



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.

File no. : [PPR/P/25/15/DD/138/INF/15/DC/773/2018]

In the matter of:

CA. Hiten Mukundbhai Parikh (M.No.040230)

M/s. Parikh & Majumdar, Ahmedabad
B-303, GCP Business Centre,
Opp. Memnagar Fire Station
Near Vijay Cross Roads
Navrangpura
AHMEDABAD – 380009

..... Respondent

Members Present:

**CA. Prafulla Premsukh Chhajed, Presiding Officer,
Smt. Anita Kapur, Member (Govt. Nominee),
Shri Ajay Mittal, Member (Govt. Nominee),
CA. (Dr.) Debashis Mitra, Member
CA. Manu Agrawal, Member**

Date of Final Hearing: 20th August, 2019

Place of Final Hearing: Mumbai

Parties Present:

CA Hiten M Parikh - Respondent

1. Vide report dated 29th January 2019 (**copy enclosed**), the Disciplinary Committee was of the opinion that **CA. Hiten Mukundbhai Parikh (M.No.040230)** was **GUILTY** of Professional Misconduct falling within the meaning of Clause (7) of Part I of the Second Schedule to the Chartered Accountants Act, 1949 with respect to the statutory audit of M/s N.K. Proteins Limited (hereinafter referred to as the "**Company**") for the year ended 31st March, 2013.

2. An action under Section 21B (3) of the Chartered Accountants Act, 1949 was contemplated against the Respondent and communication dated 7th August 2019 was addressed to him thereby granting him an opportunity of being heard in person and/or to make a written representation before the Committee on 20th August, 2019 at Mumbai.



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3. The Respondent appeared before the Committee on 20th August, 2019 at Mumbai and made oral submissions wherein he, inter-alia, stated that the relevant qualificatory notes i.e. Note no. 44 and 46 on the main body of the report were in bold type, which in his opinion were the basic and material qualifications. The Respondent also stated that the other notes which were more in the nature of informative/clarificatory notes given by Management had not been reported in bold or italics as in his view they were not in nature of qualificatory notes. It was further submitted that the Company was engaged as a member broker since 2008-09, however, the Respondent was appointed as the statutory auditor of the Company for the first time for the financial year 2012-13 and that none of the previous statutory auditors had stated anything in their audit reports in this regard. Thus, it was submitted by the Respondent that no wrong was committed by him by not reporting on said notes to accounts in the audit report and only such matters which in his opinion had an adverse effect on the functioning of the Company were required to be given in bold or in italics.

4. The Committee considered the submissions made by the Respondent and noted that that Section 227(3) of the Act require that the auditor's report should report – "*(e) in thick type or in italics the observations or comments of the auditors which have any adverse effect on the functioning of the company.*" In this regard, on perusal of papers on record, the Committee noted that the Respondent had stated the qualified remarks in regard to Note nos. 44 and 46 only **(B-70)**. As regard notes no. 43, 45, 47 and 53 to the Financial Statements for the F.Y. 2012-2013, it was noted that the company being member broker of the NSEL had not maintained records of transactions held on behalf of clients. It had also failed to constitute the Audit Committee as mentioned in Note no. 53 **(B-112)**. However, the Respondent failed to qualify on the above matters.

5. It was noted that though the Respondent had expressed qualification in respect of financial statements of the Company when he had reported about NSEL claiming from the Company Rs.969.88cr as payable to it on account of default by the clients of the Company but such claim was pending for reconciliation. In other words, he had reported in respect of substantial matter yet there were matters regarding non-maintenance of records and non-constitution of Audit Committee which may be non-financial matters but should have also been appropriately dealt with by the Respondent in his audit report. In any case, NSEL scam had already taken place before his period of audit. Hence, non-reporting on the said matters indicate his gross negligence in performing his professional duties.



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6. The Committee was thus of the opinion that the misconduct on the part of the Respondent had been established within the meaning of Clause (7) of Part I of the Second Schedule to the Chartered Accountants Act, 1949 and keeping in view the facts and circumstances of the case as aforesaid, ordered that the Respondent be reprimanded and fine of Rs. 1 (one) lakh be also imposed.

