

**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.**

**[Ref. No. PR- 190/15-DD/177/2015/DC/803/18]**

**In the matter of:**

**Shri Mukesh Arneja**

C-1/21, First Floor

Model Town

**New Delhi – 110 009**

.....Complainant

**Versus**

**CA. Anil Kumar Somani**

8, First floor, Rani Jhansi Road

Motia Khan Industrial Area

**New Delhi- 110055**

.....Respondent

**MEMBERS PRESENT:**

**SHRI JUGAL KISHORE MOHAPATRA, I.A.S.(RETD.), GOVT. NOMINEE & PRESIDING OFFICER**

**MS. RASHMI VERMA, I.A.S. (RETD.), GOVERNMENT NOMINEE,**

**CA. BABU ABRAHAM KALLIVAYALIL, MEMBER**

**CA. DAYANIWAS SHARMA, MEMBER**

**DATE OF FINAL HEARING : 17.10.2019 (Decision taken on 21.11.2019)**

**PLACE OF FINAL HEARING : ICAI, New Delhi**

**PARTIES PRESENT:**

**Respondent : CA. Anil Kumar Somani**

**Counsel for the Respondent : Shri Arun Saxena, Advocate**

**BRIEF OF THE DISCIPLINARY PROCEEDINGS:-**

1. The Committee noted that on the day of hearing held on 17<sup>th</sup> October, 2019, neither the Complainant nor his Counsel was present. The Respondent along with his Counsel was present. The Committee noted that there was an e-mail from the Complainant wherein he stated that he does not have any further evidence to provide in the matter and accordingly, he would not be attending the hearing in the matter. 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 Counsel for the Respondent decided to make his submissions. Thereafter, the Counsel for the Respondent made submission 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. The Committee noted that the Respondent was the statutory auditor of Mohindra Fasteners Limited (hereinafter referred to as the “**Company**”) for financial years 2010-11, 2011-12, 2012-13 and 2013-14. The Complainant pointed out certain discrepancies in the financial statements of the Company for the aforesaid years pertaining to non-compliances of disclosure requirements of various accounting standards applicable to the Company. The Complainant in his original complaint made number of charges against the Respondent but only in respect of charges related to violation of accounting standards as mentioned in paras no.7.3, 7.4, 7.5, 7.6, 7.7 and 7.9 of the Prima Facie Opinion, he was held prima facie guilty. Accordingly, the Committee considers only those charges on which the Respondent was held prima facie guilty and referred for further enquiry to the Committee.

3. The Committee noted that in respect of following charges, the Respondent was held prima facie guilty:-

- i) The Company has received a Capital Subsidy aggregating to Rs. 15 lakh in the financial year 2010-11. However, the Respondent had failed to disclose the accounting policies adopted towards the treatment of the said Capital subsidy post financial year 2010-11.

ii) The Respondent had failed to disclose the accounting policies as well as related disclosure for the office premises and the vehicles taken on lease during financial years 2010-11 to 2013-14.

iii) The Respondent had failed to disclose the cost formula used for valuation of inventories and Revenue Recognition policy adopted for dividend was also not disclosed.

iv) Neither the party-wise disclosures of related party transactions nor payments made to directors and their relatives for travelling abroad had been disclosed in related party disclosures in the financial statement for financial years 2010-11 to 2013-14.

v) The Company had advanced a loan of Rs. 7.50 lakh on 19.04.2011 to its related party Mohindra Sales Private Limited (**MSPL**) and said amount was used by MSPL on 21.04.2011 to purchase equity shares of the Company from IFCI Venture Capital Funds Limited by way of a cheque no 015060 of Rs. 7.75 lakh drawn on Axis bank. It is stated that the Respondent had failed to disclose and qualify his report in respect of violation of Section 77 of Companies Act, 1956 and SEBI (Buy-Back of securities) Regulations, 1998.

vi) The Respondent has not qualified his Audit Report in respect of failure by the Company to disclose details of Intangible Assets as per AS-26. The Company had not disclosed the method used and useful lives of the Computer software held by the Company in Financial years 2011-12, 2012-13 and 2013-14.

4. In respect of first charge relating to capital subsidy aggregating to Rs.15 lakh, the Respondent stated that the Company had made a provision for subsidy to be received from the Government of Rs.15 lakh in the year of 1998-99, which was properly disclosed in the Balance Sheet. The said subsidy was actually received in the year 2007-08. Therefore, no subsidy was received during the year 2010-11 as alleged. Since no subsidy received after the year 2007-08, it was not required to make any disclosure under AS-12.

