the "**Respondent**") was **GUILTY** of Professional Misconduct falling within the meaning of Items (6) & (7) of Part I of the Second Schedule to the Chartered Accountants Act, 1949.

2. That the Respondent was statutory auditor of M/s. Alibaba Commerce Digital Solution Private Limited (hereinafter referred to as '**Company**') since its incorporation i.e. F.Y. 2015-16 to FY 2019-20. The charge on which the Respondent had been found guilty was that in the audited financial statement(s) and e-form AOC-4 of financial year 2017-18 of the Company, certifying that Share Capital is 'subscribed and paid up' whereas such share capital was never paid by its subscribers. Further such situation continued for next few years, hence apart from being grossly negligent the Respondent also failed to report material facts known to him.

3. That pursuant to the said findings, an action under Section 21B(3) of the Chartered Accountants Act, 1949 was contemplated against the Respondent and a communication was addressed to him thereby granting an opportunity of being heard in person/through video conferencing and to make representation before the Committee on 19th March 2024.

4. The Committee noted that on the date of hearing held on 19th March 2024, the Respondent was present through Video Conferencing Mode and made his verbal submissions on the findings of the Disciplinary Committee. The Committee noted that the Respondent, inter-alia, submitted as under:

- a. That he accepts his mistake in not making proper and relevant disclosures.
- b. That there is no involvement of Chinese nationals in the Company.
- c. At present, he is not connected with the company either as an Auditor, or in any other capacity.
- d. Although the Company has stopped its operations, it is still in existence and the last financial statements signed by him pertain to the financial year 2017-18.

5. The Committee considered the reasoning as contained in the findings holding the Respondent Guilty of professional misconduct vis-à-vis verbal representation of the Respondent made before it.

6. Keeping in view the facts and circumstances of the case, material on record including representations on the findings, the Committee is of the view that in the present case the amount of the share capital was not introduced in the Company and the amount due from the subscribers/promoter directors was misclassified in the balance sheet by showing the same as loans and advance given to related parties. Further, neither the particulars of the related parties to which the said amount were due were shown, nor Respondent, being the statutory auditor, reported on the uncertainty of receipt of share capital even when the said amount was not received during the consecutive financial year(s). The Committee noted that there is a lack of due diligence on the Respondent's part and also failure of reporting material facts known to him. However, no other malicious intention of the Respondent was noted in the given matter. The Committee also considered the fact that the Company is a closely held Company and no public interest was involved in the Company.

7. Hence, the professional misconduct on the part of the Respondent is clearly established as spelt out in the Committee's Findings dated 8th June 2023 which is to be read in conjunction with the instant Order being passed in the case

8. The Committee, hence, viewed that the ends of justice will be met if appropriate punishment commensurate with his professional misconduct is given to him.

9. Accordingly, the Committee, upon considering the nature of charge and the gravity of the matter ordered that the name of **CA. Macharla Rosaiah (M.No. 223435) be removed from Register of Members for a period of 1 (One) month and a fine of Rs. 10,000 (Rupees Ten Thousand only) be imposed upon him, to be paid within 90 days of the receipt of the order**



भारतीय सनदी लेखाकार संस्थान

(संसदीय अधिनियम द्वारा स्थापित)

THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA

(Set up by an Act of Parliament)

and in case of failure in payment of fine as stipulated, the name of the Respondent be removed for a further period of 30 days from the Register of Members.

Sd/-

(CA. CHARANJOT SINGH NANDA)
PRESIDING OFFICER

Sd/-

(SMT. ANITA KAPUR)
GOVERNMENT NOMINEE

Sd/-

(DR. K. RAJESWARA RAO)
GOVERNMENT NOMINEE

Sd/-

(CA. PIYUSH S CHHAJED)
MEMBER

DATE: 8th May, 2024

PLACE: New Delhi

CONFIDENTIAL

DISCIPLINARY COMMITTEE [BENCH – III (2023-24)]
[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/G/81/2022/DD/89/2022/DC/1678/2022**

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.....Respondent

MEMBERS PRESENT:

**CA. Aniket Sunil Talati, Presiding Officer
Smt. Anita Kapur, Member (Govt. Nominee)
Dr. K Rajeswara Rao, Member (Govt. Nominee)
CA. Piyush S Chhajer, Member
CA. Sushil Kumar Goyal, Member**

Date of Final Hearing : 19th May, 2023 through Video Conferencing

PARTIES PRESENT:

- (i) Shri M Varaprasad Rao, ROC, Andhra Pradesh – representative of Complainant Department (from his personal location)**
- (ii) CA. Macharla Rosaiah – Respondent (from his personal location)**

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 was held *prima facie* guilty of Professional and Other Misconduct falling within the meaning of Item (7) and (8) of Part I of Second Schedule and Item (2) of Part IV of First Schedule to the Chartered Accountants Act, 1949 read with Section 22 of the said Act. Item (7) and (8) of Part I of Second Schedule and Item (2) of Part IV of First Schedule state as under: -

Part I of Second Schedule: Professional misconduct in relation to chartered accountants in practice

A chartered accountant in practice shall be deemed to be guilty of professional misconduct, if he—

...

