

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

**(Constituted under section 21B of the Chartered Accountants Act, 1949)**

**Findings under Rule 18(17) & 19(2) of the Chartered Accountants  
(Procedure of Investigations of Professional and Other Misconduct  
and Conduct of Cases) Rules, 2007**

File No. : PPR/P/16/16/DD/325/INF/17-DC/937/18

**In the matter of :**

**CA. Rajesh V Kirloskar (M.No.048199)**  
32/2B, Erandwana  
Shramasaphlya  
Scty. Nandadeep  
**PUNE- 411004**

----- Respondent

**Members Present:**

**CA. Prafulla Preme Sukh Chhajed, President**  
**Smt. Anita Kapur, Member (Govt. Nominee)**  
**Shri Ajay Mittal, IAS (Retd.), Member (Govt. Nominee)**  
**CA. Manu Agrawal, Member**

**Date of Final Hearing: 21<sup>st</sup> August, 2019 (decided on 23<sup>rd</sup> September, 2019)**

**Place of Final Hearing: Mumbai**

**Parties Present:**

- (i) CA. Rajesh V. Kirloskar – Respondent**
- (ii) Sh. S G Gokhale – Counsel for Respondent**

### **Allegations of the Informant, Registrar of Companies, Pune:**

1. It was informed that the Respondent was the statutory auditor of Maharashtra Executor and Trustee Company Private Limited (hereinafter referred to as the “**Company**”) for the Financial Years 2011-12 to 2013-14. During inspection under Section 209A of the Companies Act 1956, the Informant observed violation of Section 227 read with Section 233 for violation of Section 211 (3A) of the Companies Act 1956, read with certain Accounting Standards. It was accordingly, alleged that the Respondent, being the statutory auditor of the Company for the F.Y.s. 2011-12 to 2013-14, had failed to qualify his report for said non-compliance with the provisions of the Companies Act 1956.

### **Proceedings:**

2. At the time of hearing on 21<sup>st</sup> August 2019, the Respondent, along with his Counsel was present to appear before the Committee. 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 to be read out or these could be taken as read. The Respondent stated that he was aware of the allegations 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 opted to defend his case. Thereafter, the Counsel for Respondent made his oral submission to defend the case. The Committee examined the Respondent in the matter.

After hearing the submissions of the Counsel for the Respondent, the Committee directed the Respondent to submit copy of the Order passed in the Lok Adalat, Pune, if available, within 30 days from the date of the hearing. Accordingly, on consideration of all the documents/information available on record as well as written/oral submissions made by the Respondent, the hearing in the matter was concluded.

3. On 23<sup>rd</sup> September, 2019, the Committee noted that the document sought from the Respondent was received vide his letter dated 17<sup>th</sup> September 2019 which was duly considered by the Committee. Accordingly, based on written and oral

submissions available on record, the Committee decided to take its decision on the matter.

**Findings of the Committee:**

4. The Committee noted that the Informant had raised numerous allegations against the Respondent pertaining to AS-29, AS-18, AS-20, AS-3 and AS-15 issued by the ICAI and also relating to violations of certain requirements of Schedule VI read with section 211 of the Companies Act 1956, out of which the Director (Discipline) while forming his prima facie opinion under Rule (9) of the CA Rules 2007 had held the Respondent prima facie guilty for four charges only in context of AS-20, AS-3, AS-15 and disclosure requirement relating to 'Fixed Deposits' as envisaged in Revised Schedule VI to the Companies Act, 1956. Accordingly, the Committee considered only aforesaid four charges while hearing the matter and gave its findings on the same which are as under:

5. The Committee noted that as regard the first allegation relating to the violation of AS-20, it was alleged by the Informant that the Company was supposed to disclose EPS on the face of the Profit and Loss Accounts, even if it was negative. However, it failed to disclose the EPS either on the face of the Profit & Loss accounts or in the Notes to the Accounts for the years 2011-12, 2012-13 and 2013-14 which the Respondent being the statutory auditor had failed to report as non-compliance of Accounting Standard-20 on 'Earning Per Share' in his audit report.

