



THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA
(Set up by an Act of Parliament)

[PR-160/2011-DD/153/11/DC/329/14]

**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:

Ms. Sivagami Somasundaram,
H-47/5, Kamraj Nagar,
L.B. Road, Geetanjali Colony,
Thiruvanmiyur,
CHENNAI - 600 041

Versus

CA. Arvind Vishnu Lowlekar (M. No. 071487)
15, Balwant Arcade, Zone-II, M.P. Nagar,
BHOPAL - 462 001

[PR/160/2011/DD/153/11/DC/329/14]

MEMBERS PRESENT:

1. CA. Atul Kumar Gupta, Presiding Officer
2. CA. Amarjit Chopra, Government Nominee
3. CA. Rajendra Kumar P, Member
4. CA. Chandrashekhar V. Chitale, Member

1. That vide findings dated 05.02.2019, the Disciplinary Committee was of the opinion inter-alia that **CA. Arvind Vishnu Lowlekar (M.No.071487)** (hereinafter referred to as 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 and not guilty of ‘Other Misconduct’ under clause (2) of Part IV of the First Schedule to the said Act.

2. That an action under Section 21B (3) of the Chartered Accountants Act, 1949 was contemplated against the Respondent and a communication dated 25th June, 2019 was sent to



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him thereby granting an opportunity of being heard in person and/or to make oral/ written representation before the Committee on 09th July, 2019 at New Delhi.

3. Further, on 09th July, 2019, the Committee noted that the Respondent was present and made written as well as oral submissions on the findings of the Committee holding him Guilty of professional misconduct within the meaning of Clause (7) of Part-I of the Second Schedule to the Chartered Accountants Act, 1949.

4. The Committee noted that there is only one charge against the Respondent in which he has been held guilty by the Committee, which is as under:-

4.1 The Respondent has committed the wrongful and criminal act of forging and fabricating the records of Green Tree Foods Private Limited (hereinafter referred to as the **"Company"**) by certifying, signing and filing two e-forms 32 knowing the contents of the same to be false.

5. The Committee noted the findings of earlier Committee contained in Report of the Disciplinary Committee dated 05/02/2019 holding the Respondent guilty of professional misconduct, which are as under:-

5.1 "The Committee on perusal of the papers on record noted that Mr. Anshul Gurha had resigned w.e.f. 16.03.2011 when he served his resignation letter dated 16th March 2011 on the Company stating therein *"I... hereby resign from the post of directorship of the Company with effect from 16th March 2011 due to my preoccupation."* Thereafter, the Board of Directors in its meeting dated 16th March 2011 accepted the said resignation of Mr. Anshul Gurha, with immediate effect and recorded as under:

"Resolved that Mr. Anshul Gurha, be and is hereby relieved from the post of director of the Company after the conclusion of this board meeting." Further, it has been noted that Form 32 filed with the Registrar of Companies for the purpose of resignation of Mr. Anshul Gurha mentioned the date of his resignation as 16th March 2011 which was also certified by the Respondent. Thus, according to the Committee, the act of resignation by Shri Anshul Gurha had



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come into effect on 16th March, 2011 when the communication relating to relinquishment of the office was communicated to the Board of the Company and also accepted by Board on 16th March, 2011 which was very well within the knowledge of the Respondent.

5.2. The Committee, however, in this regard further noted that the Respondent through his Counsel has submitted in his Written Submission dated 29th April 2017 that though the Board of Directors had accepted the resignation of Sh. Anshul Gurha w.e.f.16.03.2011, however, the same was not ratified by the shareholders in the Extra Ordinary General Meeting of the Company held on 28.03.2011. The Committee noted minutes of EOGM held on 28th March, 2011 wherein only Mrs. Shipra Gurha was present and Mr. Anshul Gurha is stated to be chairing the meeting. The Committee noted that his act of chairing the meeting was not justified in view of his resignation dated 16th March, 2011. It was further noted from the minutes of said EOGM, that the members present had noted that the said resignation was not filed with the Registrar of Companies up to the date of EOGM, therefore, it authorized Mr. Anshul Gurha to file Form 5, Form 23 and Form 32 and accordingly passed a Resolution to that effect. The relevant extract of the said EOGM is as under:

“RESOLVED THAT Mr. Anshul Gurha be and is hereby authorized to file Form 5 and Form 23 with Registrar of Companies, M.P. & Chhattisgarh as on 30th March, 2011”.