Sd/-
[CA. Prafulla P. Chhajed]
Presiding Officer

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

Sd/-
[Shri Ajay Mittal]
Member, Govt. Nominee

Sd/-
CA. (Dr.) Debashis Mitra,
Member

Sd/-
[CA. Manu Agrawal]
Member

Date: 20th August, 2019
Place: Mumbai



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CONFIDENTIAL

DISCIPLINARY COMMITTEE [BENCH-III (2018-19)]

**[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/25/15/DD/138/INF/15/DC/773/2018]

In the matter of :

**CA. Hiten Mukundbhai Parikh (M.No.040230),
M/s. Parikh & Majumdar, Ahmedabad
B-303, GCP Business Centre,
Opp. Memnagar Fire Station
Near Vijay Cross Roads
Navrangpura
AHMEDABAD – 380009**

..... Respondent

Members Present:

**CA. Naveen N.D. Gupta, Presiding Officer
Smt. Anita Kapur Member (Govt. Nominee)
CA. Shyam Lal Agarwal, Member**

**Date of Final Hearing: 20th November, 2018
Place of Final Hearing: Mumbai**

Parties Present:

**CA Hiten M Parikh - Respondent
CA A P Singh - Counsel of the Respondent**

Allegations of the Informant, ROC, Ahmedabad:

1. Shri. S.N Misra, Registrar of Companies, Ministry of Corporate Affairs, Ahmedabad, (hereinafter referred to as the “Informant”) had raised the following allegations against the Respondent:-

1.1 The Respondent in his Audit Report of M/s N.K. Proteins Limited (hereinafter referred to as the “Company”) for the year ended 31st



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March, 2013 had qualified his report but Note no. 43,44,45,46,47,48,50,51,52 and 53 which were also in the nature of qualification **(A-5 to A-8)** were not reported in italics and in bold type form as required under section 227(3)(e) of the Companies Act 1956 (hereinafter referred to as the “Act”).

- 1.2 The Respondent had contravened the provisions of Section 227(2) and 227(3)(a) & (b) as he had stated that the Financial Statements for the Financial Year 2012-13 reflected true and fair view of the Company, while gross irregularities were in existence which resulted into violations of Section 227(2), Section 227(3)(a) and Section 227(3)(b) of the Act. The Informant also indicated that the Respondent had filed compounding application with the office of Informant for compounding the offence under Section 227 of the Act.

PROCEEDINGS:

2. At the time of hearing on 17th July 2018, the Committee noted that the Respondent, along with his Counsel, was present to appear before the Committee. Since it was the first hearing in the matter, the Respondent was put on oath. Thereafter, the Committee asked the Respondent whether he wished the charges to be read out or these could be taken as read. The Respondent stated that he was aware of the allegations raised against him and the same might be taken as read. On being asked, as to whether he pleaded guilty, he replied that he did not plead guilty and would opt to defend his case. Thereafter, the Counsel for the Respondent made his submission to defend the case. The Committee directed the Respondent to submit the following information/documents alongwith relevant evidences:

- (i) The relevant laws not complied with.
- (ii) Submission on impact of Note no. 43, 45, 47 and 53 of the Notes to Accounts on materiality of the Financial Statements.
- (iii) Submissions as to whether non-compliance of Law/–Act/Regulations required the test of materiality.
- (iv) Copy of the compounding Order alongwith copy of application for compounding.

3. At the time of next hearing on 1st August 2018, the Committee noted that out of the information/documents sought during the course of previous hearing only some were submitted by the Respondent. The Committee, thereafter, proceeded ahead in the matter and the Counsel for the Respondent made his further submissions. The Committee noted that the Respondent had not submitted the order against the compounding application filed by him before CLB. Accordingly, the Committee



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directed the Respondent to submit the following within next seven days from the date of hearing:

- a. Copy of the order against the compounding application filed by him before CLB
- b. Further submissions in the matter, if any.

4. At the time of last hearing on 20th November 2018, the Committee noted the documents sought from the Respondent in the previous hearing were submitted. The Counsel for the Respondent thereafter made his final submissions in the matter. Based on documents available on record and after considering the oral and written submissions made by the Respondent and his Counsel, the hearing in the matter was concluded by the Committee.

