

**CONFIDENTIAL**

**DISCIPLINARY COMMITTEE [BENCH – II (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-138/2015-DD/136/2015/DC/549/2017]**

**In the matter of:**

**Ms. Sunita Bakshi,**  
W/o Shri Indrajeet Bakshi,  
1504, South Main Street,  
Bellefontaine,  
OHIO-43311  
**USA**

**.....Complainant**

**-Vs.-**

**CA. Ajay Chandulal Mehta (M.No.127763)**  
M/s. A C Mehta & Associates,  
Chartered Accountants,  
601-B, Nirman, Opp Havmor Restaurant,  
Near Navrangpura Cross Road,  
Navrangpura,  
**AHMEDABAD-380 009**

**.....Respondent**

**MEMBERS PRESENT:**

**CA. Atul Kumar Gupta, Presiding Officer**  
**CA. Amarjit Chopra, Govt. Nominee,**  
**CA. Rajendra Kumar P, Member**  
**CA. Chandrashekhar Vasant Chitale, Member**

**DATE OF FINAL HEARING: 08.05.2019**

**PLACE OF FINAL HEARING :ICAI Tower, BandraKurla Complex, Mumbai**

**PARTIES PRESENT:**

**Complainant : Not Present.**  
**Respondent : CA. Ajay C. Mehta**  
**Respondent's Counsel : Shri Deepak R. Shah, Advocate**

### **Finding of the Committee**

1. On the date of hearing held on 8<sup>th</sup> May, 2019, the Committee noted that the Complainant was not present. The Respondent along with his Counsel was present. Since the Complainant was not present without any prior intimation, the Committee decided to continue with the hearing ex-parte the Complainant. The Committee explained about the earlier hearing held in the above matter. The Respondent was put on oath. The Committee enquired from the Respondent as to whether he wish to have de-novo hearing or the hearing in the matter can be continued from the stage as it was left in last hearing. The Respondent opted for de-novo hearing. On being further enquired from the Respondent as to whether he is aware of the charges leveled against him, the Respondent replied positively and pleaded not guilty. The Counsel for the Respondent made submissions on the charges. The Committee posed some questions to the Respondent. After hearing the final submissions, the Committee decided to conclude the hearing in the above matter.

2. The Committee noted that in the instant matter, many allegations have been levelled against the Respondent but he was held prima facie guilty with respect to the charges as mentioned in paragraphs 9.3, 9.5 and 9.9 of the Prima Facie Opinion as under:-

- i) The Respondent has been appointed to guide and provide services legally as per agreed terms and conditions and they have to take their charges after sharing audit report of distributors to both the directors on monthly basis as per Clause No. 2.2 of the Agreement but they neither submitted any report on distributors audit report to the Complainant nor kept purchase, sale bills, Bank Statements, vouchers, rent agreements, import duty challans, payment detail and all other supporting documents at the Registered office at Chandigarh as per provisions of the Companies Act, 2013 till date and fraudulently by misusing their authority withdrawn their fees from the current account of the Company in violation of the agreed terms and conditions of the Agreement, which is totally a fraudulent act on their part.

- ii) The Respondent was duty bound to pay the Expenditures like office rent, staff salary, statutory dues, director salary etc. without any instructions from any director as per Clause 3.3 of the Agreement, but they have intentionally in order to support cheating and fraudulent activities with other conspirators in contraventions of the terms and conditions of the Agreement stop making payments due to which the business of the Company is suffering a lot and also may lead to various types of litigation with staff, office owner, Govt. Departments and distributors due to intentionally failure on his part and for which he will be personally liable clearly a serious professional misconduct on his part.
- iii) The Respondent were completely acting against the interest of the Company in order to favour illegal, cheating & fraudulent activities with other conspirators and keeping in view their intentionally violations of the conditions of agreement, unprofessional, fraudulent activities the Complainant cancelled their authorisation on 24.5.2015 duly intimated to them by mail in 24.5.2015. However, despite receipt of same, the Respondent in connivance with his associate, knowingly that their authority has been cancelled, withdrawn an amount of Rs.2,90,000/- on 25.5.2015 from the ICICI Bank Account of the Company and fraudulently cheated the said amount.

