



THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA

(Set up by an Act of Parliament)

[PR/100/2015/DD/100/15/DC/518/2017]

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:

Shri Rakesh Gupta,
B-11, Mayfair Garden,
New Delhi.

&

Shri Umesh Kumar,
KA-88, Kavi Nagar,
Ghaziabad.

Versus

CA. Chander Prakash Sharma, (M. No. 091630)
Shri Ghanshyam Dass Maharshi House,
Near the Old Post Office, Sadulpur,
Sadulpur (Raj)-331 023

[PR/100/2015/DD/100/15/DC/518/2017]

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. Chander Prakash Sharma (M.No.091630)** (hereinafter referred to as the “**Respondent**”) was **GUILTY** of professional misconduct falling within the meaning of Clauses (7) of Part I of the Second Schedule to the Chartered Accountants Act, 1949.

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 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.



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

[PR/100/2015/DD/100/15/DC/518/2017]

3. Further, on 09th July, 2019, the Committee noted that the Respondent was not present, however, he has made written submissions dated 15/04/2019 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 earlier Committee, which is as under:-

4.1 The Respondent fraudulently appointed both the Complainants as the Managing Director & Director respectively of M/s. Evinix Industries Limited (hereinafter referred as **the Company**) w.e.f. 10.1.2015 & 05.01.2015 in connivance with Mr. Krishan M. Gupta and Mr. Jatin Sharma. The Complainants had never given their consent to act as a Director/Managing Director of the Company. In Form DIR 12 filed for the Complainants appointment, an unsigned and undated consent letter had been attached. No Board Meeting / Acceptance by Board had been held for said appointments.

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 written statement of the Respondent dated 23/09/2015 noted that he has submitted that he had no reason to doubt the genuineness of the documents that were shown to him by Mr. Krishan M. Gupta. In his contention, he mentioned that there can be room for controversy in a case of resignations by the Directors and not with appointment of new directors. He has also contended that in this case, resigning director approached him, hence he had no reason to doubt anything wrong.

5.2 The Committee noted that the Respondent has failed to submit certified copies of documents verified by him such as Board Resolution, consent of the Directors appointed and/or other documents before certifying DIR-12. However, Shri Krishan Murari Gupta vide above affidavit has taken the responsibility to have shown all these documents to the Respondent before certifying Form DIR – 12. However, the Committee noted that the Respondent did not



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

[PR/100/2015/DD/100/15/DC/518/2017]

have any working papers, copies of these documents and so the Respondent has failed to provide necessary evidences to negate the charges.

5.3 Further, the Committee noted that the Respondent vide his letter dated 23rd September, 2015 addressed to ROC has stated that certification done on DIR-12 be treated as invalid as his signature is apprehended to have been obtained through misrepresentation of facts. This letter on the part of the Respondent appears to be an afterthought and though it is a corrective step adopted by the Respondent, the same by itself cannot absolve him of having certified without verification of requisite documents.

5.4 Moreover, the Committee noted a fact that the subject Company is located at Faridabad and resigning/appointing Directors are based in Delhi, whereas, the Respondent is Sadulpur (Rajasthan) based Chartered Accountant. In such scenario how it is possible that Shri Krishan M Gupta visited Sadulpur office of the Respondent with original documents for certifying Form DIR – 12 and also what was necessity to go so far for such work. Further, it is also on record that the Respondent was approached through Ms. Bhawna Salwan, Company Secretary for certifying these documents. The Committee noted the said professional is herself authorized to certify DIR – 12, then why the Respondent was approached through her.

5.5. Furthermore, the Committee noted that the Respondent failed to file his defence on the charges as directed by it in its meeting held on 15/01/2019. He vide letter dated 23/01/2019 has submitted that *“he had engaged new Counsel to submit affidavit of Shri K.M. Gupta which was available with him since his case file with his Counsel CA. C.V. Sajan and could not be returned to him as he was not available till 31st January, 2019 as already informed by him to the Institute”*.

On other side, the Complainant has submitted an affidavit dated 25/01/2019, stating as under:-

“He was not shareholders of M/s. Evinix Industries Limited and was Director for a short period of time during year 2009 and had resigned as he had found that there was mis-management in the Company, Thereafter, he never been associated with the Company in any manner.

That on 06.02.2015, he shocked and startled after receiving telephone calls and people coming to him for recovery of dues stating that he has become the Director of said Company.



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

[PR/100/2015/DD/100/15/DC/518/2017]

When he surfed the website of the Ministry of Corporate Affairs, he came to know that he has been fraudulently appointed as Director w.e.f. 05.01.2015. On a detailed inspection of the documents available at the website, he came to know of the fraud committed by Mr. Krishan Murari Gupta and the Respondent.

He had never given his consent to act as a Director of the Company. In Form DIR 12 filed for his appointment, an unsigned and undated consent letter has been attached. He had neither attended any Board meeting of the company nor had given his consent to be appointed as Director”.

