

**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.PR-271/13-DD/266/2013 &
PR- 270/13-DD/265/2013/DC/600/2017]**

In the matter of:

**Shri Jawahar Lal Goel,
Near Anil Dairy House,
Gali No.4, Pradhuman Nagar,
Saharanpur – 247 001**

...Complainant

Versus

**CA. Pankaj Kumar (M.No.508433)
C-586, LGF,
Defence Colony,
New Delhi – 110 024**

.....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. Dayaniwas Sharma, Member**

DATE OF FINAL HEARING/ORDER : 28.08.2019

PLACE OF FINAL HEARING/ORDER : ICAI, New Delhi

PARTIES PRESENT:

Complainant : Not Present

Respondent : CA. Pankaj Kumar

Brief of the Disciplinary Committee proceedings:-

1. The Committee noted that first hearing in the above matter was fixed on 23rd May, 2019. The notice of hearing was duly sent to the Complainant and the Respondent. However, the said hearing was adjourned at the request of the Respondent.

1.1 The Committee noted that on the day of next hearing held on 28th August, 2019, neither the Complainant nor his authorised Counsel was present. The Respondent was present. Since there was no prior intimation from the Complainant about his absence and there was no request for adjournment of hearing, the Committee decided to proceed ahead with the proceedings. Thereafter, the Respondent was put on oath. On being enquired from the Respondent as to whether he is aware of the charges leveled against him, the Respondent replied in affirmative and pleaded not guilty to the charges. The Respondent made submissions on the charges. The Committee also raised questions to the Respondent. After hearing the final submissions, the Committee decided to conclude the hearing.

CHARGES IN BRIEF AND FINDINGS OF THE DISCIPLINARY COMMITTEE:-

2. In this case, the Respondent audited the books of accounts of Shivalik Cotex Limited for the financial years 2006-07 to 2012-13. The Complainant made number of charges against the Respondent in his complaint but the Respondent was held prima facie guilty in respect of one charge only as mentioned in para no.8.4 of the Prima Facie Opinion. As per para 8.4 of the Prima Facie Opinion, the charge against the Respondent was that he as auditor of Shivalik Cotex Limited (hereinafter referred to as the “**Company**”) failed to disclose / report preferential allotment of shares to the related parties in the financial year 2010-11, 2011-12 and 2012-13 though the Annual Returns and Form 2 for allotment of shares were accessible to the Respondent.

3. In respect of above charge, the Respondent in his defence made the following submissions:-

3.1. The Complainant filed the complaint against him out of his personal grudge with other managerial personnel. The Complainant was a director of the Company till December 2009 and holding 3% shares of the Company.

3.2 Financial Statements were prepared by the management of the Company and not by the Statutory Auditor. The role of a Statutory Auditor is limited to the extent of giving their fair comments on the financial position of a Company and they are not involved in preparing the accounts of the Company. Under the XBRL format, the financials of a Company which

are attached are not physically signed. The Company data along with financial position is submitted to the government in a computer readable format (i.e., XBRL) for easy evaluation by the authorities. Since a soft copy of the financial statement is uploaded with XBRL filing, there are high chances of risk of mistake being committed at the time of filing.

3.3 The Respondent stated that at the time of XBRL filing by the Company for the years 2010-11, 2011-12 and 2012-13, the signed audited financial statements / audit report were not attached with the relevant forms. The attached financials wherein the preferential allotment of shares were not reported, were not signed by the Statutory Auditors and were uploaded on the MCA portal signed as sd/-. Hence, in such a scenario, inadvertent typing errors are bound to happen and it is unreasonable to hold the Statutory Auditors liable for such error on the part of the Company and its representatives. The Respondent cannot be held accountable for unsigned and unstamped financials.

3.4. The Respondent has been performing their duties with utmost competence by giving the appropriate qualifications, wherever necessary, in the audit reports of the Company for F.Y. 2006-07 to 2014-15. The Respondent provided copy of audit reports of the Company for F.Y. 2010-11 to 2014-15. The Respondent further stated that from a perusal of the said audit reports, it is noticeable that he has given required qualifications in the Audit report of financial years 2010-11 to 2012-13 whereas at the time of filing, only XML file had been attached.

4. On perusal of the Form 2, the Committee noted that the Company had allotted new equity shares on 15th February, 2011, 31st March, 2012 and 31st March, 2013. These shares were allotted to the directors of the Company. As per sd/- copy of financial statement filed with the ROC by the Company, the Company has not made any preferential allotment of shares to companies, firms and parties covered in the register maintained under Section 301 of the Companies Act, 1956. In this regard, the defence of the Respondent was that the preparation of the financial statement is the responsibility of the management and filing of financials with ROC was done by the Company and not by him. He also stated that while filing the financial statements with ROC, an error took place and the word "not" was inadvertently inserted and this error resulted in misrepresentation that that the Company has not made any preferential allotment of shares.

4.1 The Committee perused the signed copy of financial statements for the financial years 2010-11 to 2012-13 and noted that in the copy of the financial statements signed by the Respondent, it was duly mentioned that the Company has made preferential allotment of

shares to companies, firms and parties covered in the register maintained under Section 301 of the Companies Act, 1956. Further, the Respondent brought on record affidavit of director, Shri Summit Gupta wherein it was mentioned that the Company had undertaken preferential allotment of shares for the financial years 2010-11, 2011-12 and 2012-13 and the word "not" in point no.(xix) had been inadvertently edited as typographical error while supplying soft copy for XBRL by the stenographer who was an employee of the Company. The uploading of the said financials on the ROC portal in XBRL format was done by the Company. It further mentioned that in the signed audit report sent to the shareholders, it was duly mentioned that there was preferential allotment of shares.

4.2 In view of above facts, the Committee noted that audit reports signed by the Respondent duly contains that the Company has issued preferential allotment of shares to the companies, firms and parties covered in the registered maintained under Section 301 of the Companies Act, 1956. However, due to error on the part of the employee of the Company, the word "not" was inadvertently inserted in point no.(xix) (Under CARO 2003 reporting) of the sd/- copy of the audit reports and for the same, the Respondent cannot be held responsible at all. Accordingly, the Committee decided to hold the Respondent not guilty of professional misconduct falling within the meaning of Clause (7) of Part I of Second Schedule to the Chartered Accountants Act, 1949.

Conclusion:-

5. Thus in the considered opinion of the Committee, the Respondent is **Not GUILTY** of professional misconduct falling within the meaning of Clause (7) of Part I of Second Schedule to the Chartered Accountants Act, 1949.
- 5.1 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.))
MEMBER

Sd/-
(CA. DAYANIWA SHARMA)
MEMBER

DATE: 03rd February, 2020
PLACE : New Delhi