4.1 In respect of above charge, the Committee observed that the above charge is related to violation of disclosure requirement of Accounting Standard - 12 on "**Accounting for**

**Government Grants”**. As regard the relevant disclosure requirement under AS-12, it is noted that the following disclosure are required to be given in the financial statements in respect of capital subsidy / grant received by the Company:-

- (i) the accounting policy adopted for government grants, including the methods of presentation in the financial statements;*
- (ii) The nature and extent of government grants recognised in the financial statements, including grants of non-monetary assets given at a concessional rate or free of cost.*

It is also noted that Government grants of the nature of promoters' contribution should be credited to capital reserve and treated as a part of shareholders' funds.

- 4.2 Upon perusal of the documents on record, it is noted that in the financial year 2010-11, Capital Subsidy has been shown under the head Capital Reserve. Further, in subsequent years i.e. 2011-12 to 2013-14, Capital Reserve has been shown at the same amount without any change in the figures which indicates that amount of Capital subsidy was duly included in Capital Reserve as per requirement of AS-12. Though it is felt that the Company should have mentioned in Notes to Accounts for subsequent years 2011-12 that they have not received any grant in the current year, accordingly, the same is not recognized, yet in view of the fact that there was no evidence on record to show that grant was received in the subsequent years also and in view of the fact that it was not affecting true & fair view of the financial statement of the Company for the subsequent years, the Committee decided to extend benefit to the Respondent. Accordingly, it decided to hold the Respondent Not Guilty in respect of above charge related to capital subsidy.
5. As regard the next charge relating to failure to disclose the accounting policies as well as related disclosure for the office premises and the vehicles taken on lease during financial years 2010-11 to 2013-14, the Respondent stated that the Company purchased office from M/s. Dimension Properties (P) Ltd under Builder Buyer agreement. The builder constructed building on lease hold land but office was not taken on lease. In support of evidence, the Respondent provided copy of purchase agreement of the office. The Respondent further stated that since vehicles were also purchased under hire-purchase agreement, AS-19 was not applicable on the same.

- 5.1 On perusal of Builder Buyer agreement brought on record by the Respondent, the Committee noted that the building was not taken on lease. *However, it is noted that word "leasehold office premises" has been used in the fixed assets schedule which appears to be a clerical mistake in the schedule. Further, it is noted that there was no documents on record to show that vehicle was purchased on Lease.*
- 5.2 Considering all the above facts, the Committee is of the view that there was nothing on record to show that building and vehicle was taken on lease and accordingly, there was no requirement for the Company to give disclosure under AS-19 in respect of Building and vehicle as claimed by the Complainant in his allegation. Thus, the Respondent is Not Guilty of professional misconduct with respect to above charge.
6. As regard the next charge related to the non-disclosure of cost formula used for valuation of inventories and Revenue Recognition policy adopted for dividend, the Respondent stated that the method of valuation of inventories as well as accounting policy adopted for recognition of dividend income had been properly disclosed in the Notes to Accounts under significant accounting policies. In respect of above charge, the Committee noted that as per requirement of Accounting Standard – 2 on "**Valuation of Inventories**", the financial statements should disclose: (a) the accounting policies adopted in measuring inventories, including the cost formula used; and (b) the total carrying amount of inventories and its classification appropriate to the enterprise.
- 6.1 Keeping in view the above requirement of Accounting Standard -2, the Committee perused disclosures given in the Notes to Accounts of the financial statements and found them to be in line with the disclosure requirement of Accounting Standard – 2. Further, as regard the charge related to disclosure of revenue recognition policy, it is noted that as per disclosure requirement of Accounting Standard – 9, it is noted that "*Dividends from investments in shares are not recognised in the statement of profit and loss until a right to receive payment is established*". The said accounting policy for recognition of dividend was duly given in the Notes of Accounts under significant accounting policy. Accordingly, the Committee decided to hold the Respondent not guilty with respect to above charge.

7. As regard the next charge relating to non- disclosure of related party transactions in the financial years 2010-11 to 2013-14, the Respondent stated that he had disclosed related party transactions as per requirement of AS-18 in each annual reports of financial year 2010-11, 2011-12, 2012-2013 and 2013-14 and as regards the payments made to directors and their relatives, he submitted that the same had been included in the travelling expenses.

