

CONFIDENTIAL

DISCIPLINARY COMMITTEE [BENCH-III (2019-20)]

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

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

File no. : PPR/P/14/N/13-DD/5/N/INF/13-DC/708/2017

In the matter of :

CA. Jagdish Kumar Manocha (M.No. 118497)
27/55, street No. 55,
Vishwasnagar,
Delhi-110 032Respondent

Members Present:

CA. Prafulla Premsukh Chhajed, President
Smt. Anita Kapur, Member (Govt. Nominee)
Shri Ajay Mittal, IAS (Retd.), Member (Govt. Nominee)
CA. Debashis Mitra, Member
CA. Manu Agrawal, Member

Date of Final Hearing: 28th May 2019

Place of Final Hearing: New Delhi

Parties Present:

CA. Jagdish Kumar Manocha – Respondent
Shri S. Sharma, Advocate – Counsel for Respondent

Allegations of the Deputy ROC, MCA, New Delhi:

1. It has been stated by the Informant in the allegation letter that the Respondent had acted as the statutory auditor of M/s CMI Limited (hereinafter referred to as the 'Company') and during inspection under section 209A of the Companies Act 1956, it was found that the Company had not complied with the provision of Section 211 (3A),

211(3B) and 211(3C) of the Companies Act 1956, read with AS-5, AS-13, AS-15, AS-16, AS-17, AS-18, AS-19, AS-20, AS-22, AS-26 and AS-28 issued by the ICAI. The Respondent being the statutory auditor of the Company for the F.Y.s. 2006-07 to 2008-09 had failed to qualify his report for non-compliance with the provisions of Section 227(4A) of the said Act read with Clause 4(i)(a) of CARO 2003.

Proceedings:

2. At the outset on 4th April 2019, the Committee noted that neither the Respondent nor his authorized representative was present before the Committee. It was noted that an e-mail dated 3rd April, 2019 was received from Shri Saurabh Sharma, Counsel for Respondent, wherein he had stated that he had been appointed for the matter very recently due to the fact that the Counsel earlier appointed by the Respondent was not contactable. Therefore, he requested for adjournment of the hearing so as to enable him to prepare the defense in the matter. He had further stated that Additional Chief Metropolitan Magistrate, Tis Hazari Court vide judgment dated 05.11.2018 had acquitted the Respondent from all offences as alleged by the ROC and in order to bring relevant documentary evidences for proper appraisal of facts an adjournment of 4 weeks was required.

The Committee noted that this case was earlier fixed for hearing on 29th January, 2019 when it was adjourned at the request of the Respondent on the same grounds that he needed the time to procure the pronouncement of Additional Chief Metropolitan Magistrate. It was viewed that sufficient time had already been granted to the Respondent to collect the documentary evidences and that the proceedings before the Chief Metropolitan Magistrate were separate from that before Disciplinary Committee. In any case, considering the principles of natural justice, the Committee acceded to the request for adjournment, with a direction to the Respondent that no further adjournment would be granted to him and in case of failure on his part to appear before the Committee in the next hearing, the case would be decided ex-parte. Accordingly, hearing in the matter was adjourned at the request of the Respondent to a future date.

3. At the time of next hearing on 28th May 2019, the Committee noted that the Respondent along with his Counsel was present in person before it. Since it was first hearing in the matter, the Respondent was put on oath. Thereafter, the Committee asked the Respondent as to 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 charges against him. On further asking as to whether he pleaded guilty, the Respondent pleaded not guilty and opted to defend the case. The Counsel for the Respondent made his submission on behalf of the Respondent. The Respondent was examined on the submissions made by him. Based on the documents available on record and after considering oral and written submissions, the Committee concluded hearing in the matter.

Findings of the Committee:

4. The Committee noted that the Informant had raised numerous allegations against the Respondent pertaining to AS-5, AS-13, AS-15, AS-16, AS-17, AS-18, AS-19, AS-20, AS-22, AS-26 and AS-28 issued by the ICAI, out of which the Director (Discipline) while forming his prima facie opinion under Rule (9) of the CA Rules 2007 had held the Respondent prima facie guilty for two charges only in context of AS-15 and AS-22. The Committee, at its meeting held on 3rd October 2017, on consideration of the same, at prima facie stage, substantially concurred with the reasons given against the charges(s) in the said opinion of the Director (Discipline) except for the charges mentioned at Para nos. 7.2 and 7.8 of the PFO wherein it decided to conduct further enquiry in respect of AS-13 and AS-20. The Committee was of the view that information then available in respect of latter charges were not sufficient to exonerate him of the said charges. Accordingly, the Committee considered only aforesaid four charges while hearing the matter and gave its findings on the same which are as under :

5. The Committee noted that in the first allegation, it was informed that the Company had not provided provision for leave encashment for the Financial Years ending on 31st March, 2007, 31st March, 2008 and 31st March, 2009 on accrual basis which the

Respondent being the statutory auditor had failed to report as non-compliance of Accounting Standard-15 on retirement benefits.

