

**CONFIDENTIAL**

**COUNCIL OF THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA  
384<sup>TH</sup> MEETING OF THE COUNCIL –18<sup>TH</sup> AND 19<sup>TH</sup> AUGUST, 2019  
FINDING OF THE COUNCIL – 19<sup>TH</sup> AUGUST, 2019  
UNDER SECTION 21 OF THE CHARTERED ACCOUNTANTS ACT, 1949**

**MAHENDRABHAI D. PANDYA  
Vs  
DIPAKKUMAR JAYANTILAL SHAH  
[25-CA(87)/2005]**

**MEMBERS PRESENT:**

CA. Atul Kumar Gupta (Vice-President)(In the chair)  
CA. Chitale Chandrashekar Vasant  
CA. Nandkishore Chidamber Hegde  
CA. Nihar Niranjana Jambusaria  
CA. Durgesh Kabra  
CA. Prasanna Kumar D  
CA. Rajendra Kumar P  
CA. Ranjeet Kumar Agarwal  
CA. Sushil Kumar Goyal  
CA. (Dr.) Debashis Mitra  
CA. Pramod Kumar Boob  
CA. Anuj Goyal  
CA. Satish Kumar Gupta  
CA. Prakash Sharma  
CA. Hans Raj Chugh  
CA. Pramod Jain  
CA. Nanda Charanjot Singh  
Shri Vijay Kumar Jhalani

[Out of four Signatories to the Report of the Disciplinary Committee dated 5<sup>th</sup> February, 2018, two signatories namely, CA. Manu Agrawal and Dr. P.C. Jain were not present at the time of consideration of the Report on 19<sup>th</sup> August, 2019 and the remaining two signatories namely CA. Nilesh Shivji Vikamsey and CA. Sanjay Vasudeva were no longer members of the Council.]

[CA. Atul Kumar Gupta, Vice-President in Office, was in the Chair when this Report was taken up for consideration on 19<sup>th</sup> August, 2019]



1. In his Complaint, duly verified on 27<sup>th</sup> January, 2005, **Mr. Mahendrabhai D. Pandya** (hereinafter referred to as the "**Complainant**") made the following allegations against **CA.**

**Dipakkumar Jayantilal Shah** (hereinafter referred to as the "**Respondent**"):-

- 1.1 The Respondent herein was a litigant (being **Respondent No.2**) in a court matter in the case of V.M. Modi V/s. State of Gujarat and another, reported on Page 871 of (1977) Company Cases Vol. 88. In the above matter, in respect of transfer of shares, the order of the Company Law Board was stayed by the High Court of Gujarat.
- 1.2 Meanwhile, the Respondent filed a complaint on 2.12.1994 against the petitioner in the litigation, viz, Mr. V.M. Modi for alleged commission of offence punishable u/s. 621A of the Companies Act. As a result, Magistrate executed the evidence warrant against Mr. V.M. Modi and others. In the said complaint, the Respondent suppressed the fact that the High Court had granted stay, under statement under oath recorded by Magistrate.
- 1.3 The Respondent thus made a false statement before Magistrate as held by Hon'ble High Court in the case V.M. Modi v/s. State of Gujarat reported at (1997) 88 Company (case) at Page 87. At page 875, the Hon'ble Gujarat High Court has held as under:

*"Reading the complaint, it is evident that the fact that the order passed by the Company Law Board is stayed by the High Court is suppressed by Respondent no.2. Even in his statement which was recorded by the learned magistrate on oath, respondent no.2 has not referred to the stay granted by the High Court. The respondent has thus abused the process of law and obtained orders from the learned Magistrate without disclosing true facts. This indicates that the complaint filed by respondent no.2 is Vexatious and malicious and is filed with an oblique motive.*

*It is well settled that where a criminal proceeding is manifestly attended with mala fides and / or where the proceeding is maliciously instituted with ulterior motive for wreaking vengeance on the accused and with a view to splitting, then the proceedings are liable to be quashed. There is no manner of doubt that Respondent No.2 has abused process of law".*

- 1.4 From the above judgement of Hon. Gujarat High Court, it is evident that the Respondent, who is also respondent No.2 in the said case viz. V.M. Modi's case in the High Court, the complaint filed by him in the case was:-
  - a) Vexatious
  - b) Malicious
  - c) Filed with an oblique motive
  - d) Proceeding is maliciously instituted with ulterior motive.
  - e) The Respondent had abused the process of law.