3. As regard the fact of the case, on perusal of the documents on record, the Committee noted that the Respondent was appointed alongwith Mr. Siddharth B. Shah for assisting, managing & overseeing financial affairs of FS Fuelstick India Pvt. Ltd. (hereinafter referred to as “**FSIPL**”) by agreement dated 13.12.2014 which contain terms and conditions of their service and resolution dated 13.12.2014 towards operation of all the Bank Accounts and operating, maintaining and holding stock at new administrative office at Anand, Gujarat. The said appointment of the Respondent was for a period of two years from the effective date i.e. 31.12.2014. The Complainant alleged that the Respondent failed to perform his duties diligently as per terms of the Agreement.

4. The Respondent in his Written Statement as well as during his oral submissions stated that he has been dragged into controversy due to dispute between two directors of the Company. There was an agreement between the Respondent and the Company of which the Complainant is one of the Directors. The Complainant is a minority shareholder. The other director, Mr. Yogendra Desai is a majority shareholder and he has no grievances against him. Therefore, it is basically a case of personal grievance of one director against other director. Looking to unresolvable dispute between the two directors, Mr. Yogendra Desai has resigned from the Company on 22.06.2015 and the resignation letter and grounds for resignation is testimony to the internal dispute between the two directors. The Respondent was appointed to perform certain function in terms of an agreement between the Company and him. His role was limited to verifying the bill and invoices as per agreement and he has not audited the books of account of the Company. The rights and duties of both the parties to the agreement were stated therein. In terms of the said agreement, he performed his duties diligently and except remuneration as agreed between them, he has not taken a single rupee out of the funds of the Company. He also clarified that though as per agreement, his firm was authorised to operate the bank account, yet he has not signed any cheque. It was Mr. Siddharth Shah who was operating all the bank accounts on behalf of the Company.

5. As regard the first allegation related to non-submissions of the report of the distributors to both the directors and withdrawal of fees from the current account of the Company, the Respondent stated that the Complainant is silent as to which audit report of which distributor for which month was not shared. The audit report for audit of the distributor namely, M/s. Sun Petrochemicals, Pune for the period 01.10.2014 to 31.01.2015 was finalized on 15.02.2015 and was sent to the administrative office of the Company. The detail of expenses was also sent through e-mail on 19.02.2015. The audit report of another distributor M/s. Harsh Venture for the period 01.10.2014 to 31.03.2015 was finalized on 23.04.2015 and was also sent to the administrative office of the Company.

5.1 The Respondent stated that when a communication is sent to the office of the Company, it is deemed to be received by all the concerned of the Company. Thus, clause 2.2 of the agreement was duly complied with. The Respondent further stated that the bill was raised after the submissions of the audit report to the Company and

payment was received thereafter only. Further, no dispute is raised by the Complainant in respect of quality of audit report or misreporting therein.

5.2 On being enquired from the Respondent about the reports sent to the administrative office of the Company, the Respondent stated that he had sent e-mail dated 19<sup>th</sup> February, 2015 to company's e-mail id at [accounts@fuel-stick.com](mailto:accounts@fuel-stick.com) attaching therewith Pune Audit Report for the period Oct, 2014 to Jan 2015.

5.3 To a further question as to why he sent e-mail to the administrative office instead of e-mails to both the directors, the Respondent stated that the administrative office was under the control of all the directors and not under any particular director. The Respondent also clarified that the intimation about the audit report is different compliance from the intimation about the expenses to both the directors. When the Respondent has to reimburse expenses as per agreement, he has to send the details for their consideration and permissions whereas with regard to sharing of the audit report, there is no specific requirement.

