

**DISCIPLINARY COMMITTEE [BENCH – I (2019-2020)]
[Constituted under Section 21B of the Chartered Accountants Act, 1949]**

Findings cum Order under Rule 18(17) and Rule 19(2) of the Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007

[File No. PPR- 72/15-DD/65/INF/15/DC/698/2017]

In the matter of Information treated against:

**CA. Rohit Goel
179, Bank Road,
Ambala Cantt.,
Haryana – 133 001**

.....Respondent

MEMBERS PRESENT:

**CA. Prafulla Premsukh Chhajed, Presiding Officer,
Shri Jugal Kishore Mohapatra, I.A.S. (Retd.) (Government Nominee)
Ms. Rashmi Verma, I.A.S. (Retd.) (Government Nominee)
CA. Babu Abraham Kallivayalil, Member
CA. Dayaniwas Sharma, Member**

DATE OF FINAL HEARING/ORDER : 23.05.2019

PLACE OF FINAL HEARING/ORDER : ICAI, New Delhi

PARTIES PRESENT:

**Respondent : CA. Rohit Goel
Counsel for the Respondent : CA. C.V. Sajan
Respondent's witness : CA. Praveen Kumar**

FINDINGS:

1. The Committee noted that on the day of hearing, the Respondent was present. On being enquired, the Respondent stated that he is aware of the charges and he pleaded not guilty to the same. The Counsel for the Respondent decided to make his submissions on the charges. Thereafter, the Counsel for the Respondent made submissions on fact of the case and also made submissions in defence. The Committee called Respondent's witness, CA. Praveen Kumar. The witness appeared before the Committee. He was put on oath. He said that he is one of the directors of the Company and they acquired the Companies i.e. Xilon Trading Private Limited and Radiant Cement Co. Ltd in the year 2009. The Respondent examined the witness and thereafter, the Committee cross examined the witness. After cross-examination, the Committee discharged the witness. The Counsel for the Respondent made submissions on the charges and the Committee posed questions to the Counsel for the Respondent. After hearing the submissions, the Committee directed the Respondent to submit the copy of audit report of Radiant Cement Co. Ltd for the financial year 2010-11 within 10 days of hearing. With the above directions, the hearing in the matter was concluded.

2. The Committee noted that the Respondent was auditor of Xilon Trading Private Limited (hereinafter referred to as the "**Company**") for the financial year 2010-11 and he was held prima facie guilty in respect of the following three charges:-
 - i) The Respondent firm without examining the accounts certified the advance given for purchase of machineries amounting Rs.2,60,00,000/- to Radiant Cement Co. Ltd and Rs.46,50,000/- to B.R. Packwel Industries Pvt. Ltd in the audited accounts of the Company for the year ending 31st March, 2011, in spite of the fact that the Company being in the trading business never requires any machinery.
 - ii) Under Schedule - 1 to the Balance Sheet of the Company, it was mentioned that the Company has repaid the share application money amounting to Rs.71,50,000/- whereas the Company has not repaid the same till date.
 - iii) Misleading information has been given to the Income Tax Department by the Respondent in Income Tax Return.

3. As regard the first charge relating to advances given to Radiant Cement Co. Pvt. Ltd and B.R. Packwel Industries Pvt. Ltd, the Respondent in his submissions stated that the presentation of the advance in books of other Companies was as per the

decision of the Management of the respective companies and not at the instance of the auditor. As per records of the Company, the said advances for purchase of machinery were approved by the Board of Directors of the Company.

3.1 The Respondent in order to support his submissions brought on record copy of resolutions passed in the meetings of Board of Directors of the Company held on 01.03.2011 and 31.08.2009 whereby the Board of Directors consented for merging of business of Radiant Cement Co. Pvt Ltd. and B.R. Packwell Industries Pvt. Ltd at the book value on the date of actual takeover of business as given. In this regard, the Board of Directors further agreed to pay as advance to extent of book value of assets of Radiant Cement Co Pvt Ltd. and B.R. Packwell Industries Pvt. Ltd as required by the said companies at times to come subject to availability of funds with the Company.

3.2 The Respondent also brought on record copy of audit report on the accounts of Radiant Cement Co. Pvt. Ltd and B.R. Packwell Industries Pvt. Ltd and stated that appropriate qualifications in respect of unsecured loan received from the Company was given by the auditors of these two companies.

