



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.**

In the matter of:

CA. Hemant Tulsidas Merchant (M.No.033805)
[PPR/136/15/DD/111/INF/15/DC/559/2017]

MEMBERS PRESENT:

CA. Atul Kumar Gupta, Presiding Officer,
Shri Rajeev Kher, IAS (Retd.), Government Nominee,
CA. Rajendra Kumar P, Member,
CA. Chandrashekhar Vasant Chitale, Member

1. That vide report dated 08.02.2018, the Disciplinary Committee was of the opinion inter-alia that **CA. Hemant Tulsidas Merchant (M.No.033805)** (hereinafter referred to as the “Respondent”) was **GUILTY** of professional misconduct falling within the meaning of Clause (9) of Part I of First Schedule and Clause (7) of Part I of the Second Schedule to the Chartered Accountants Act, 1949.

2. That pursuant to the said report, an action under Section 21B (3) of the Chartered Accountants (Amendment) Act, 2006 was contemplated against the Respondent and communications dated 6th December, 2018 and 14th May, 2019 were addressed to him thereby granting an opportunity of being heard in person and/or to make a written representation before the Committee.

3. That the hearing in the above matter for award of punishment was earlier fixed on 30th May, 2019 but as per request of the Respondent, it was preponed to 29th May, 2019. The Committee noted that on 29th May, 2019, the Respondent was present and he made his oral submissions on the findings of the Disciplinary Committee. The Committee also noted that the Respondent vide his letter dated 21st May, 2018 made his written representations on the findings of the Disciplinary Committee.

4. The Committee noted that the Respondent in his oral and written representations reiterated his earlier submissions made in the matter. The Respondent stated that he was neither informed nor shown copy of report filed with ROC dated 6th September, 2013 of M/s. V.R. Bhabhra & Co.

5. The Committee considered the following reasoning (s) as contained in report, holding the Respondent Guilty of professional misconduct:-



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5.1 It is noted that financial statement was signed by CA. Vimal Bhabhra on 6th September, 2013 whereas the Respondent signed the financial statement on 26th September, 2013.

5.2 There was difference in figures of both the Balance Sheets.

5.3 The Respondent also in his written statement admitted that he had not been issued any appointment letter by the Company nor any remuneration was fixed. Moreover, during the hearing in the matter, the Respondent admitted before the Committee that he has not sought NOC from the previous auditor before accepting audit assignment.

5.4 The Committee was of the view that if the Respondent had taken appointment letter and checked copy of minutes of meeting in which his appointment had been made or communicated with previous auditor, he would easily detect that Audit had already been done by another member. Moreover, the allegations are serious in nature where there are huge variance in figures as mentioned in para 9.1 of PFO. Although the role of the Company is also doubtful since it appears to have got audited the books of by two auditors for same financial year, yet it is seen that the Respondent has not discharged his professional duties diligently as explained in the Code of Ethics of the Institute nor he was able to explain the reasons for variance in figures in the financial statements certified by him.

5.5 The Committee was of the opinion that it is apparent from the facts / submissions of the Respondent that he was not only failed in performing his professional duties assigned to him and was also grossly negligent.

6. The Committee considered the findings as contained in the Report along with oral and written representations of the Respondent.

7. Keeping in view the facts and circumstances of the case, material on record and the oral and written representations of the Respondent made/submitted before it, the Committee ordered that the name of the Respondent i.e. CA. Hemant Tulsidas Merchant (M.No. 033805) be removed from the Register of Members for a period of 18 months (Eighteen Months).

