



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

[PR/63/15/DD/66/15/DC/809/2018]

**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 Arjundas A. Alreja
Flat No. 501, Fairwinds,
5th Floor, Plot No.5B,
Dattatraya Road,
Santacruz (W)
MUMBAI - 400 054.

.....Complainant

Versus

CA. Manoj Kumar Choudhary ... (M.No.077125)
504, Fifth Floor,
Pink Tower,
Opp. Nehru Park,
Tonk Road,
JAIPUR – 302015.

.....Respondent

MEMBERS PRESENT:

- 1. CA. Atul Kumar Gupta, Presiding Officer**
- 2. Sh. Rajeev Kher, I.A.S. (Retd.), Govt. Nominee**
- 3. CA. Amarjit Chopra, Government Nominee**
- 4. CA. Rajendra Kumar P, Member**

1. That vide findings under Rule 18 (17) of the Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007 dated 05.02.2019, the Disciplinary Committee was inter-alia of the opinion that **CA. Manoj Kumar Choudhary (M.No.077125)** (hereinafter referred to as the **Respondent**) was **GUILTY** of 'Other Misconduct' falling within the meaning of Clause (2) of Part IV of the First Schedule to the Chartered Accountant Act 1949.



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2. That an action under Section 21B (3) of the Chartered Accountants Act, 1949 was contemplated against the Respondent and communication dated 29th March, 2019 was addressed to him thereby granting an opportunity of being heard in person and/or to make oral/ written representation before the Committee on 09th April, 2019 at New Delhi.
3. Further, on 09th April, 2019, the Committee noted that the Respondent was present and he appeared before it. The Respondent made written submissions before the Committee stating that *"I have denied only for copies of my audit documents due to non-payment of my dues. As I didn't hold any physical records of the Company hence, question of retention of the same does not arise. This fact may also be construed from the mentioned mail dated 12th January, 2011 of the Complainant in which he has asked me to send the required ledger accounts on his given email ID. It is well known fact that physical documents can never be send on email"*.
4. The Committee considered the findings dated 05/02/2019 and noted that the earlier Committee had dealt with the case in detail on the charge that the Respondent turned down the request of the Complainant to provide details of accounts and ledgers of the Company. The Committee perused the findings on the above charge as contained in para 6 (including its sub- paras) of the earlier Committee.
5. The Committee perused the above facts and noted that as per the request of the Complainant, the Respondent failed to return the documents of auditee Company, which are not permissible as per Ethical Standards of the ICAI.

Keeping in view all above aspects, the Committee warns the Respondent that he should be more careful in future in respect of discharging of professional duties and any professional negligence (if attracted in future) would be looked seriously.



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6. Thus, keeping in view the facts and circumstances of the case, the material on record before it, the Committee ordered that the Respondent i.e. CA. Manoj Kumar Choudhary (M. No. 077125) be reprimanded.

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

Sd/-
(CA. AMARJIT CHOPRA)
GOVERNMENT NOMINEE

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

Sd/-
(CA. RAJENDRA KUMAR P)
MEMBER

DATE : 09/04/2019
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/63/2015/DD/66/2015/DC/809/2018]

In the matter of:

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Opp. Nehru Park,

Tonk Road,

JAIPUR 302015

.....Respondent

MEMBERS PRESENT:

CA. Prafulla P. Chhajed, Presiding Officer
CA. Amarjit Chopra, Government Nominee
CA. Mangesh P. Kinare, Member

CA. Sushil Kumar Goyal, Member

DATE OF FINAL HEARING : 07.01.2019

PLACE OF FINAL HEARING : ICAI Bhawan, Jaipur

PARTIES PRESENT:

Respondent : CA. Manoj Kumar Choudhary alongwith
CA. Praveen Bhandari

Charges in Brief:-

1. The Respondent was the statutory auditor of M/s. Golden Sill and Shelters Pvt Ltd. (hereinafter referred as **the "Company"**) for the financial year 2006-07.