6. The Committee noted that the Respondent submitted in this regard that the Company was a 100% subsidiary of Bank of Maharashtra and though inadvertently EPS was not shown, neither it affected the true and fair view of the Financial Statements nor non-disclosure of the same caused any prejudice to the public interest. Furthermore, the Earning Per Share (EPS) was calculated and was on record while preparing P&L statement for FYs 2011-12, 2012-13 and 2013-14. He further stated that EPS was duly mentioned in the relevant form 23ACA e-filed with ROC. Thus, according to him, there was no fraudulent intention to hide any information and it was only a presentation issue.

7. The Committee in this regard noted that as per requirement of AS-20, basic and diluted earning per share are required to be disclosed on the face of the Profit & Loss Account of the Company and though it was not shown on the face of the Profit & Loss Account of the Company but the same was duly disclosed in Form 23 ACA for Financial Years 2012-13 **(C-90)** 2013-14 **(C-38)** which were filed on 25.04.2013 and 08.05.2014 respectively. As regards financial year 2011-12, on perusal of Form 23ACA for the financial year 2012-13, it was noted that EPS for the financial year 2011-12 was shown as corresponding previous year's figures in the said form **(C-90)**. Moreover, it was 100% subsidiary of Bank of Maharashtra, and hence, its omission did not cause any loss to any investor/shareholder. Accordingly, in light of above, the Committee held that the Respondent was 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 with respect of this charge.

8. As regard the second charge alleged against the Respondent relating to violation of AS-3 read with Section 211(3A) of the Companies Act, 1956, it was alleged by the Informant that no cash flow statements were prepared and attached to the Balance Sheets for the 3 financial years which the Respondent being the statutory auditor had failed to report as non-compliance of Accounting Standard-3 on 'Cash Flow Statements'.

9. The Committee noted that the Respondent submitted in this regard that the Cash Flow Statements were prepared for all the years and were available on record but the Company did not enclose the same with the financial statements of the Company. Further, the cash flow statements were more in the nature of receipts and payments account and the lapse in not enclosing the same was only a technical lapse on part of the Company. Further, he stated that Since the Company was wholly owned subsidiary of the Bank of Maharashtra, there were no outside users and no prejudice was caused to the public interest.

10. The Committee in this regard noted that the Respondent had produced on record copy of documents which remained to be attached with financial statements of the Company **(C320-C325)**. On perusal of the said documents, it was noted that the said

documents include Receipt & Payments Accounts for the year ended 31.03.2013 and 31.03.2014. It was further noted that Cash Flow Statement is prepared in accordance with the requirement of AS-3 classifying the cash inflows / outflows into those arising from operating, investing and financial activities. However, the Receipt & Payment Account so prepared by the Respondent was although not in the required format in accordance with the requirement of AS-3 but it gave clear information about the receipt and payments made by the Company. Accordingly, the Committee was of the view that there was not a total omission of information as required under AS-3. The Committee was also of the view that the same could not be construed to be a "professional misconduct" as in order to invoke the same, in addition to the failure to do the duty there should be a failure to act honestly and reasonably which was not the case here. Accordingly, the Committee was of the considered opinion that the Respondent was not grossly negligent in discharging his duties and decided to give him benefit of doubt with respect to this charge.

11. As regard the third allegation relating to violation of requirement of AS-15 read with Section 211(3A) of the Companies Act, 1956, the Committee noted that the Informant had reported in the Inspection report that the Company had made provision for gratuity liabilities for last three years ,however, detailed working of the same was not disclosed in the Notes to Accounts for the financial years 2011-12 to 2013-14 which the Respondent being the statutory auditor had failed to report as non-compliance of Accounting Standard-15 on 'Retirement Benefits'.

12. The Committee noted submissions of the Respondent with respect to this charge that the provision for Gratuity was done on the basis of actuarial valuation made by professional firm and he relied on the professional valuer's report. He had complied with the requirements in this regard in verifying the existence of the report but only lapse on his part was that the detailed disclosure as required under AS-15 was not given in the notes to accounts. Thus, there was not total disregard to the disclosure requirement.