Further the following extracts from the said decision of Hon'ble Gujarat High Court is most relevant:-

*"The fact that the operation, execution and implementation of the order dated September 18, 1992 passed by the Company Law Board, Western Region Branch, Bombay, was stayed was never brought to the notice of the learned magistrate by Respondent No.2".(Page 875)"*

- 1.5. From the above it is very clear and evident that the Respondent had misled the Court of Magistrate by concealing certain facts viz. order of stay granted by Hon'ble Gujarat High Court and thereby not informing and misleading Hon'ble Magistrate Court of the correct situation. This was with a view to receive a judgement against somebody with vengeance and oblique motive.
  - 1.6. The Respondent was holding only a few number of shares in different companies and becoming a shareholder with the purpose of taking objections and thereby prolonging the passage of amalgamations, arrangements etc between the Companies and thereby creating the nuisance value and with a purpose of prolonging the matters or otherwise to settle the matter in the way he desires.
2. The Respondent submitted his Written Statement, duly verified on 14<sup>th</sup> February, 2006. The Complainant submitted his Rejoinder, duly verified on 16<sup>th</sup> March, 2006. The Respondent submitted his Comments, duly verified on 7<sup>th</sup> April, 2006.
  3. Thereafter, in accordance with the provisions of Regulation 12(11) of the Chartered Accountants Regulations, 1988, the above papers containing the Complaint, Written Statement, Rejoinder and Comments thereon were considered by the Council at its 272<sup>nd</sup> meeting held in September, 2007 at New Delhi. The Council being prima facie of the opinion that the Respondent was guilty of professional and/or other misconduct, decided to cause an enquiry to be made in the matter by the Disciplinary Committee.
  4. The Disciplinary Committee conducted the enquiry in the case and the hearing in the matter was concluded at its meeting held on 8<sup>th</sup> June, 2017 at Mumbai. The Disciplinary Committee submitted its report dated 5<sup>th</sup> February, 2018 with the conclusion that the



Respondent was **Not Guilty** of "Other Misconduct" under Section 22 read with Section 21 of the Chartered Accountants Act, 1949 with respect to any of the charges.

5. While arriving at its aforesaid conclusion, the Disciplinary Committee had relied on the following reasonings/arguments:-

5.1. Upon perusal of the charges alleged in the complaint form, the Committee noted that there were two charges against the Respondent. First Charge was that he suppressed a fact that the High Court had granted stay on the execution of the order of the Company Law Board. Second charges which have been leveled against the Respondent is that he became shareholder of different companies by holding only a few number of shares with the purpose of taking objections and thereby prolonging the passage of amalgamations etc. between the companies.

5.2. The Respondent, however, denied that he ever suppressed the fact to Hon'ble Court or any other Hon'ble Courts. He stated that he was not allowed by the Hon'ble Judge to make his representations before him. Since he was not affected at all by the stricture passed by the Hon'ble High Court, therefore, he had not taken any step to file an application to delete the stricture against him.

5.3. The Respondent, in his defence, further stated when the Complainant filed allegation against him in the Institute, he moved to the Hon'ble High Court to rectify the order but his application was dismissed by the Hon'ble Judge who passed the stricture on the ground that there was a delay of ten years and six months in filing application for clarifications / modification and the Respondent failed to file instant application in this regard.



5.4. The Committee went through the order passed by the Hon'ble Justice, Mr. J.M. Panchal J. of the Hon'ble Gujarat High Court in the matter of V.M. Modi Vs. State of Gujarat and Another, and found as under:-

(i). A shareholder, namely, Mrs. Pushpaben S. Nayak, of the petitioner company having five equity shares in the company, transferred four shares, one each, to four different groups of persons (including the Respondent). One of the transferees (the Respondent in the extent case) lodged the transfer deeds and share certificate for registration of the transfer. The Company returned the documents to the transferee refusing to register the transfer as the intended transfer amounted to splitting of the share certificate and it was not in consonance with article 24 of the AOA of the Company.

(ii). On appeal by the transferee under Section 111 of the Companies Act, 1956, the Company Law Board vide its order dated 18<sup>th</sup> September, 1992, directed the Company to register the transfers.

iii. The Company appealed to the Hon'ble High Court which granted a stay of the order of the Company Law Board.

iv. Thereafter, the Respondent no.2 (the Respondent in the instant matter) filed a complaint on December, 2, 1994 against the Company and others under Section 624 of the Companies Act, for failure by the Company to comply with the order of the Company Law Board.