“RESOLVED FURTHER THAT Mr. Anshul Gurha, Mr. Ajai Kumar Gurha and Mrs. Usha Gurha are authorized to act on behalf of the Company till their resignation letter as there Form 32 are not filed with the Registrar of Companies, M.P. & Chhattisgarh and all the act and deeds done as Director on behalf of the Company after the said date of resignation period is valid and accepted by the Company”.

5.3. The Committee in this regard noted that Article 43 of the Articles of Association of the Company clearly provides that "the office of Director shall ipso facto be vacated in addition to the events and grounds enumerated by Section 283 (1) of the Companies Act, 1956, if by notice in writing to the Company he /she resigns from his/her office and the said resignation is accepted by the Board." It is noted that Section 283 of the Companies Act, 1956 also provides



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that in case of a private company, the articles could provide for the vacation of the office of a director. Section 283(3) read as:

(3) A private company which is not a subsidiary of a public company may, by its articles, provide that the office of director shall be vacated on any grounds in addition to those specified in sub-section (1).

5.4. Therefore, in the opinion of the Committee, as per Section 283 of the Companies Act, 1956 and in accordance with the Articles of Association of the Company, the resignation of Mr. Anshul Gurha came into effect from the date of its acceptance by the Board, i.e. 16th March 2011 and thus the Committee does not accept the submissions made by the Respondent that the decision of the Board of accepting the resignation of Sh. Anshul Gurha was not ratified by the shareholders. It was also noted that Companies Act, 1956 does not lay down any further provision which empowers the shareholders for ratification or non-ratification of the decision once taken by the resigning director and accepted by the Board. Further, a question was raised whether Mrs. Shipra Gurha could alone give any authority to Mr. Anshul Gurha in the said claimed meeting of Extra Ordinary General Meeting dated 28/03/2011. Hence, the Respondent's submission of placing reliance on the resolution of such EOGM is completely unacceptable.

5.5 Further, as per direction of the Committee dated 18/09/2018, the Counsel for the Respondent had filed an affidavit dated 26/09/2018 of Shri Anshul Gurha, the witness of the Respondent in this matter. In said affidavit the witness has admitted that Form No. 32, 5 and 23 were digitally signed and verified by the Respondent. He further admitted that the same was done on the basis of intimation/ information/ documents/ copies of resolutions and minutes of the meetings of the Board of Directors and copies of the minutes & resolutions of extra ordinary general meeting held on 28/03/2011 which were provided to him by the Company. Moreover, the Counsel for the Complainant has not filed any submissions as directed by the Committee on final day of hearing i.e. 18/09/2018".



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6. The Committee perused the above facts and looking into all these aspects noted the Respondent who has verified and certified all the e-forms in question has failed to exercise due diligence as all the e-forms were signed by a person in the capacity of Managing Director which he was not holding as on the date of filing e-forms. The resolution passed by EOGM on which the Respondent relied upon nowhere restored/restated/refurbished any such authority to Sh. Anshul Gurha which he had relinquished vide his resignation letter dated 16.03.2011 and duly accepted by the Board. Thus, the Respondent, in the opinion of the Committee failed to exercise due diligence as he has verified and certified e-forms to be correct which were signed by a person as M.D. who was not so as on the date of e-filing and about which the Respondent was duly aware as on the date of certifying the stated e-forms.

Based on the above findings the Respondent being held guilty of professional misconduct, the Committee is of the view that ends of justice will be met, if the punishment awarded to the Respondent is commensurate with the seriousness of the nature of misconduct.

7. Thus, keeping in view the facts and circumstances of the case as aforesaid, the material on record, submissions of the Respondent before it, the Committee ordered that the name of the Respondent i.e. CA. Arvind Vishnu Lowlekar (M.No.071487) be removed from the register of members for a period of 01 (one) day .