5. It was noted that with regard to hearing held on 20th November, 2018, the Respondent had vide his letter dated 29th November, 2018 questioned constitution of the bench that heard the case vis-à-vis the composition of the Committee. It was noted that in the Composition of the Committee that heard the extant case prior to Nov 20, 2018 vis a vis the one that heard on Nov 20, 2018, the only change was that Shri. R Sridharan, the then Government Nominee, was not present in that hearing. It was noted that said Government Nominee was replaced by Shri. Ajay Mittal by the Ministry. So, the remaining members who held the final hearing on 20th November, 2018 at Mumbai, were the ones who had the case during the previous hearings also. The continued presence of three members also signifies that quorum as required for conducting the proceedings in the Disciplinary Committee was present. As regard, the contention of the Respondent that the new member of the Disciplinary Committee Bench III, Sh Ajay Mittal, had recused himself from the hearings of his matter due to which he could not avail of denovo hearing, it was noted that it could never be a prerogative of the Respondent to decide on the constitution of the Bench that would hear his case. Accordingly, the stated contentions of the Respondent were not at all justified to claim defense, more so when a valid quorum was present for conducting the proceedings in the extant case.

Findings of the Committee:

6. It was noted that the Respondent was the statutory auditor of the Company for the F.Y. 2012-13. The facts of the case were that the Respondent had issued a qualified opinion by giving remarks in bold type in respect of note nos. 44 and 46 only (**B-70**). However in respect of certain other qualificatory remarks given in the notes to accounts of the Financial statements of the Company, neither the Respondent had highlighted them/marked in bold in accordance with the provisions of Section 227(3)(e) of the Act nor had he mentioned regarding the same in his audit report. Also



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the Respondent had filed a Compounding Application with respect to the same in the Office of the Informant for compounding the offence under Section 227 of the Act.

7. With regard to the allegation as mentioned in 1.1 above, the Respondent in his Written Statement had submitted that the relevant qualificatory notes i.e. Note no. 44 and 46 on the main body of the report were in bold type, which in his opinion were the basic and material qualifications. The Respondent also stated that the other notes which were more in the nature of informative/ clarificatory notes given by Management had not been reported in bold or italics as in his view they were not in nature of qualificatory notes. It was further submitted that the Company was engaged as a member broker since 2008-09, however, the Respondent was appointed as the statutory auditor of the Company for the first time for the financial year 2012-13 and that none of the previous statutory auditors had stated anything in their audit reports in this regard. Thus, it was submitted by the Respondent that no wrong was committed by him by not reporting on said notes to accounts in the audit report. The Respondent further submitted that only such matters which in his opinion had an adverse effect on the functioning of the Company were required to be given in bold or in italics.

8. The Committee noted in this regard that Section 227(3) of the Act require that the auditor's report should report – "*(e) in thick type or in italics the observations or comments of the auditors which have any adverse effect on the functioning of the company.*" In this regard, on perusal of papers on record, the Committee noted that the Respondent had stated the qualified remarks in regard to Note nos. 44 and 46 only **(B-70)**. As regard notes no. 43,45,47 and 53, to the Financial Statements for the F.Y. 2012-2013, it was noted that from these notes it is clearly coming out that the company being member broker of the Company had entered into a number of transactions but records prescribed for member broker were not maintained by the Company due to which matters reported therein could not be dealt with. It was also noted that the Company had failed to constitute the Audit Committee thereby contravening the provisions of Section 292A of the Companies Act, 1956 as mentioned in Note no. 53 **(B-112)**. It was observed that the Company itself had admitted in the notes to accounts (Note 43) that there had been a violation by way of non-maintenance of accounts as a result of which there was uncertainty with regard to quantification of the brokerage income. It was viewed that when the Company itself had stated about such non-compliances in notes to accounts, stating that it was unable to obtain any audit evidence to report on matters, then, the Respondent being the auditor should have pointed out the same in bold and italics in his audit report, which had not been done in the extant case. It was viewed that



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non-maintenance of records and non-constitution of Audit Committee certainly had adverse effect on the functioning of the Company and the same should have been qualified and reported in italics or bold type by the Respondent as per requirement of Section 227(3)(e) of Companies Act, 1956. It was viewed that it was the duty of the Respondent to make the relevant information clear to the readers of the financial statements so that they could have assessed the impact of such notes on the future viability of the business. Thus, the Respondent had failed to comply with the provisions of Section 227(2) as well as Section 227(3)(e) of Companies Act, 1956. Thus, in respect of this charge, the Respondent is held to be guilty of professional misconduct falling within the meaning of Clause (7) of Part I of the Second Schedule to the Chartered Accountants Act, 1949.