“(7) Does not exercise due diligence, or is grossly negligent in the conduct of his professional duties

(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”

Part IV of First Schedule: Other misconduct in relation to members of the Institute generally

A member of the Institute, whether in practice or not, shall be deemed to be guilty of other misconduct, if he—

...

(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.

Brief background and the allegations against the Respondent

2. In the extant case, an inquiry was conducted into the affairs of M/s. Alibaba Commerce Digital Solution Private Limited (hereinafter referred to as the “**Company**”) under Section 206(4) of the Companies Act, 2013. The said Company was incorporated on 13.10.2015 with CIN – U72200AP2015PTC097543 and there were two directors in the Company namely, Smt. Pandikuppam (99.99% shareholding) and Mr. Chinna Thyagaajan (0.01% shareholding). The Company’s object of doing business was in the field of print and electronic media, electronic commerce services, online shopping, net marketing, web designing among others with registered office at the residence of one of

the directors of the Company- Mrs. Pandikuppan Sujana. The Respondent was the statutory auditor of the Company from FY 2015-16 to FY 2019-20.

It has been alleged that the Respondent had certified e-form AOC -4 (**C-4 to C-55**) for FY 2017-18 and that he had helped the Directors of the Company to operate shell company in India.

Proceedings:

3. During the hearing held on 19th May 2023, the Committee noted that the Complainant's Representative and the Respondent appeared before it through video conferencing for hearing. Thereafter, both the parties present gave declaration that there was nobody present except them in their respective room from where they were appearing and that they would neither record nor store the proceedings of the Committee in any form. The Respondent was put on oath. The Committee asked the Respondent whether he wished the charges to be read out or it could be taken as read. The Respondent stated before the Committee that he was aware of the allegations raised against him and the same might be taken as read. On being asked, as to whether the Respondent pleaded guilty, he replied that he did not plead guilty and opted to defend his case.

The Committee, thereafter, asked the Respondent to make his submissions. The Committee examined the Respondent on his submissions.

After deliberations, the Committee, based on the documents available on record and after considering the oral and/or written submissions of the parties concerned, concluded hearing in the matter.

Findings of the Committee:

4. At the outset, the Committee noted that the Respondent was the statutory auditor of the Company since its incorporation i.e. FY 2015-16. Further, it is noted that it has been alleged against the Respondent that he had certified e-form AOC -4 (**C-4 to C-55**) for FY 2017-18 and that he had helped the Directors of the Company to operate shell company in India.

4.1 On perusal of the AOC-4 (**C-7 & C-8**) read with the Balance Sheet of the Company as on 31.03.2018 (**C-36**), it was observed that on liability side the share capital of the Company was shown at Rs.30 lakh which was stated to be paid-up capital and a parallel/ corresponding entry, on assets side, under the head 'Long term Loan & Advances' was also shown at Rs.30 lakh as loans in relation to related parties.

4.2 It was noted that the Respondent, interalia, submitted that he was appointed as statutory auditor of the Company since its incorporation. As per the Memorandum of Association, the two directors who were also subscribers to the Memorandum of Association had agreed to subscribe for initial subscription of 3,00,000 equity shares of Rs. 10/- each aggregating to Rs. 30 Lacs. From the date of his appointment as Statutory Auditor he insisted them to bring in the initial subscription amount by depositing the same into bank account. However, they could not mobilize the resources. As a result, they could not get any viable business opening or commence any business activity. However, in order to comply with the statutory requirement of filing balance sheet and annual return as per the provisions of the Companies Act, 2013, the Board of Directors of the Company had approved and signed the financial statements for FYs - 2015-16, 2016-17 and 2017-18, showing the share capital on the liability side and share subscription amount receivable under the head Loans and Advances in the balance sheet and produced the same to him for audit for further filing with the Registrar of Companies. The Respondent further stated that he had bonafide belief that presenting Share Application money receivable under the head 'Loans & Advances' was in order. However, the Board of Directors while approving and signing the balance sheet and submitting to him for his audit report, had mistakenly described this amount in Schedule 11 as Loans from Related parties instead of share subscription amount receivable and which the Respondent had omitted to rectify mistaken wordings while signing the audit report and balance sheet, which was not intentional but by oversight.