1.1 Instead of allotting the shares to the Complainant and Mr. Shankar Jethlani (existing shareholders) in equal proportion, Mr. Jethlani, the first Director of the Company in active connivance with the Respondent allotted 4,00,000 equity shares to three Companies who were not the shareholders of the Company. The allotment of said shares as well as the meetings in which the said allotment were decided were false, fabricated, invalid and illegal because the



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Complainant neither received notice of any Board Meeting nor the notice of resolution wherein said allotment of equity shares was passed.

1.2 The Company had filed its Annual Returns for the financial years 2006-07 to 2008-09 with ROC without getting the approval of annual accounts by Board of Directors and Shareholders in duly convened Board Meeting and AGM respectively.

1.3 The Respondent is also a Director in another Company i.e. M/s. Solitaire Buildsquare Private Ltd. together alongwith Mr. Shankar Jethani and as such being statutory auditor of a Company wherein his business partner is a director leads to conflict of interest.

1.4 The Respondent turned down the request of the Complainant to provide details of accounts and ledgers of the Company.

Brief facts of the Proceedings:

2. On the day of hearing, the Committee noted that the Respondent in person was present and appeared before it. However, the Complainant was not present and even there was no intimation of his presence, but notice of this meeting duly served upon him.

The Respondent was put on oath. With the consent of the Respondent, the charges were taken as read. Further, the Respondent pleaded not guilty to the charge and wish to defend the charges.



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The Respondent filed his submissions in written before the Committee and apologized the fact that he has not filed the same at Prima Facie stage and thereafter as directed by the Disciplinary Directorate.

The Respondent stated that he has returned all the documents to the Complainant but has not received professional fees. The Committee asked him to produce the evidence in support of his statement. The Respondent expressed his inability to produce the same.

The Committee recorded the submissions of the Respondent and directed him to file final submissions, letter from the Complainant for receipt of records and any other documents within 15 days time.

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

Findings of the Committee:

3. In respect of first charge as narrated above in para 1.1, the findings of the Committee are as under:-

On perusal of papers on record, it is seen that as per Memorandum of Association of the Company is dated 13/03/2006 and the Complainant and Mr. Shanker Jethani held 5000 shares each in the Company. Further *Section 81 of Companies Act, 1956 in respect of, "Further issue of capital states Where at any time after the expiry of two years from the formation of a company or at any time after the expiry of one year from the allotment of shares in that company made for the first time after its formation, whichever is earlier, it is proposed to increase the subscribed capital of the company by allotment of further shares, then, such further shares shall be offered to the persons who, at the date of the offer, are holders of the equity shares of the company, in proportion, as nearly as circumstances admit, to the capital paid up on those shares at that date".*



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But Section 81(3) of the Companies Act, 1956 states that this section is not applicable on Private Company. It is noted that the Company in extant case, is a Private Ltd Company and therefore the plea of the Complainant that further shares should be given to existing holders cannot be accepted and thereby the allegation against the Respondent fails.

As regards, the audit procedures adopted by the Respondent to verify how the allotment of equity shares is reflected in the books of third parties, it is viewed that the Respondent had no role to play in the books of third parties to verify the form in which said investments were shown in the balance sheet of allottee Companies. Hence, said allegation dropped by the Committee against the Respondent.

4. In respect of second charge as contained in para 1.2 above, the Committee noted that as regards annual returns, nothing has been produced on records by the Complainant which shows that the Respondent has certified the same and were not approved by Board of Directors or shareholders in duly convened Board meeting and Annual General Meeting. Moreover, the Respondent was the Statutory auditor and he was not supposed to look into such kind of managerial functions of the Company. Hence, the Committee was of the view that said charge is not maintainable against the Respondent.

5. Further, in respect third charge that the Respondent is also a Director in another Company i.e. M/s. Solitaire Buildsquare Private Ltd (hereinafter referred as **Solitaire**) together alongwith Mr. Shankar Jethani and as such being statutory auditor of subject Company wherein his business partner is a director leads to conflict of interest.

5.1 The Respondent vide submissions dated 07/01/2019 has submitted that above allegation cannot be leveled against him as he has not expressed opinion on financial statements of the Company. He was only a professional director and that is also upto 31.03.2010 after that no service has been rendered. Furthermore, the Company has been rendered as defunct thereafter and no work whatsoever has been conducted in said Company.