9. With regard to allegation mentioned in 1.2 above, it was noted that the Respondent had in the audit report in paragraph 2(a) and 2(b) (**B-71**) stated that he had obtained all the information and explanations which to the best of his knowledge and belief were necessary for the purpose of audit and that in his opinion proper books of accounts as required by law had been kept by the Company so far as it appeared from his examination of those books.

10. In this regard, it was noted from the Notes to accounts no. 43, 45 & 47 that they explicitly mention about the non-maintenance of records by the Company being a member-broker of NSEL. Thus, it was noted that there appeared to be a contradiction in the reporting done by the Respondent in his audit report with the information given in the notes to accounts. It was noted that such non-maintenance of records had lead to a situation when NSEL was claiming from the Company Rs.969.88cr as payable to it on account of default by the clients of the Company but such claim was pending for reconciliation. It was viewed that if proper records were maintained as member broker, the Company could have made counter claims at its clients. It was noted that maintenance of records was required under SEBI Regulations and thus was a requirement of the law. Thus, it was viewed that the Respondent had wrongly reported in his Audit Report that the Company had kept proper books of accounts, while the same had not been kept by the Company which was in contravention of the provisions under Section 227(2) and (3) of Companies Act, 1956. Hence, the Respondent, in the opinion of the Committee, was guilty of professional misconduct with respect to this charge falling within Clause (7) of Part I of the Second Schedule to the Chartered Accountants Act, 1949.

11. With regard to the compounding application the Respondent contended that he had moved the compounding application with the office of Informant for compounding the offence under Section 227 of the Act voluntarily to buy



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peace and moreover, the mere act of filing a compounding petition with this objective should not be construed as an admission on his part of the alleged violation.

12. In this regard, it was noted that a compounding application was filed by the Respondent under section 621A of the Companies Act, 1956 before the Regional Director, Western Region, Ministry of Corporate Affairs, Ahmedabad stating that offence under section 227 (3) (e) and 227(2) & (3) (a) & (b) be compounded. The Committee perused the compounding order dated 29/05/2015 of Regional Director, Western Region, Ministry of Corporate Affairs, Ahmedabad. In said Order on page 3, last para, it was stated that *“the applicant had committed the default under section 227(3)(e) & 227(2) and (3)(a)(b) of the Act in respect of the Auditors who had failed to consider these points while giving their report as to true and fair view of the financial statement for the financial year 2012-13 and therefore resulting into violations of section 227(3)(e) & 227(2) and (3)(a)(b) of the Act and had become liable under section 233 of the Act. After taking into consideration all the relevant facts of the case, the aforesaid default was compounded on payment of compounding fees of Rs. 10,000/- per count total amount being Rs. 20,000/- by the applicant.”*

13. The Committee was of the view that the submissions of the Respondent that to avoid undue harassment he made a compounding application under section 227(3)(e) & 227(2) and (3)(a)(b) of the Companies Act, 1956 did not had much relevance as it had been clearly stated in the Compounding order that the Respondent had committed the default under Section 227(3)(e), Section 227(2) and Section 227(3)(a)&(b) of the Act being the auditor of the Company and *a compounding fees of Rs. 10,000/- per count total amount being Rs. 20,000/- was imposed on him.* In view of said order, the Committee was of the opinion that once the Respondent had accepted his offence before one Government authority, now for the same charge(s) he cannot change his stand before this forum. Hence, it was apparent that the Respondent was guilty of professional misconduct within the meaning of Clause (7) of Part I of the Second Schedule to the Chartered Accountants Act, 1949.

Conclusion

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



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Sd/-

(CA. Naveen N.D. Gupta)
Presiding Officer
Nominee)

Sd/-

(Smt. Anita Kapur)
Member (Govt.

Sd/-

(CA. Shyam Lal Agarwal)
Member

Date : 29th January, 2019
Place : New Delhi