7.1 On perusal of relevant disclosure requirement of AS-18 on “**Related Party Transactions**”, it is noted that following disclosures are required to be given in the financial statements:-

*“If there have been transactions between related parties during the existence of a related party relationship, the reporting enterprise should disclose the following:*

*(i) The name of the transacting related party;*

*(ii) A description of the relationship between the parties;*

*(iii) A description of the nature of transactions;*

*(iv) Volume of the transactions either as an amount or as an appropriate proportion;*

*(v) Any other elements of the related party transactions necessary for an understanding of the financial statements;*

*(vi) The amounts or appropriate proportions of outstanding items pertaining to related parties at the balance sheet date and provisions for doubtful debts due from such parties at that date; and*

*(vii) Amounts written off or written back in the period in respect of debts due from or to related parties”*

7.2 Keeping in view the above requirement of Accounting Standard -18, the Committee perused disclosures given in the Notes to Accounts of the financial statements of the Company and found them to be in line with the disclosures requirement of Accounting Standard – 18. Accordingly, the Committee decided to hold the Respondent Not Guilty with respect to above charge.

8. As regard the next charge related to loan given to another Company for purchase of its own share, the Committee noted that the Company had advanced a loan of Rs. 7.50 lacs on 19.04.2011 to its related party Mohindra Sales Private Limited (MSPL) and said

amount was used by MSPL on 21.04.2011 to purchase equity shares of the Company from IFCI Venture Capital Funds Limited by way of a cheque no 015060 **(C-252)** of Rs. 7.75 lacs drawn on Axis bank **(C-250)**. It is stated that the Respondent had failed to disclose and qualify his report in respect of violation of Section 77 of Companies Act, 1956 and SEBI (Buy-Back of securities) Regulations, 1998.

- 8.1 The Respondent in his defence stated that complaint on similar ground was made with SEBI and SEBI has closed the same without any action against the Company or the Respondent. In support of his defence, the Respondent provided copy of status report of the said SEBI case. The Committee noted that the Company in its reply to the SEBI stated that MSPL had given loan of Rs.71 lakh to the Company in the year 2009 and the Company repaid the said loan in the year 2011 in various installments. Hence, amount given by the Company was not used for the purchase of its own shares. The Committee further noted that the SEBI did not take any action against the Company and disposed the complaint vide order dated 03.09.2015. Further, the Complainant could not bring on record any evidence to show that amount given by the Company was not in fact repayment of loan. In absence of any evidence in support of the charge, the Committee decided to hold the Respondent Not Guilty with respect to above charge.
9. In next charge, it was alleged that the Respondent has not qualified his audit report in respect of failure of the Company to disclose details of Intangible Assets as per Accounting Standard - 26. The Company had not disclosed the method used and useful lives of the Computer software held by the Company in financial years 2011-12, 2012-13 and 2013-14.
- 9.1 In respect of above charge, the Committee observed that the Director (Discipline) found the Respondent not guilty with respect to this charge. The Respondent stated that Intangible assets were computer software and it was shown and disclosed properly in the Schedule to the Fixed Assets and depreciation was also charged on the same which shows the manner and the way in which it was amortised by the Company. In respect of relevant requirement of AS-26 on Intangible Assets *“the financial statements should disclose the following for each class of intangible assets, distinguishing between internally generated intangible assets and other intangible assets:*

(a) *The useful lives or the amortisation rates used;*

(b) *The amortisation methods used;*

9.2 In view of the above requirement, the Committee is of the view that the Respondent was required to mention useful lives or amortization rates and he was also required to mention method used for amortization but the same was neither mentioned in the financial statements nor in the Notes to Accounts. However, keeping in view, the amount involved in the charge ( i.e. Rs. 6.53 lakh only) which does not appear to be material when compare with size of the balance sheet of Rs. 7293 lakh, the Committee decided to extend benefit to the Respondent. Accordingly, the Respondent is Not Guilty with respect to above charge.

**Conclusion:-**

10. Thus in the considered opinion of the Committee, the Respondent is **NOT GUILTY** of Professional Misconduct falling within the meaning of Clauses (5) & (6) of Part I of Second Schedule to the Chartered Accountants Act, 1949.

10.1 Accordingly, in terms of Rule 19 (2) of the Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007, the Committee passes Order for closure of this case against the Respondent.

**Sd/-**  
**(SHRI JUGAL KISHORE MOHAPATRA, I.A.S.(RETD.))**  
**GOVERNMENT NOMINEE & PRESIDING OFFICER**

**Sd/-**  
**(CA. BABU ABRAHAM KALLIVAYALIL)**  
**MEMBER**

**Sd/-**  
**(MS. RASHMI VERMA, I.A.S. (RETD.))**  
**GOVERNMENT NOMINEE**

**Sd/-**  
**(CA. DAYANIWAS SHARMA)**  
**MEMBER**

**DATE : 03<sup>rd</sup> February, 2020.**  
**PLACE : NEW DELHI**