5.5. The Court passed a stricture that there is no matter of doubt that respondent no.2 has abused the process of law.



5.6. As regard the role of the Respondent in the alleged matter, it appears from reading of the aforesaid order of the Hon'ble High Court of Gujarat that the Respondent was one of the transferees who challenged the refusal of the Company to register the transfers before the Company Law Board and thereafter before the Magistrate Court for non-implementation of Company Law Board order. On a perusal of criminal application dated 2<sup>nd</sup> December, 1994 filed by the Respondent for non-implementation of the order and contempt of Court order, in the Court of Hon'ble Chief Metropolitan Magistrate, Ahmedabad, the Committee noted that though the Respondent mentioned in his application that the Company had obtained stay against the implementation of the CLB order, yet, he, despite being aware of the fact about the stay order by the Hon'ble High Court of Gujarat Court, filed an application in lower court against the Company for non-implementation of the order and contempt of Court. Further, as apparent from the reading of court order, the Respondent, in his statement on oath, never mentioned about the stay order granted by the High Court. In this regard, the Respondent stated that it was the Advocate who has not brought this fact to the knowledge of the Court. The Committee noted that in the complaint filed by the Respondent before the Metropolitan Magistrate (Lower Court) dated 2<sup>nd</sup> December, 1994, the Respondent had categorically disclosed the fact of the stay granted by the Hon'ble High Court. However, as it appears from the High Court Order the same was not disclosed by the Respondent while making statement under oath before the said lower court and therefore the Hon'ble High Court of



Gujarat had passed a stricture against the Respondent stating that "there is no doubt that the Respondent No.2 has abused the process of law."

- 5.7. The Committee was of the view that the Respondent being a Chartered Accountant was required to act in a manner which should not lower the image of the profession before public at large. But at the same time, it appears that the Respondent had categorically disclosed the fact in his written application before the concerned Court. The Committee noted the explanations of the Respondent in this regard and the reasons for filing a delayed application for deletion of the strictures. The petition of the Respondent for deletion of the strictures was rejected mainly on the ground of delay. It appears that the High Court also found it sufficient to pass the strictures against the Respondent and did not pass any penal order against the Respondent. The Committee is of the opinion that had the High Court considered it necessary, the High Court would have passed some penal order against the Respondent. Further, it was not a case in which the Respondent had completely concealed the fact of stay order. The Respondent had disclosed the same in writing but not in the statement on oath. The explanation of the Respondent as to why the fact did not appear in the statement on oath is also note worthy. There is certainly semblance of truth in the explanations filed by the Respondent in this regard and in regard to delayed petition for deletion of the strictures. Keeping in view of the above, and particularly since in the application dated 2<sup>nd</sup> December, 1994 before the lower court, the Respondent having disclosed the fact of stay order, creates a ground for benefit of doubt in favour of the Respondent. Further, it is note worthy that

Hon'ble Justice Panchal has not noted that the Respondent did disclose the fact of stay order in his written application before the lower court. This creates a further ground for the benefit of doubt in favour of the Respondent. Further, the Committee perused the following paras from the application of the Respondent dated 2<sup>nd</sup> December, 1994 filed before the lower court:

*"The Company obtained stay against the implementation of the said order from Hon. High Court of Gujarat at Ahmedabad on 27-11-1994. After 10 days from the date of receipts of the order by Company and that too after 30 days of the date of receipt of the order. This also being the matter of law and a reference may be made to Hon. High Court for such action.*

*Since I am aggrieved from the order of the Hon. High Court against staying the proceedings of the order, I am right person to be aggrieved from the said order restraining the order of Company Law Board.*

*It is the spirit of the law and section 111 of the Companies Act 1956 that to give quick justice to the person aggrieved by such refusal to transfer the shares. If this first process is given to Hon. High Court it would be taken up not before 10 years from the date of filling the application. If this contingently is taken into account together with Provision of Law is to read with 111 (5) (6) and 111 (7) (8) the intension of Law is to give quickest disposal of matter and further criminal Provision is made in the Act if default is made in implanting the order.*