6. On the basis of above, the Committee was of the view that the Respondent appears to have adopted a casual approach by signing DIR-12 without ascertaining/verifying the relevant records. Hence, he failed to exercise due diligence, which is generally expected from a professional while certifying the facts and statements.

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. Chander Prakash Sharma (M.No.091630) 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



THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA

(Set up by an Act of Parliament)

[PR/100/2015/DD/100/15/DC/518/2017]

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 100/2015-DD/100/2015-DC/518/2017]

In the matter of:

Shri Rakesh Gupta,

B-11, Mayfair Garden,

New Delhi.

&

Shri Umesh Kumar,

KA-88, Kavi Nagar,

Ghaziabad.

.....Complainant

Versus

CA. Chander Prakash Sharma, (M. No. 091630)

Shri Ghanshyam Dass Maharshi House,

Near the Old Post Office, Sadulpur,

Sadulpur (Raj)-331 023

.....Respondent



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

[PR/100/2015/DD/100/15/DC/518/2017]

MEMBERS PRESENT:

CA. Prafulla P. Chhajed, Presiding Officer
Shri Rajeev Kher, Government Nominee
CA. Mangesh P. Kinare, Member

CA. Sushil Kumar Goyal, Member

DATE OF FINAL HEARING : 15.01.2019

PLACE OF FINAL HEARING : ICAI Bhawan, New Delhi

PARTIES PRESENT:

Complainant : Shri Umesh Kumar
Counsel for the Complainant : Shri Sunil Sharma, Company Secretary
Counsel for Respondent : Shri J. Lal, Advocate

Charges in Brief:-

1.1 The Respondent fraudulently appointed both the Complainants as the Managing Director & Director respectively of M/s. Evinix Industries Limited (hereinafter referred as **the Company**) w.e.f. 10.1.2015 & 05.01.2015 in connivance with Mr. Krishan M. Gupta and Mr. Jatin Sharma.

1.2 The Complainants had never given their consent to act as a Director/Managing Director of the Company. In Form DIR 12 filed for the Complainants appointment, an unsigned and undated consent letter had been attached. No Board Meeting / Acceptance by Board had been held for said appointments.



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

[PR/100/2015/DD/100/15/DC/518/2017]

Brief facts of the Proceedings:

2. On the day of hearing, the Committee noted that the Complainant alongwith his Counsel and the Counsel for the Respondent were present and appeared before it. The Complainant was put on oath.

The Counsel for Complainant explained the charges. The Counsel for the Respondent stated that the Respondent has appointed CA. C.V. Sajan his Counsel, however, as informed earlier he is not available today. Hence, he has been appointed just a day before for this case by the Respondent.

The Committee directed him as he has valid authorization from the Respondent, so he may defend the charges. The Counsel for the Respondent submitted an affidavit of Shri Krishan Murari Gupta (brother of Shri Rakesh Gupta), Director of the Company.

The Counsel for the Respondent gave his submissions on the charges. After recording submissions of the Counsel for Respondent, the Committee gave both the parties 10 days time to file their final submissions, if any, with a copy to each other.

With above directions, the Committee concluded the hearing in the captioned matter.

Findings of the Committee:

3. On perusal of papers on record, the Committee noted that in the Form DIR-12 used for appointment of directors filed with Registrar of Companies, the Respondent has certified the appointments of the Complainants as Directors of the Company. Further, the DIR – 12 in case of Shri Rakesh Gupta has been signed by Shri Umesh Kumar, Director (one of the complainant of this complaint). However, DIR-12 for the appointment of Shri Umesh Kumar (one of the Complainant of this complaint) has been signed by Shri Kishan M. Gupta (brother of Shri Rakesh Gupta).



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

[PR/100/2015/DD/100/15/DC/518/2017]

4. The Counsel for the Respondent submitted an affidavit dated 14/01/2019 of Shri Krishan Murari Gupta (brother of Shri Rakesh Gupta). The Committee noted the contents of the said affidavit, which are as under:-

4.1 *“He was Director of the Company for period 01/07/2009 to 07/01/2015 and on 05/01/2015, a board meeting was held in presence of Shri Rakesh Gupta (his brother) and Shri Umesh Kumar for purpose of reconstruction of board and it was decided that:*

(a) Mr. Umesh Kumar be admitted as a director w.e.f. 05/01/2015.

(b) Mr. Krishna Murari Gupta may resign w.e.f. 07/01/2015 from the post of Managing Director.

(c) Shri Rakesh Gupta be admitted as Managing Director w.e.f. 10/01/2015 and

(d) Shri Ajit Kumar Doshi may resign w.e.f. 10/01/2015 from the Board of Directors.