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

Sd/-
(CA. AMARJIT CHOPRA)
GOVERNMENT NOMINEE

Sd/-
(CA. RAJENDRA KUMAR P)
MEMBER

Sd/-
(CA. CHANDRASHEKHAR V. CHITALE)
MEMBER

DATE : 09/07/2019

PLACE : NEW DELHI



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CONFIDENTIAL

DISCIPLINARY COMMITTEE [BENCH – II (2018-2019)]

[Constituted under Section 21B of the Chartered Accountants (Amendment) 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. :[PR/160/2011/DD/153/2011/DC/329/2014]

In the matter of:

Ms. Sivagami Somasundaram,

H-47/5, Kamraj Nagar,

L.B. Road, Geetanjali Colony,

Thiruvanmiyur,

CHENNAI - 600 041

..... Complainant

Versus

CA. Arvind Vishnu Lowlekar (M. No. 071487)

15, Balwant Arcade, Zone-II, M.P. Nagar,

BHOPAL - 462 001

..... Respondent



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MEMBERS PRESENT:

CA. Prafulla P. Chhajer, Presiding Officer
Shri Rajeev Kher, I.A.S. (Retd.), Govt. Nominee
CA. Amarjit Chopra, Government Nominee
CA. Mangesh P. Kinare, Member

DATE OF FINAL HEARING : 18.09.2018

PLACE OF FINAL HEARING : ICAI Bhawan, New Delhi

PARTIES PRESENT:

Counsel for the Complainant: Shri Ankur Khandelwal, Advocate

Counsel for Respondent: Shri R. D. Makhija, Advocate

Charges in Brief:-

1. The Respondent has committed the wrongful and criminal act of forging and fabricating the records of Green Tree Foods Private Limited (hereinafter referred to as the “**Company**”) by certifying, signing and filing two e-forms 32 knowing the contents of the same to be false.

Brief facts of the Proceedings:



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2. The Committee noted that on the day of hearing i.e. 18/09/2018, the Counsel for the Complainant and Counsel for the Respondent were present and appeared before it. But witness Mr. Anshul Gurha was not present owing to medical conditions of his wife.

The Counsel for the Complainant submitted that as he has received a phone call few days ago in respect of this meeting, he has to receive consent of the Complainant because said matter was concluded earlier and the Complainant is presently out of Country.

The Counsel for the Respondent submitted that Witness Shri Anshul Gurha has expressed his inability to appear before the Committee today due to health issues of his wife. In the absence of said Witness, he cannot proceed in this case and requested for adjournment.

However, the Committee was not inclined to grant the adjournment in view of various adjournments granted to both the parties on earlier occasions. The Committee was also of the view that since the case was heard and concluded on earlier occasion, therefore, there is no point of granting any further adjournment in the case when all the papers/submissions of both the parties are already on record. Accordingly, the Committee rejected the plea of adjournment and directed both the parties that they may file their final submissions, if any in 15 days time with a copy to each other and no more personal hearing would be held in this case.

The Committee informed both the parties that all their submissions and documents which are on record would be considered by the Committee in finalization of its decision. Moreover, the Committee also acceded to the request of the Counsel for the Respondent to file an affidavit from the witness Mr. Anshul Gurha in the circumstances.

With above directions, the Committee decided to conclude the hearing in the captioned case.

Finding of the Committee

3. The Committee noted that the Complainant has made an allegation that the Respondent has forged and fabricated the records of the Company and has certified and filed with the Registrar of the Companies (ROC) certain e-forms in the month of March and April, 2011 in connivance with



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Mr. Ajai Kumar Gurha, Dr. Usha Gurha and Mr. Anshul Gurha, the Directors of the Company. The said forms have also been signed by Mr. Anshul Gurha as the Managing Director of the Company when infact he had resigned from the said responsibility on 16.03.2011 i.e. much before the date of e-filing the said forms.