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5.2 After considering the above, the Committee perused the papers on record and noted that the Respondent was the Director of M/s. Solitaire Buildsquare Private Limited along with Mr. Jethani and Vinod Jain. Further this Company was incorporated on 18/06/2010 as evident from Ministry of Corporate Affairs record/portal.

On other side, Mr. Jethani was also Director in the Company (M/s. Golden Sill and Shelters Pvt. Ltd.) with the Complainant in equal proportion. Hence, in view of this corroborated evidence, it is apparent that the Mr. Jethani has substantial interest i.e. having voting right more than 20% in the Company, in which the Respondent is Auditor.

However, provisions of Clause (4) Part I of Second Schedule are as under:-

“expresses his opinion on financial statements of any business or enterprise in which he, his firm, or a partner in his firm has a substantial interest”

Further, meaning of relative as per regulation 190A is as under:-

“relative”, in relation to a member means the husband, wife, brother or sister or any lineal ascendant or descendant of that member”

In view of above, it is noted that this allegation does not fall within the meaning of Clause (4) Part I of Second Schedule of the Chartered Accountants Act, 1949.

6. Last and fourth charge is that the Respondent turned down the request of the Complainant to provide details of accounts and ledgers of the Company.

6.1 The Respondent in context of above charge has submitted that he has not retained any original paper/ file of the Complainant. The Complainant has sent an e-mail dated 21/05/2010 to him asking for the documents and he has provided the copy of Income Tax Returns for



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Assessment Year 2009-2010 of M/s. Golden Sill & Shelters Pvt. Ltd. through return mail on same day. Therefore, this allegation made by the Complainant regarding retention of files in lieu of payment of fee only on pretext of one mail is nothing but sham and is denied by him.

6.2 The Committee perused the above submissions of the Respondent and observed that an e-mail was sent to the Respondent on 12/01/11 by the Complainant stating that *“as per discussion with Shri Ghanshyamdas Jethani kindly send all accounts and ledgers of Golden Sill & Shelters P. Ltd. from 2006 to 2010 to tally bank account of 4 years with everybody’s personal a/c. Kindly forward the same on email id: ararproperties@yahoo.co.in”*.

In response to said mail, the Respondent vide his mail dated 15/01/11 sent on above mail id has stated that *“we have not received any fee towards professional services rendered by me since incorporation of the Company even not have been reimbursed the payment made by me on your behalf. First settle down my all dues and then arrange for collecting the required documents. My bills are attached herewith. Waiting for an early payment.....”*

The Committee noted that in view of the above mails, the matter is very clear that the Respondent had kept records & documents of the Complainant in his custody for non payment of his fees.

6.3 Furthermore, the Committee on the day of hearing i.e. 07/01/2019 directed the Respondent to provide a letter from the Complainant for receipt of records within 15 days time that he has received all the papers and documents from the Respondent and there is nothing with the Respondent which he retained in lieu of non payment of professional fees.

However, the Respondent vide e-mail dated 22/01/2019 has stated that in spite of his best efforts, the same could not be obtained and he requested to allow him time of 15 days.

As the Respondent failed to submit the above document to satisfy the Committee that he has in-fact returned the documents to the Complainant, also the Committee noted that:-



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“A Chartered Accountant cannot exercise lien over the client documents/records for non-payment of his fees as per decision of Ethical Standard Board of ICAI”

In the view of above, in the considered opinion of the Committee, the Respondent is Guilty of ‘Other Misconduct’ falling within the meaning of Clause (2) of Part IV of the First Schedule to the Chartered Accountant Act 1949.

Conclusion

7. Thus, in conclusion, in the considered opinion of the Committee, the Respondent is held **GUILTY** of ‘Other Misconduct’ falling within the meaning of Clause (2) of Part IV of the First Schedule to the Chartered Accountant Act 1949.

Sd/-
(CA. PRAFULLA P. CHHAJED)
PRESIDING OFFICER

Sd/-
(CA. AMARJIT CHOPRA)
GOVERNMENT NOMINEE

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

Sd/-
(CA. SUSHIL KUMAR GOYAL)
MEMBER

DATE : 05th February, 2019

PLACE : New Delhi



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