*This application is arisen from the non implementation of the order and contempt of Court order, Court which is designated as Company Law Board under the Provision of the Companies Act, and granted to act as quasi Judicial States is given under the civil Procedure code and criminal Procedure code. Therefore for non-implementing the order of Company Law Board is contempt of Court. Further to this, a specific Provision is made and granted authority to file criminal application against officers / directors / managing for non implementation of the order by appellant to the appeal."*

- 5.8. A perusal of the above paras reveal that the one of the very reasons for the Respondent filing the said application dated 2<sup>nd</sup> December, 1994 was that the Respondent was aggrieved against the stay order of the High Court and of the fact that the Company has not taken quick step to register the transfer and



waited for one & half month before approaching the Hon'ble High Court of Gujarat for stay on the order of the Company Law Board. This along with other explanations of the Respondent does create a strong base or at least a semblance of truth on the part of the Respondent that the Respondent had no intention of concealing the fact of the stay order.

5.9. Though it appears that the Respondent should have checked the provisions of the Companies Act and the Court of law before approaching the lower Court as the Companies Act, 1956 allows a person aggrieved with the order of CLB to file appeal within 60 days of receipt of order and accordingly, the Respondent was required to wait for at least 60 days before taking any course of action, yet, the Committee noted that the Complainant only alleged that the Respondent misled the lower court by suppressing the fact of order of stay granted by Hon'ble Gujarat High Court and accordingly, resulted a stricture against him. The Complainant did not challenge other part / ground of the application made before the lower Court. Hence, the Committee restricted its finding only to the allegation made by the Complainant. Thus, in view of the above, it is apparent that the Respondent had disclosed the fact to the lower court in his written application that the order of CLB has been stayed by the Hon'ble High Court of Gujarat and in view of his submissions as to why the said fact cannot be made on oath, the Committee is of the view that the stricture of the High Court alone cannot form the basis for the decision of the Committee. Therefore, the Committee is of the view that the Respondent deserves benefit of doubt. Accordingly, the Respondent is not guilty with respect to allegation relating to

suppression of the fact by the Respondent of stay order by the Company Law Board.

5.10. With respect to second charge relating to holding a few number of shares with the purpose of filing objections, the Committee noted that the Complainant submitted a list of cases where the Respondent had taken objection to the various schemes of amalgamation. On perusal of documents provided by the Complainant, the Committee did not find anything which could amount to misconduct on the part of the Respondent. In this context, the Committee is of the view that there is no bar to hold any number of shares of any company and there is nothing objectionable in holding even one share of any company. Further, copy of the documents provided by the Complainant was not sufficient to establish any misconduct on the part of the Respondent. Hence, the Committee is of the view that the Respondent is not guilty of 'Other Misconduct' with respect to this charge.

6. The Council noted that the Respondent, CA. Dipakkumar Jayantilal Shah (M.No. 034164) vide e-mail dated 27<sup>th</sup> July, 2019 wished and prayed that his presence is not required before the Council on 19<sup>th</sup> August, 2019 as the Disciplinary Committee has already found him not guilty.

7. Accordingly, Council considered the Report of the Disciplinary Committee dated 5<sup>th</sup> February, 2018.

8. The Council upon consideration of the Report of the Disciplinary Committee dated 5<sup>th</sup> February, 2018 decided to accept the finding(s) of the Disciplinary Committee holding the Respondent "Not Guilty" of "Other Misconduct" under Section 22 read with Section 21 of the Chartered Accountants Act, 1949 with respect to any of the charges. The Council noted that

the Respondent in his application submitted has mentioned the fact that the High Court has granted stay on the execution of order of CLB. Though he would not mention the fact at the time of making final submission as per the Respondent's statement he was not allowed to speak/mention the fact before the Hon'ble Magistrate. The Council noted that the fact was mentioned in the application filed before the Hon'ble Magistrate.

9. The Respondent submitted that there was no malafide intention on his part. Further he moved an application to rectify the mistake. The Council, in view of the above, accepted the Report of the Disciplinary Committee and decided to hold the Respondent not guilty of professional misconduct.

10. The Council also decided that the papers related to the case be filed.

11. The Council further resolved that CA. Atul Kumar Gupta, Chairman of the meeting at the time of consideration of the report be authorised to sign the Finding of the Council in the case, on behalf of the Council.

**Sd/-**  
**(CA. ATUL KUMAR GUPTA)**  
**CHAIRMAN**

**Certified to be true copy**

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The Council of the Institute of  
Chartered Accountants of India  
New Delhi

*Dr. Seef*

Certified to be true copy

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