6. The Committee noted that the Respondent submitted that the Company had duly provided the liability with the respect to leave encashment for the year ended 31.03.2007, 31.03.2008 and 31.03.2009 and clubbed the same under Schedule 11- "Current Liabilities"- subheading "Other Liabilities" and thus the company had made sufficient provision with respect to leave encashment. He further stated that the statement reported in the Inspection Report that there was no provision made in respect of the leave encashment was not true, as the liability on account of leave encashment was arrived at after considering the opening balance, provision required at the end of the year and payment made during the year.

7. The Committee in this regard perused in Schedule 18 **(B-69)**, Schedule 19 **(B-88)** and Schedule 19 **(B-110)** of the Financial Statements for the year ending 31.3.2007, 31.3.2008 and 31.03.2009 respectively wherein under Para 8 – 'Retirement Benefits', the accounting policy of 'Leave Encashment' was stated as being determined on the basis of accumulated leave to the credit of employees at the period ended. It was noted that the Respondent had brought on record a certificate dated 8th May 2018 from the current statutory auditor of the Company in respect of the leave encashment liability. The said certificate provide details of opening balance, payment made during the year, provisions made during the year and closing balance of the leave encashment liability for the financial year 2006-07, 2007-08 and 2008-09 as per the books of accounts. This information provided therein is reproduced below:

Leave Encashment Liability

Year	Opening Balance (As per Balance Sheet) Amount in Rs	Payment during the year amount in Rs	Provision made during the year Amount in Rs	Provision shown under the head in the P/L Account	Closing Balance (As per Balance Sheet) Amount in Rs.
2006-07	307,622.78	47,895.50	-	-	259,724.28
2007-08	259,724.28	14,225.00	29,102.72	Salaries, Wages, Bonus and	274,602.00

				other	
2008-09	274,602.00	2,722.00	50,119.00	Salaries, Wages, Bonus and other	321,999.00

In view of the above, the Committee was of the view that the fact that the liabilities of leave encashment existed as payable in the beginning as well as close of each the financial years 2006-07, 2007-08 and 2008-09 indicated that due provision was being made for leave encashment on accrual basis. Accordingly, the Respondent is held not guilty w.r.t to this charge.

8. The Committee noted that the second allegation pertained to the notes of accounts (Schedule 18) for the year ended 31st March, 2007 and 31st March, 2008 wherein the Accounting Policy of Taxes on Income stated that *“no provision for deferred tax liabilities/assets have been created for timing differences on Account of losses & depreciation as the Management does not foresee the Profit to be arising in the near future as per past performance”*. It was informed that the Company was a Profit making company and AS-22 required the recognition of Deferred Tax/Liability as well as the computation thereof in the notes to Accounts. It was alleged that the Company had neither given the computation nor created and disclosed the Deferred Tax Liability, but the Respondent failed to report non-compliance of AS-22 in his audit report.

9. The Committee noted that the Respondent had submitted that as on 31.03.2006 and 31.03.2007, the company had earned total profit i.e. Profit after depreciation and tax to the tune of Rs 93.06lacs and 77.56 lacs. In 2008, it went up to Rs 108.38 lacs and further in the year 2009, the figure rose to Rs.214.94 lacs. The major chunk of profit of the year 2006 and 2007 was mainly earned due to writing back of interest on working Capital, Term loans and other deferred loans to the tune of Rs.304.08 lacs and Rs.963.89 Lacs respectively and in the said years, there was a total operational loss of Rs. 211.02 Lacs and 188.21 Lacs respectively. In the year 2008 and 2009, the company had earned operational profit to the tune of Rs. 109.54 Lacs and 211.89 Lacs respectively. Since the Company was having huge amount of unabsorbed depreciation and carry forward losses (to the tune of Rs.374.98 Lacs) from past

years, the Company was having a total net loss of Rs.160.03 Lacs as on 31.03.2009. The Company was in revival stage and it had just started earning profits. Owing to this, the management was not anticipating much profit in approaching 2-3 years, and since there was no virtual certainty with respect to profitability of the Company, as it was incurring heavy operational losses from the year 2000 onwards, the Company had not provided for any deferred tax asset/liability.

10. The Committee in this regard noted that as per AS-22, Deferred tax/ liability is determined for timing differences which are the differences between taxable income and accounting income for a period that originate in one period and are capable of reversal in one or more subsequent periods. It further noted that the financial accounts of the Company disclose a loss during the F.Y 2005-06. Further, during the F.Y. 2006-07, the Company did disclose a profit of Rs. 77,568,229/- **(B-62)** but the same was arrived at after crediting the amount of various liabilities written back by the Company which included interest on deferred loans, interest on working capital loans etc. amounting to Rs.298,215,441/-. Hence, effectively, operations were not generating profit. Thus, any provision on account of deferred tax asset could not have been considered as proper. Moreover, if the Company would have at all provided, it would have been recognized it as deferred tax assets which would have misrepresented the facts. Accordingly, the Committee held the Respondent not guilty with respect to this charge.