5.4 In respect of the allegation, on perusal of Clause 2 of the Agreement, it is noted that it talks about the Right and duties of the Company as under:-

*"2.1 FSIPL shall provide ACMA with all the relevant information as requested by ACMA to enable ACMA to discharge its duty/ies diligently under this agreement.*

*2.2 FSIPL shall pay ACMA's fees as per attached quotation on quarterly basis with the exception of the travelling and other out of pocket expenses for audit to various distributors of the FSIPL on monthly basis and upon receipt of ACMA's bill after the audit and audit report shared with both directors."*

Whereas on perusal of the clause 3 of the said Agreement, it is seen that it talks about the duties and right of the Respondent. The sub-clause 3.4 of the said Agreement states as under:-

*"3.4 ACMA should provide monthly bank statements of FSIPL and Sales and purchase account (with invoices) and Monthly MIS Statements to both the directors."*

5.5 From the above, it is noted that the Respondent was required to submit the reports of the distributors with both the directors. In this regard, the Respondent stated that he shared the audit reports with the directors by sending the same to the

administrative office of the Company and hence, it cannot be denied that the copy of the audit report was not received by the directors of the Company. It is seen that the Respondent vide his e-mail dated 19<sup>th</sup> February, 2015 sent audit report of Pune Distributors (M/s. Sun Petrochemicals) to the Company e-mail id and the said fact has not been disputed by the Complainant. In respect of issue related to report of other distributors, the Respondent brought on record copy of audit report dated 23.04.2015 for the period 01.10.2014 to 31.03.2015 for M/s. Harsh Venture, Chandigarh and audit report for the period 01.10.2014 to 31.12.2014 for M/s. Anand Fuelstick Pvt. Ltd, Anand and stated that the same were also sent to the administrative office of the Company. In this regard, it is observed that the said fact was not disputed by the Complainant.

5.6 Looking into all the submissions and facts on record, the Committee is of the view that casual behaviour of the Respondent is apparent in submissions of the audit report but the same was not so grave in nature to hold him guilty of professional misconduct in respect of above charge in view of the fact audit report was submitted to the administrative office of the Company and delivery of the same to the both the directors cannot be denied. Thus, the Committee decided to hold the Respondent not guilty of professional misconduct.

5.7. As regard the issue related to payment of fees, it is noted that the Respondent brought on record copy of audit report of three distributors for the financial year 2014-15, hence, it cannot be stated that payment of fees to the Respondent firm was not as per the terms and condition of the Agreement which says that fees would be paid to the Respondent firm. The Respondent firm also brought on record his bill dated 2<sup>nd</sup> March, 2015 in respect of his fees raised after submissions of audit report of Pune distributors. Thus, the Committee decided to hold the Respondent not guilty of 'Other Misconduct' falling within the meaning of Clause (2) of Part IV of the First Schedule to the Chartered Accountants Act, 1949.

6. In respect of next allegations related to non-payment of expenditures like office rent, staff salary, statutory dues, directors salary etc. which resulted into litigation with staff, Government authorities etc. and the allegation related to withdrawal of funds, the Counsel for the Complainant stated that on perusal of bank statement of ICICI Bank, it is seen that the payments was frequently made to staff and to

Government authorities etc. except in the month of April, 2015. The Complainant stated that the Respondent had cited insufficient balance on account of payment of huge amount to one creditor as a reason of such non-payment in April, 2015. The payment for expenses for April, 2015 was made in the month of May, 2015. The Complainant also stated that as per clause 3.3 of the Agreement, the Respondent was supposed to make payments against expenditure and he was the signatory to the cheque.