3.3 The Respondent brought on record a copy of letter dated 30th June, 2014 addressed to ROC by Shri Navneet Garg wherein it was mentioned that Radiant Cement Co. Pvt. Ltd in the Balance Sheet as at 31st March, 2011 under schedule has falsely shown about the receipt of Rs.2,60,00,000/- as an unsecured loan from Xilon Trading Private Limited whereas Xilong Trading Private Limited had given the said amount as an advance for purchasing of machineries. The Respondent stated that informant, Shri Navneet Garg has given contradictory facts to ROC and Institute by misrepresenting the facts.

4. The Respondent's witness, who is director in all the aforesaid companies, stated that information filed by his brother, Navneet Garg is an offshoot of family dispute. The witness stated that for merging of business of Radiant Cement Co. Pvt. Ltd and B.R. Packwell Industries Pvt. Ltd, the Company has given loan to these two companies. However, later merger could not be implemented due to the family dispute. The witness stated that no mistake or fault is apparent on the part of the auditor.
5. In view of above submissions and facts, it is noted that the Company in order to merge both the companies i.e. Radiant Cement Company Pvt. Ltd and B.R. Packwell Industries (P) Ltd., gave advances to both the companies. Since the Board of directors has given consent for merging of businesses and for which amount was

given as advance to these two companies, the Committee did not find any discrepancies in classification of loan under Loan and Advance. Further, presentation of advance in the books of Radiant Cement Pvt Limited and B.R. Packwell Industries (P) Ltd was as per decision of their respective management and the auditor(s) of these two companies had duly qualified their audit report as advance was given for purchase of machinery. In view of above, the Committee decided to hold the Respondent Not Guilty in respect of first charge.

6. In respect of second charge relating to repayment of share applications money, the Respondent stated that the Disciplinary (Directorate) has overlooked an important fact that refund of share money not liquidates an obligation, but also depletes the precious resources of the Company in question. He stated that a series of transactions that consumed Rs.71.50 lakhs of bank balance of the Company was used for making repayments, cannot be dubbed as fake without any cogent evidence. The Respondent also added that since the share application money was pending since long, as per his question to the Company, the Company decided to repay the same and accordingly, the Company withdrew money from Bank of Baroda account vide 4 cheques and utilized the money for repayment of share application money.

6.1 The Committee noted that the Respondent brought on record copy of bank statement of Bank of Baroda for the financial year 2010-11 and also brought on record copy of receipts issued for repayments made for share application money. As per bank statement, the Company had withdrawn Rs.80 lakhs between 4th February, 2011 to 7th February, 2011 and that fact supports the submissions of the Respondent that payment in cash for repayment of share application money was in fact made by withdrawing the money from the bank account. In view of above, the Committee is of the view that the Respondent brought on record sufficient evidence to establish that the Company has made repayment of share application money. Accordingly, it decides to hold the Respondent not guilty in respect of second charge.

7. As regard the third charge relating to providing misleading information to Income tax Department, the Respondent stated that on one hand, the Director (Discipline) admits that no malafide intention on the part of the Respondent is established, on the other hand, there has been doubt on the genuineness of the documents narrated in connection with refund of share application. The Respondent also stated that he was not involved in providing any information to the tax department. The Committee after consideration of facts on record as well as submissions of the Respondent, it is

noted that since no discrepancy / anomalies were found in respect of charges related to advance given for purchase of machineries and repayment of share application money, it cannot be stated that the Respondent has given wrong information to the Income Tax Department. Further, there was nothing on record to show that the Respondent was involved in providing information to the Income Tax Department. Hence, the Committee decided to hold the Respondent not guilty with respect to the said charge also.

Conclusion

8. Thus in the considered opinion of the Committee, the Respondent is **Not GUILTY** of professional misconduct falling within the meaning of Clauses (1), (7) & (8) of Part I of the Second Schedule to the Chartered Accountants Act, 1949.
- 8.1 Accordingly, the Committee passes an Order for closure of this case under Rule 19(2) of the Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of cases) Rules, 2007.

Sd/-
(CA. PRAFULLA PREMSUKH CHHAJED)
PRESIDING OFFICER

Sd/-
(SHRI JUGAL KISHORE MOHAPATRA, I.A.S. (Retd.))
GOVERNMENT NOMINEE

Sd/-
(MS. RASHMI VERMA, I.A.S. (Retd.))
GOVERNMENT NOMINEE

Sd/-
(CA. BABU ABRAHAM KALLIVAYALIL)
MEMBER

Sd/-
(CA. DAYANIWAS SHARMA)
MEMBER

DATE : 03rd February, 2020
PLACE : New Delhi