The Respondent has certified and filed the said e-forms stating that he had verified all the particulars stated in e-form from the records of the Company and found them true and correct. It is alleged that on the date of filing said e-forms the person digitally signing it on behalf of the management was not holding the authority in which he declared to have signed. Accordingly, the Respondent failed to exercise due-diligence in conduct of his professional duties and also connived with the other directors of the Company to the detrimental of the complainant. The following statutory forms, certified by the Respondent and filed with the Registrar of Companies ("RoC"), are alleged to be false:

- (a) Form No 32: With respect to appointment of Mrs. Usha Gurha and Mr Ajai Kumar Gurha, on the Board of the Company:
- (b) Form No.5- With respect to increase of share capital
- (c) Form No.23- With respect to alteration in the Articles

It is alleged that the said Forms were digitally signed by Mr Anshul Gurha on 30th March, 2011, who had himself resigned from the Board on 16th March 2011. These e-forms were filed by the Respondent with ROC on 30th March 2011 claiming to have verified the particulars of the forms from the records of the Company and found them to be true and correct.

3.1. The Committee considered the written submissions of both the Complainant and the Respondent along with various documents made available on record by both of them. It also noted that both the parties appeared through their authorised representative before the Committee on 28/03/2018 and 18/09/2018.

3.2. The Committee on perusal of the papers on record noted that Mr. Anshul Gurha had resigned w.e.f. 16.03.2011 when he served his resignation letter dated 16th March 2011 on the Company stating therein "*I... hereby resign from the post of directorship of the Ccompany with effect from*



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16th March 2011 due to my preoccupancy.". Thereafter, the Board of Directors in its meeting dated 16th March 2011 accepted the said resignation of Mr. Anshul Gurha, with immediate effect and recorded as under:

"Resolved that Mr. Anshul Gurha, be and is hereby relieved from the post of director of the Company after the conclusion of this board meeting." Further, it has been noted that Form 32 filed with the Registrar of Companies for the purpose of resignation of Mr. Anshul Gurha mentioned the date of his resignation as 16th March 2011 which was also certified by the Respondent. Thus, according to the Committee, the act of resignation by Shri Anshul Gurha had come into effect on 16th March, 2011 when the communication relating to relinquishment of the office was communicated to the Board of the Company and also accepted by Board on 16th March, 2011 which was very well within the knowledge of the Respondent.

3.3. The Committee, however, in this regard further noted that the Respondent through his Counsel has submitted in his Written Submission dated 29th April 2017 that though the Board of Directors had accepted the resignation of Sh. Anshul Gurha w.e.f.16.03.2011, however, the same was not ratified by the shareholders in the Extra Ordinary General Meeting of the Company held on 28.03.2011. The Committee noted minutes of EOGM held on 28th March, 2011 wherein only Mrs. Shipra Gurha was present and Mr. Anshul Gurha is stated to be chairing the meeting. The Committee noted that his act of chairing the meeting was not justified in view of his resignation dated 16th March, 2011. It was further noted from the minutes of said EOGM, that the members present had noted that the said resignation was not filed with the Registrar of Companies up to the date of EOGM, therefore, it authorized Mr. Anshul Gurha to file Form 5, Form 23 and Form 32 and accordingly passed a Resolution to that effect. The relevant extract of the said EOGM is as under:

"RESOLVED THAT Mr. Anshul Gurha be and is hereby authorized to file Form 5 and Form 23 with Registrar of Companies, M.P. & Chhattisgarh as on 30th March, 2011".

"RESOLVED FURTHER THAT Mr. Anshul Gurha, Mr. Ajai Kumar Gurha and Mrs. Usha Gurha are authorized to act on behalf of the Company till their resignation letter as there Form 32 are not filed with the Registrar of Companies, M.P. & Chhattisgarh and all the act and deeds done as Director on behalf of the Company after the said date of resignation period is valid and accepted by the Company".



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3.4. The Committee in this regard noted that Article 43 of the Articles of Association of the Company clearly provides that "the office of Director shall ipso facto be vacated in addition to the events and grounds enumerated by Section 283 (1) of the Companies Act, 1956, if by notice in writing to the Company he /she resigns from his/her office and the said resignation is accepted by the Board." It is noted that Section 283 of the Companies Act, 1956 also provides that in case of a private company, the articles could provide for the vacation of the office of a director. Section 283(3) read as:

(3) A private company which is not a subsidiary of a public company may, by its articles, provide that the office of director shall be vacated on any grounds in addition to those specified in sub-section (1).