6.1 The Respondent in his defence stated that he has been alleged to have managed the funds of the Company for the month of May, 2015 as per whims and fancies. The Respondent stated that he has not used the funds of the Company for his personal benefit and it was used only for the legitimate business needs of the Company and the same is evidenced from the summary of bank transactions for the months of January, 2015 to May, 2015. The Respondent also stated that the fund of the client was kept in a separate bank account. He also contended that there was no allegation that the amount paid to various person and authorities were paid without they being entitled to receive such sum. There was no allegation that the amount was misappropriated by him. As regard the payment made in cash to other director, the Respondent stated that Mr. Yogendra Desai was a director of the Company and he had spent the amount for legitimate business need of the Company which are only reimbursed to him. Since he is not staying in India and has no banks account in India, he was paid in cash on his instruction.

6.2 In respect of above allegation, it is noted that the crux of the allegation was that the Respondent in order to support the cheating and fraudulent activities, stopped making payments in April and he withdrew the funds despite cancellation of agreement. In this regard, it is noted that as per provisions of the agreement, the Respondent was required to make payment for the purpose as mentioned in the agreement. Further, for payment for the purposes other than mentioned in the agreement, the Respondent was required to seek the approval of one of the directors of the Company. In respect of the approval, it is noted that Mr. Yogendra Desai has not raised any doubt or question on the payment made by the Respondent. Moreover, the Respondent brought on record copy of ledger account of payment made to Mr. Yogendra Desai and copy of payment voucher signed by Mr. Yogendra

Desai himself showing payment of Rs.2,90,000/- in cash. The Respondent also produced bills of travel of Mr. Yogendra Desai in support of payments and the same establishes that the payments were made with the approval of one of the director of the Company as mentioned in clause 3.3 of the agreement.

6.3 In addition to above, there was nothing on record to establish that the Respondent had kept the funds of the Company in their personal bank account and did not incur the same for the business needs of the Company. It is also relevant to mention that the Complainant also made allegation of non payment of government dues and staff dues etc. but she did not specify the nature/name of expenses which was not paid. On the contrary, the Respondent brought on record copy of bank statements to establish that the payment was regularly being made to the staff and for other dues and support its contentions that large payment was made to a supplier in early April, 2018 which resulted in low balance in the bank account and due to which timely payment could not be made.

6.4 Taking into account all the facts on record and written as well oral submissions made by the parties before it, the Committee is of the view that the Respondent cannot be held liable for non-payment of dues due to insufficient balance in the account and further, payment of Rs.2,90,000/- was approved by one of the director. Hence, it cannot be stated that the Respondent had acted in violation of the conditions of the agreement. The Committee also noted that the matter appears to be filed against the Respondent due to dispute between the directors of the Company and he has been unnecessarily dragged into their matter without invoking arbitration clause of the Agreement. Thus, the Committee decided to hold the Respondent not guilty of professional misconduct falling within the meaning of Clause (2) of Part IV of the First Schedule and Clause (10) of Part of Part I of Second Schedule to the Chartered Accountants Act, 1949.

7. Though the Committee decided to hold the Respondent Not Guilty of professional misconduct based on submissions and documents on record, yet, it is also of the view that the Respondent needs to be more careful in future while performing various professional duties, accordingly, the Committee decided to issue a letter of caution to the Respondent for the same.

**Conclusion**

8. Thus in the considered opinion of the Committee, the Respondent is **NOT GUILTY** of professional Misconduct and 'Other Misconduct' falling within the meaning Clause (2) of Part IV of First Schedule and Clause (10) of Part I of the Second Schedule to the Chartered Accountants Act, 1949.
9. 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/-**

**(CA ATUL KUMAR GUPTA)  
PRESIDING OFFICER**

**Sd/-**

**(CA. AMARJIT CHOPRA)  
GOVERNMENT NOMINEE**

**Sd/-**

**(CA. RAJENDRA KUMAR P)  
MEMBER**

**Sd/-**

**(CA. CHANDRASHEKHAR VASANT CHITALE)  
MEMBER**

**DATE : 04-09-2019**

**PLACE : MUMBAI**