Sd/-
(CA. ATUL KUMAR GUPTA)
PRESIDING OFFICER

Sd/-
(SHRI RAJEEV KHER)
GOVERNMENT NOMINEE

Sd/-
(CA. RAJENDRA KUMAR P)
MEMBER

Sd/-
(CA. CHANDRASHEKHAR VASANT CHITALE)
MEMBER

DATE: 29-05-2019

PLACE : Mumbai



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CONFIDENTIAL

THE DISCIPLINARY COMMITTEE (BENCH – II)

[Constituted under Section 21B of the Chartered Accountants (Amendment) Act, 2006]

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/136/15/DD/111/INF/15/DC/559/2017]

CA. Hemant Tulsidas Merchant, (M. No. 033805) in Re.:
Flat No.4, 1st Floor,
Sai Manzil,
18, Altamount Road,
MUMBAI – 400 026

..... **Respondent**

MEMBERS PRESENT:

CA. Naveen ND Gupta, Presiding Officer
Shri Amit Chatterjee, Government Nominee
Mrs. Bindu Agnihotri, Government Nominee
CA. Sanjay Kumar Agarwal, Member
CA. Manu Agarwal, Member

DATE OF FINAL HEARING : 07.11.2017

PLACE OF FINAL HEARING : ICAI, BKC, MUMBAI

PARTIES PRESENT:

Respondent : CA. Hemant Tulsidas Merchant



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Finding of the Committee

1. The Committee noted upon a perusal of the facts of the case, read with prima facie opinion in the instant case that the charges against the Respondent is that the audited Balance Sheet for the year 2012-13 of M/s. Kanade Aqua Farm P. Ltd. was signed by the Respondent on 26/09/2013, whereas the same were already certified by CA. Bimal R Bhabhra on 06/09/2013. On perusal of Both sets of balance Sheets, it was observed that there were wide variations in the audited Balance Sheet submitted by the Respondent and one filed with ROC. The variations were noticed in important parameters like reserves and surplus, non-current investments, trade payables, inventories and short term loans and advances.

2. The Committee heard the submissions of the Respondent and duly considered various documents made available on record by both the Informant and the Respondent.

3. On perusal of papers on record, the Committee noted that the financial statements of the Company for financial year 2012-13 was signed by CA. Vimal Bhabhra on 06th September, 2013 whereas it was signed by the Respondent on 26th September, 2013. There are differences in figures of both the Balance Sheets.

4. Further, the Committee noted that the Respondent in his written statement dated 22/09/2015 himself has stated that he was not issued any appointment letter by the Company nor any remuneration was fixed. Moreover, during the hearing in caption matter, the Respondent has admitted before the Committee that he has not sought "No Objection Certificate" from the previous auditor before accepting audit assignment.

5. The Committee was of the view that had the Respondent taken appointment letter and checked copy of minutes of meeting in which his appointment had been made or communicated with previous auditor, he would have easily detect that Audit had already been done by another member. Moreover the allegations are serious in nature where there are huge variances in figures as mentioned in para 9.1 of PFO. Although the role of



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the Company is also doubtful since it appears to have got audited the books by two auditors for same financial year, yet it is seen that the Respondent has not discharged his professional duties diligently as explained in the Code of Ethics of the Institute nor he was able to explain the reasons for variances in figures in the Financial Statements certified by him.

6. In the light of the facts and circumstances stated above, the Committee was of the opinion that it is apparent from the facts/submissions of the Respondent that he has failed in performing his professional duties assigned to him.

Conclusion

7. Thus in the considered opinion of the Committee, the Respondent is **Guilty** of professional misconduct falling within the meaning Clause (9) of Part I of First Schedule and Clause (7) of Part I of the Second Schedule to the Chartered Accountants Act, 1949.

Sd/-
(CA. NAVEEN ND GUPTA)
PRESIDING OFFICER

Sd/-
(SHRI AMIT CHATTERJEE)
GOVERNMENT NOMINEE

Sd/-
(Mrs. BINDU AGNIHOTRI)
GOVERNMENT NOMINEE

Sd/-
(CA. SANJAY KUMAR AGARWAL)

Sd/-
(CA. MANU AGARWAL)



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MEMBER

MEMBER

DATE : 08th February, 2018

PLACE : New Delhi