3.5. Therefore, in the opinion of the Committee, as per Section 283 of the Companies Act, 1956 and in accordance with the Articles of Association of the Company, the resignation of Mr. Anshul Gurha came into effect from the date of its acceptance by the Board, i.e. 16th March 2011 and thus the Committee does not accept the submissions made by the Respondent that the decision of the Board of accepting the resignation of Sh. Anshul Gurha was not ratified by the shareholders. It was also noted that Companies Act, 1956 does not lay down any further provision which empowers the shareholders for ratification or non-ratification of the decision once taken by the resigning director and accepted by the Board. Further, a question was raised whether Mrs. Shipra Gurha could alone give any authority to Mr. Anshul Gurha in the said claimed meeting of Extra Ordinary General Meeting dated 28/03/2011. Hence, the Respondent's submission of placing reliance on the resolution of such EOGM is completely unacceptable.

3.6. Therefore, the Committee noted that the Respondent who has verified and certified all the e-forms in question has failed to exercise due diligence as all the e-forms were signed by a person in the capacity of Managing Director which he was not holding as on the date of filing e-forms. The resolution passed by EOGM on which the Respondent relied upon nowhere restored/restated/refurbished any such authority to Sh. Anshul Gurha which he had relinquished vide his resignation letter dated 16.03.2011 and duly accepted by the Board. Thus, the Respondent, in the opinion of the Committee failed to exercise due diligence as he has verified and certified e-forms to be correct which were signed by a person as M.D. who was not so as on the date of e-filing and about which the Respondent was duly aware as on the date of certifying the stated e-forms. Thus, in view of the Committee, the Respondent is Guilty of professional



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Misconduct for not exercising due-diligence in carrying out his professional duties falling within the meaning of clause (7) of Part I of the Second Schedule to the Chartered Accountant Act 1949.

3.7 Further, as per direction of the Committee dated 18/09/2018, the Counsel for the Respondent had filed an affidavit dated 26/09/2018 of Shri Anshul Gurha, the witness of the Respondent in this matter. In said affidavit the witness has admitted that Form No. 32, 5 and 23 were digitally signed and verified by the Respondent. He further admitted that the same was done on the basis of intimation/ information/ documents/ copies of resolutions and minutes of the meetings of the Board of Directors and copies of the minutes & resolutions of extra ordinary general meeting held on 28/03/2011 which were provided to him by the Company. Moreover, the Counsel for the Complainant has not filed any submissions as directed by the Committee on final day of hearing i.e. 18/09/2018.

3.8 As regard the second leg of the main charge that the Respondent acted in connivance with the other Directors of the Company, the Committee noted that there is no material on record to establish as to how and in what manner the Respondent was involved in connivance. It also noted that said allegation hints upon an act of criminal conspiracy and contains an element of *mens rea* which needs to be established beyond doubt which the Complainant failed to do. Thus, the Committee is of the view that since the said charge could not be proved by the Complainant and in the absence of any evidence, the Respondent is held Not Guilty of other misconduct under Clause (2) of Part IV of the First Schedule to the Chartered Accountant Act 1949.

Conclusion

9. Thus in conclusion, in the considered opinion of the Committee, the Respondent is held Guilty of 'Professional Misconduct' falling within the meaning of clause (7) of Part I of the Second Schedule to the Chartered Accountant Act 1949 and not guilty of 'Other Misconduct' under clause (2) of Part IV of the First Schedule to the said Act.

Sd/-



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(CA. PRAFULLA P. CHHAJED)

PRESIDING OFFICER

Sd/-

(SH. RAJEEV KHER, I.A.S. (Retd.))

GOVERNMENT NOMINEE

Sd/-

(CA. AMARJIT CHOPRA)

GOVERNMENT NOMINEE

Sd/-

(CA. MANGESH P. KINARE)

MEMBER

DATE : 05th February, 2019.

PLACE : New Delhi