

CONFIDENTIAL

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

[Constituted under section 21B of the Chartered Accountants Act, 1949]
Findings under Rule 18(17) read with 19(2) of the Chartered Accountants
(Procedure of Investigations of Professional and Other Misconduct and
Conduct of Cases) Rules, 2007

File no. : PPR/P/38/2016-DD/43/INF/16-DC/832/2018

In the matter of:

CA. Damodar Prasad Agarwal (M.No.035500)

4-B, Bilquees Mansion,
4th Floor,
261/263, Dr. D.N. Road,
Fort
Mumbai- 400001

.....Respondent

Members Present :

CA. Prafulla Preme Sukh Chhajed, Presiding Officer

Smt. Anita Kapur, Member (Govt. Nominee)

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

CA. Manu Agrawal, Member

Date of Final Hearing: 21st August, 2019

Place of Final Hearing: Mumbai

Parties Present :

CA. Damodar Prasad Agarwal – Respondent
(along with his daughter Ms. Priyal Agarwal for his assistance)

Allegations of the Assistant General Manager (AGM), Reserve Bank of India (RBI) :

1. The Informant in its letter has stated that the Respondent was the statutory auditor of Aadhaar Ventures India Limited (hereinafter referred to as the “**Company**”), a Non-Banking Finance Company and had given Statutory Auditor’s Certificate (SAC) in respect of the Company for the Financial Years 2012-13, 2013-14 and 2014-15. The Informant has alleged that the Company, a Non-Banking Finance Company, did not fulfill Principal Business Criteria (PBC) for the years 2012-13, 2013-14 and 2014-15. The Respondent, who was auditor of the Company, did not submit the exception report as regard the failure of the Company to fulfill Principal Business Criteria for the aforesaid years. The financial income of the Company was 0.68%, 4.43% and 1.33% for the years 2012-13 2013-14 and 2014-15 respectively (**A-199 to A-201**). Further, in spite of the Company having failed to meet Principal Business Criteria, the Respondent had certified that the Company continued the NBFBI business and was required to hold Certificate of Registration (COR).

Proceedings :

2. At the outset, the Committee noted that the Respondent was present during the hearing of the matter on 21.08.2019. Since it was the first hearing in the matter, the Respondent was put on oath. Thereafter, the Committee asked the Respondent whether he wished the charges be read out or these could be taken as read. The Respondent stated that he was aware of the allegation raised against him and the same might be taken as read. On being asked as to whether he pleaded guilty, he pleaded not guilty and decided to defend his case. The Respondent was examined on the submissions made by him. Accordingly, upon consideration of all the documents/ information available on record as well as written/oral submissions, the case was heard and concluded by the Committee.

Findings of the Committee :

3. The Committee noted that the charge alleged against the Respondent was that the Certificate issued by the Respondent was showing the financial assets more than 50% but income from Financial Assets was much lower at 0.68% for 2012-13, 4.43% for 2013-14 and 1.33 for 2014-15 and accordingly, the Company was not fulfilling

principal business criteria as set by the RBI to carry on the business of NBF . Thus, the Respondent was required to mention the aforesaid fact in his Exception Report to the RBI but the Respondent failed to submit Exception Report and on the contrary in his certificate he mentioned that the Company continued the business of NBF and was required to hold the COR. Such allegations were made for the certificate issued for financial years 2012-13, 2013-14 and 2014-15.

4. The Committee noted that the Respondent had submitted that the Company was registered as an NBFC in terms of Section 45IA of RBI Act 1945 and he was the statutory auditor of the Company for the F.Y. 2012-13 to 2014-15. He denied the allegations leveled against him and stated that the it was a bona fide error as he was under the impression that the income from Investments and financial assets was to be compared with net income as opposed to gross income and also contended that the certificate issued by him contained all the correct figures as per Balance sheet and P&L Account and there was no misstatement. Furthermore, the Respondent had admitted to have erred which as per his contention, had caused no grievance or loss to any individual.

5. The Committee in this regard noted that the following observations given in the Code of Ethics as issued by the ICAI:-

“Professional misconduct on the part of a person practicing one of the technical professions cannot fairly or reasonably be found merely on a finding of a bare non-performance of a duty or some default in performing it. The charge is not one of inefficiency but of misconduct. Imputation of certain mental condition is always involved. The test must always be whether in addition to the failure to do the duty, there has also been a failure to act honestly and reasonably. “

“The misconduct implies failure to act honestly and reasonably either according to the ordinary and natural standard or according to the standard of a particular profession”.

6. Thus in light of the above, the Committee was of the considered view that since the Respondent had admitted that it was a bona fide mistake on his part which could not be construed to be a “professional misconduct” unless in addition to the failure to do the duty there was a failure to act honestly and reasonably. It was viewed that a bare non-performance of a duty or some default in performing it, was not sufficient to

arrive at a finding of professional misconduct. In the instant case, the Respondent had claimed the mistake to be bona fide and unintentional error. His submission of comparing the financial income with net income rather than gross income could be taken as reasonable error, which had caused no loss to any individual. Accordingly, in light of above, although the Committee considers Respondent not guilty of professional misconduct falling within the meaning of Clause (7) of Part I of the Second Schedule to the Chartered Accountants Act, 1949 in respect of the charge alleged in this case, it also advised the Respondent to be cautious in future so as to avoid such mistakes.

Conclusion :

7. Thus, in conclusion, in the opinion of the Committee, the Respondent is **NOT GUILTY** of professional misconduct falling within the meaning of Clause (7) of Part I of the Second Schedule to the Chartered Accountants Act, 1949.
8. 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/-
[Ajay Mittal, IAS (Retd.)]
Member (Govt. Nominee)

Sd/-
(CA. Manu Agrawal)
Member

Date : 14th October, 2019

Place : New Delhi