4.2 *In order to complete the filing formalities in ROC, he has approached the Respondent through CS. Bhawna Salwan to certify necessary Form DIR – 12.*

4.3 *He confirmed that he had shown original consent letter of Mr. Rakesh Gupta and Mr. Umesh Kumar duly signed by him to act as Managing Director/Director respectively of the Company.*

4.4 *He confirmed that he had also produced certify copy of Board resolution dated 05/01/2015 to the Respondent approving appointment of Mr. Rakesh Gupta and Umesh Kumar as Managing Director/Director of the Company..*

4.5 *On the basis of these documents, the Respondent had certified Form DIR – 12 for appointment of Mr. Rakesh Gupta and Umesh Kumar.*

4.6 *All these documents were retained at the Company’s office for the purpose of official records after same was verified by the Respondent.*

4.7 *Thereafter, Mr. Rakesh Gupta (his brother) and Mr. Umesh Kumar (brother-in-law of Mr. Rakesh Gupta) have been in charge of affairs of the Company.*

4.8 *That the Respondent demanded copies of the documents like consent letters, board resolution and other related documents for filing with ICAI, and when he (Shri Krishna M. Gupta)*



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

[PR/100/2015/DD/100/15/DC/518/2017]

requested Mr. Rakesh Gupta to share the documents he claimed that no such documents existed.

4.9 Mr. Rakesh Gupta and Mr. Umesh Kumar in order to implicate him have destroyed the Company's record and putting blame on him".

5. The Committee on perusal of the written statement of the Respondent dated 23/09/2015 noted that he has submitted that he had no reason to doubt the genuineness of the documents that were shown to him by Mr. Krishan M. Gupta. In his contention, he mentioned that there can be room for controversy in a case of resignations by the Directors and not with appointment of new directors. He has also contended that in this case, resigning director approached him, hence he had no reason to doubt anything wrong.

6. The Committee noted that the Respondent has failed to submit certified copies of documents verified by him such as Board Resolution, consent of the Directors appointed and/or other documents before certifying DIR-12. However, Shri Krishan Murari Gupta vide above affidavit has taken the responsibility to have shown all these documents to the Respondent before certifying Form DIR – 12. However, the Committee noted that the Respondent did not have any working papers, copies of these documents and so the Respondent has failed to provide necessary evidences to negate the charges.

7. Further, the Committee noted that the Respondent vide his letter dated 23rd September, 2015 addressed to ROC has stated that certification done on DIR-12 be treated as invalid as his signature is apprehended to have been obtained through misrepresentation of facts. This letter on the part of the Respondent appears to be an afterthought and though it is a corrective step adopted by the Respondent, the same by itself cannot absolve him of having certified without verification of requisite documents.

8. Moreover, the Committee noted a fact that the subject Company is located at Faridabad and resigning/appointing Directors are based in Delhi, whereas, the Respondent is Sadulpur



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

[PR/100/2015/DD/100/15/DC/518/2017]

(Rajasthan) based Chartered Accountant. In such scenario how it is possible that Shri Krishan M Gupta visited Sadulpur office of the Respondent with original documents for certifying Form DIR – 12 and also what was necessity to go so far for such work. Further, it is also on record that the Respondent was approached through Ms. Bhawna Salwan, Company Secretary for certifying these documents. The Committee noted the said professional is herself authorized to certify DIR – 12, then why the Respondent was approached through her.

9. Furthermore, the Committee noted that the Respondent failed to file his defence on the charges as directed by it in its meeting held on 15/01/2019. He vide letter dated 23/01/2019 has submitted that *“he had engaged new Counsel to submit affidavit of Shri K.M. Gupta which was available with him since his case file with his Counsel CA. C.V. Sajan and could not be returned to him as he was not available till 31st January, 2019 as already informed by him to the Institute”*.

On other side, the Complainant has submitted an affidavit dated 25/01/2019, stating as under:-

“He was not shareholders of M/s. Evinix Industries Limited and was Director for a short period of time during year 2009 and had resigned as he had found that there was mis-management in the Company, Thereafter, he never been associated with the Company in any manner.

That on 06.02.2015, he shocked and startled after receiving telephone calls and people coming to him for recovery of dues stating that he has become the Director of said Company.

When he surfed the website of the Ministry of Corporate Affairs, he came to know that he has been fraudulently appointed as Director w.e.f. 05.01.2015. On a detailed inspection of the documents available at the website, he came to know of the fraud committed by Mr. Krishan Murari Gupta and the Respondent.

He had never given his consent to act as a Director of the Company. In Form DIR 12 filed for his appointment, an unsigned and undated consent letter has been attached. He had neither attended any Board meeting of the company nor had given his consent to be appointed as Director”.



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

[PR/100/2015/DD/100/15/DC/518/2017]

10. On the basis of above, the Committee was of the view that the Respondent appears to have adopted a casual approach by signing DIR-12 without ascertaining/verifying the relevant records. Hence, he failed to exercise due diligence, which is generally expected from a professional while certifying the facts and statements.

Conclusion

11. 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.

Sd/-
(CA. PRAFULLA P. CHHAJED)

PRESIDING OFFICER

Sd/-
(SH. RAJEEV KHER, I.A.S. (Retd.))
GOVERNMENT NOMINEE

Sd/-
(CA. MANGESH P. KINARE)
MEMBER

Sd/-
(CA. SUSHIL KUMAR GOYAL)

MEMBER

DATE: 05th February, 2019

PLACE : New Delhi