11. As regard the third allegation, the Committee noted that the Company in its Balance Sheet as at 31st March, 2007, 31st March, 2008 and 31st March, 2009 had made investments in equity shares of quoted and unquoted shares. As per the requirements of AS-13, the investments were required to be disclosed as investments into current and long term in addition to being classified into trade investment and other investments in view of the requirements of Schedule VI of the Companies Act, 1956. However such details were not given which the Respondent being the statutory auditor had failed to report in audit report.

12. The Committee noted that the Respondent had submitted that the Respondent was appointed as the Statutory Auditor for the first year in Financial Year 2006-07. In the Schedule VI attached to the financial statements of the company as at 31st March, 2007, it was specifically noted that number of share of Dena Bank as at 31st March, 2007 were the same (i.e. 300 only) as compared to the holding of the Company as at 31st March, 2006. Further any current investment would be disclosed as part of the current assets and the age of the investment in respect of Dena Bank was absolutely transparent starting from the very first year of statutory audit by the Respondent (Financial year 2006-07) wherein the disclosure as on 31st March, 2007 was such that it clearly stated that the said investments were already held for at least more than 24 months. Further, the investment in CMI Telecom Limited in the nature of a holding company was for long term purposes. It was contended that the manner in which the investments were disclosed in the Balance Sheet, clearly indicated the age of holding and nature of investments thereof.

13. The Committee on perusal of Schedule of Investments (**B-65**) noted that the Company was holding only two investments: One in equity shares of Dena Bank and other was in its wholly owned subsidiary, CMI Telecom Ltd. With regard to investments in subsidiary, it was viewed that nature of such investments itself signified it to be a long term investments. Regarding investments in Dena Bank, the submission of the Respondent is acceptable that both the number and value of equity shares as held by the Company as at the previous year vis a vis that held as at the end of the current year were same, which signified that it was also a long term investment. As regards, non-disclosure of its classification in trade or other investments, the Committee viewed that firstly the investments were insignificant and secondly, omission of such information did not affect true and fair view of the financial statements. Accordingly, the Committee held that the Respondent was not guilty with respect to this charge.

14. In the fourth allegation, the Committee noted that, it was informed that the Company had not disclosed the amounts used as the numerators in calculating basic and diluted earnings per share and a reconciliation of those amounts to the net Profit and Loss for the period including the details regarding Earnings Per Share (EPS) were not disclosed in Notes to Accounts as per requirements of Accounting Standard-20.

15. The Committee noted that the Respondent had submitted that as the Statutory Auditor, the Respondent was fully aware of the requirement of the appropriate disclosure in terms of AS-20. He submitted that the Profit and Loss Account clearly included reference to a separate schedule being schedule 18 for the year 2006-07 and Schedule 19 for the year 2007-08 and 2008-09. The said Schedules included complete disclosure relating to the EPS in respect of the ordinary shares of the Company for each of the financial years concerned which ensured compliance of AS-20.

16. The Committee on perusal of the financial statements available on record noted that the related disclosures for basic earning per shares was made in Note no. 9, Note no.10 and Note no. 11 for the financial years 2007, 2008 and 2009 respectively **(B-71) (B-90) (B-114)** and the net profit figures stated as numerator tallied with that given in Profit and loss account and hence the question of non- reconciliation did not arise. However, in FY 2008 and 2009, profit taken was the profit before taxation instead of profit after tax as discussed in paragraph 11 of AS 20. However, the related implications were very limited on basic earnings per share. Further, being SMC for FY 2007 the disclosure relating to Diluted Earnings per share was not applicable to entity as explained in paragraph 1 of AS 20 and also that the nature of shares /securities issued by the Company had no diluted impact on earnings. Accordingly, the Committee held that the Respondent was not guilty with respect to this charge as no misconduct on part of the Respondent was evident.

Conclusion :

17. Thus, in conclusion, in the considered opinion of the Committee, the Respondent is held **NOT GUILTY** of Professional Misconduct falling within the meaning of Clauses (5) and (7) of Part I of the Second Schedule to the Chartered Accountants Act, 1949.

18. The Committee, accordingly, passed orders for closure of this case against the Respondent.

Sd/-
CA. Prafulla Premsukh Chhajed
Presiding Officer

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

Sd/-
Shri Ajay Mittal, IAS (Retd.)
Member (Govt. Nominee)

Sd/-
CA. Debashis Mitra
Member

Sd/-
CA. Manu Agrawal
Member

Date : 12th December, 2019

Place : New Delhi