4.3 The Committee noted that the Respondent was auditor of the Company and had not only expressed his opinion on the financial statements of the Company but had also filed the said financial information in E-form AOC-4 with Registrar of Companies. It was observed that the alleged Share Capital has been stated to be paid up though such share capital was never paid by the subscribers to the capital as also admitted by the Respondent.

Further, it was noted that as per Para 8.1.1.7. of 'Guidance Note On Schedule III to the Companies Act, 2013'

"the unpaid amount towards shares subscribed by the subscribers of the Memorandum of Association should be considered as 'subscribed and paid-up capital' in the Balance Sheet and the debts due from the subscriber should be appropriately disclosed as an asset in the balance sheet."

From the above, it was noted that although unpaid share capital could have been shown as 'subscribed and paid-up capital' but at the same time such amount due from the subscribers/ promoter directors was also required to be disclosed appropriately in the balance sheet. In the extant case, the same was shown as loan and advances in relation to related parties but neither the particulars of the related party to which the said amount was due was shown nor the Respondent, being, statutory auditor reported either on the uncertainty of its receipt when the said amount was not received during the consecutive financial year. It was viewed that share capital indicates interest of owners in the entity and when the same was not received despite several reminders, the Respondent was bound to report on the same along with uncertainty arising on continuity of its business in the future. It was noted that the alleged amount was material as it constituted 98.49% of the total size of the Balance Sheet (**C-36**), still the Respondent opted to remain silent. The Respondent pleaded on the grounds that the draft report produced before him clearly showed the particulars of the balance due but when the signed financials were brought for his signature, it was shown as amount due to related parties. The Committee viewed that firstly in such a scenario the Respondent was free to report about material misstatement in his audit report. Moreover, such a situation might arise once but not continuously for the next few years. Accordingly, the Committee viewed that in extant case, the Respondent had not only failed to report on material facts known to him but was grossly negligent in the performance of his professional duties. He should have modified his audit report appropriately so that the user of the financial statements would have been aware of the aforesaid facts. However, the Respondent, being auditor, not only failed to report it but he moved ahead and filed the said financial information of the Company in file E-form 'AOC-4'. Thus, the Committee viewed that the Respondent was **Guilty** of Professional Misconduct within the meaning of Item (6) and (7) of Part I of Second Schedule to the Chartered Accountants act, 1949.

5. As regards allegation that the Respondent had helped the directors of the Company to operate shell companies in India, it was noted that the Respondent had submitted that the promoters had incorporated the Company with the name of Alibaba in the normal course and with a bonafide belief of doing business with that name. The Respondent further stated that the husband of Mrs. P. Sujani, director of the Company, was a teacher and she did not know the implication of creating a Company or that of not bringing initial share capital. The Respondent had accepted the assignment with bonafide belief that they would bring the share capital as the business would grow.

5.1 At the outset, the Committee noted that the Companies Act, 2013 does not define the term 'Shell Company'. However, the Organization for Economic Cooperation and Development (OECD) defines a Shell Company as a company which is formally

registered or otherwise legally organized in an economy, but which does not conduct any operation in that economy other than in a pass-through capacity. Further,

In the extant case, it was noted that the misstatement of Rs.30 lakhs was merely a journal entry on both sides of the balance sheet, and it was never passed through to another entity. Further, considering the volume of business reported in the Statement of Profit and Loss i.e., approx. Rs. 3 lakhs of revenue **(C-11)** leading to generation of profit in few thousand, it was evident that the Company could not be a shell company since it was conducting operations – might be in very small volume but there was nothing on record which indicated that it was existing to pass through the transactions. In the absence of any evidence to prove otherwise, the Committee viewed that the Respondent could not be held guilty on this charge. Hence, the Respondent was held not guilty under Item (8) of Part I of Second Schedule and Item (2) of Part IV of First Schedule to the Chartered Accountants Act, 1949.

Conclusion:

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

Sd/-
[CA. Aniket Sunil Talati]
Presiding Officer

Sd/-
[Smt. Anita Kapur]
Member (Govt. Nominee)

Sd/-
[Dr. K Rajeswara Rao]
Member (Govt. Nominee)

Sd/-
[CA. Sushil Kumar Goyal]
Member

Sd/-
[CA. Piyush S Chhajed]
Member

Date: 8th June, 2023
Place: New Delhi