13. With regard to the above, the Committee was of the opinion that though it was mentioned in Notes to Accounts that provisions for defined benefit plans like Gratuity and leave encashment were made as per Actuarial Valuation and the Respondent had brought on record copy of Actuarial Valuation Report of Gratuity Liability, Actuarial Valuation Report of Accumulating Compensated Absence Liability (Privilege Leave) **(C-266 to C-319)** yet, the disclosures required in terms of the requirement of AS-15 were not disclosed in the Notes to Accounts of either financial year **(C43 to C46 and C-75 to C-78)**. However, it was noted that the Gratuity provision was done on actuarial basis and the Company had assigned it to a professional firm on the basis of whose report the provision was made. It was accordingly noted that adequate provision as per actuarial valuation was given and there was true and fair view of profit as well as that liabilities thereof. Only further detailed disclosures were not given which again did not affect true and fair view. It was a lapse of technical nature only. The Respondent, therefore, cannot be termed/inferred to be grossly negligent in discharging his professional duties. Accordingly, the Committee held the Respondent not guilty with respect to this charge.

14. As regard the fourth allegation, the Committee noted that it was alleged against the Respondent that the Company had shown 'Fixed Deposits' to the tune of Rs. 5.38 crores, Rs.4.73 crores and Rs.6.83 crores for the year ended 31<sup>st</sup> March, 2012, 31<sup>st</sup> March, 2013 and 31<sup>st</sup> March, 2014 respectively under the head 'Non-current Investment' instead of "Cash and Cash Equivalents". Thus, there was a violation of the provisions of Schedule VI read with Section 211 of the Companies Act, 1956 and the Respondent being the statutory auditor failed to report the same in his audit report.

15. The Respondent in this regard, submitted that in his opinion the management's stand was bonafide. He further stated that since incorporation in the year 1946, the Company was in business of formation, management and Execution of Trusts, Wills, Execution of wills, Power of Attorney. The Management of the Company was of the view that since said fixed deposits were created from the funds received from Trusts (the clients of the Company) and were for the period more than one year, they were

not shown under current assets, but as Non-current investment based on past experience, nature of business, past trend of business and response of clients of the Company. These funds were not meant to be utilized in near future / during ensuing 12 months and not for any routine current payment / expenses and therefore, these FDRs were not treated as the current assets in the books.

16. The Committee in this regard noted that there was only a question of classification as to whether the fixed deposits were to be shown under investments or under the head cash or cash equivalent which did not made any material difference based on the reasoning provided by the Respondent. The Committee noted that considering the Company's business and also the fact that being in receipt of trust balances which were irrevocable and of perpetual existence if such trust balances were shown as non-current assets and hence the corresponding Fixed deposits were also shown under the non-current asset head, it cannot be stated that the Respondent was guilty of gross negligence / lack of due diligence as such presentation did not affect the true and fair view of the financial statements.

17. The Committee further noted the submissions of the Respondent made before it that the Honorable Regional Director, Western Region, Mumbai, of MCA did the compounding of all the offences committed under section 227 read with section 233 of the Companies Act 1956 and the order was passed in January 2017, after payment of penalty of Rs. 5,000/- per year i.e. Rs. 10,000/- for two years and all the cases filed by RIOG in the Court of Judicial Magistrate FC, Anti-Corruption Pune had been disposed off in Lok Adalat on 8<sup>th</sup> September 2018. The Committee also noted that the Respondent had also brought on record the disposal Order of the Lok Adalat as directed by the Committee vide his letter dated 17<sup>th</sup> September 2019. Accordingly, it was viewed that there could be certain presentation errors but such error neither affect true and fair view of financial statement nor caused loss to any individuals. Subsequently such errors were rectified. Accordingly, in the light of above, although the Committee considered the Respondent not guilty of professional misconduct falling within the meaning of Clauses (6), (7) and (8) of Part I of the Second Schedule to the Chartered Accountants Act, 1949, it also advised the Respondent to be cautious so as to avoid such mistakes in future.

**Conclusion:**

18. Thus, in conclusion, in the considered opinion of the Committee, the Respondent was held **NOT GUILTY** of Professional Misconduct falling within the meaning of Clause (6), (7) & (8) of Part I of the Second Schedule to the Chartered Accountants Act, 1949.

19. The Committee, accordingly, passes orders for closure of this case against the Respondent.

**Sd/-**  
**CA. Prafulla Preme Sukh Chhajed,**  
**Presiding Officer**

**Sd/-**  
**Smt. Anita Kapur**  
**Member, (Govt. Nominee)**

**Sd/-**  
**Shri Ajay Mittal, IAS (Retd.)**  
**Member (Govt. Nominee)**

**Sd/-**  
**CA. Manu Agrawal**  
**Member**

**Date : 12<sup>th</sup> December, 2019**

**Place : New Delhi**