

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 19(2) of the Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007

Ref No. [PR-231/13-DD/223/2013/DC/417/2014]

In the matter of:

**Dr. Udit Raj,
T-22, Atul Grove Road,
Connaught Place,
New Delhi-110 001**

...Complainant

Versus

**CA. Nilesh Gandhi (M.No.044294)
M/s. N.P. Gandhi & Co.,
Chartered Accountants,
10, Radha Chamber,
Level 3, Telli Street Lane
Andheri (E),
Mumbai-400 069**

....Respondent

MEMBERS PRESENT:

**CA. ATUL KUMAR GUPTA, PRESIDING OFFICER,
CA. AMARJIT CHOPRA, GOVT. NOMINEE,
CA. RAJENDRA KUMAR P, MEMBER,**

**DATE OF FINAL HEARING/ORDER : 09.05.2019
PLACE OF FINAL HEARING/ORDER : ICAI, MUMBAI**

PARTIES PRESENT:

**Respondent : CA. Nilesh Gandhi
Counsel for Respondent : Shri Bhupendra Shah, Advocate**

FINDINGS:

1. The Committee noted that the only surviving charge of the Complainant is that Plethico Pharmaceuticals Ltd (hereinafter referred to as the “**Plethico**”) has falsely stated vide clause 20 of its annual report for the year 2007-08 that it has purchased 45% of the shares of Rezlov Ukraine of the value of Rs.159.77 million, whereas the fact is that no such transaction has taken place between Plethico and Rezlov Ukraine. The Respondent who was the Statutory Auditor of the Plethico failed to exercise due diligence in examining the authenticity of the transactions running into crores of rupees.

2. The Committee noted that the Respondent was Prima Facie held guilty in context of this charge as he had not provided any documentary evidence to the effect that he had verified details of payments made to M/s. Pharmqual Investment – FZC. The Committee also noted that the Complainant has not submitted anything subsequent to the Prima Facie Opinion nor he appeared before it for making further submissions in support of his complaint.

2.1 On the day of hearing held on 09.05.2019, the Complainant was not present. The Respondent along with his Counsel was present. On being enquired from the Respondent as to he would like to have de-novo hearing or the hearing be continued from the last hearing, the Counsel for the Respondent stated that he would like to go with earlier hearing and would also like to rely on submissions made earlier. Thereafter, the hearing commenced from the stage as it was left in last hearing. The Counsel for the Respondent made brief submissions on the charges. The Committee posed some questions to the Respondent. After hearing the submissions, the Committee decided to conclude the hearing in the above matter.

3. Upon consideration of oral submissions made on record and after perusal of Written Submissions of the Respondent dated 20/12/2014, the Committee noted that the Respondent has inter-alia submitted as under:-

3.1 The Respondent has duly collected the following documentary evidences at the time of conducting audit of Plethico Pharmaceutical Limited and the same forms part of his working papers for verification of Payment made to Pharmqual Investments FZC of US\$ 39,60,000 for acquisition of stake in SC Rezlov, Ukraine:-

- (i) Swift Transactions advice from Bank of Baroda, Siyaganj Branch, Indore to Pharmqual Investments FZC.
- (ii) Letter from Plethico Pharmaceutical Limited to Bank of Baroda, Siyaganj Branch, Indore requesting for the remittance of payment to be made to Pharmqual Investments FZC alongwith Form A2.

3.2. For Verification of Payment made to Pharmquals Investment FZC of US \$ 37,50,000 for acquisition of stake in Rezlov – MO – SRL – “Moldova”, the Respondent has verified the following evidences/documents:-

- (i) Swift Transactions advice from Bank of Baroda, Siyaganj Branch, Indore to Pharmqual Investments FZC.
- (ii) Letter from of Plethico Pharmaceutical Limited to Bank of Baroda, Siyaganj Branch, Indore requesting for the remittance of payment to be made to Pharmqual Investments FZC alongwith Form A2.

3.3. For Verification of Association of M/s. Rezlov LLC, Ukraine, the Respondent has verified the following evidences:-

- (i) Memorandum of Association of M/s. Rezlov LLC Ukraine in Russian language.
- (ii) True copy of the Memorandum of Association of M/s. Rezlov LLC, Ukraine translated into English Language.

3.4. For Verification of Extract from State Register of Juridical Entity for M/s. Rezlov – MO – SRL – “Moldova”, the Respondent has verified the following evidences.

- (i) Extract from State Register of Juridical Entity for M/s. Rezlov – MO – SRL – “Moldova” in Russian Language.

- (ii) Extract from State Register of Juridical Entity for M/s. Rezlov – MO – SRL – “Moldova” translated into English language.

4. Further, the Committee also noted that as per directions of earlier Committee, the Respondent brought on record the following documents, which are as under:-

- (i) Agreement dated 20/08/2004 between M/s. Plethico Pharma Ltd and M/s. v Pharmqual Investments FZC for acquisition of stake in M/s. S C Rezlov, MO – SRL Moldova totaling to USD 39,60,000.
- (ii) Agreement dated 27/07/2004 between M/s. Plethico Pharma Ltd and M/s. Pharmqual Investments FZC for acquisition of stake in M/s. S C Rezlov, MO – SRL Moldova totaling to USD 37,50,000.

5. Upon perusal of above documents brought on record by the Respondent and oral submissions made before the Committee, it was apparent that the Respondent has made available sufficient working papers/supporting documents in respect of his certification that the Company has purchased 45% of shares of Rezlov Ukraine of value of Rs.159.77 million. Further, it was viewed that it is decision of the Management of the Company to make investment and the Respondent as an auditor cannot question / restrict the decision of the Management. The role and responsibility of the statutory auditor in such a situation is limited to collection of adequate audit evidence which is necessary to satisfy himself about the nature of the transaction and its proper reflection in the Financial Statements that are certified by him. Further, the evidences placed on record by the Respondent during the hearing speaks of the diligence exhibited by the Respondent under the given circumstances and in absence of any rebuttal by the Complainant to the aforesaid, (who has not appeared at any of the hearings) the same requires to be given due consideration and weightage on merits.

6. Therefore, the Committee upon a detailed examination of the documents on record was of the considered opinion that the Respondent has collected the sufficient audit evidence (s) as narrated in para 3 & 4 above in this case. The Committee also noted that the Respondent has produced the relevant documentary evidences to establish

the payment being made and the nature of transaction by providing relevant Form A2 and copies of agreement which were found to be satisfactory to negate the charges against the Respondent. Hence, in view of this, there is no material misstatement and negligence attributable on the part of the Respondent. The Committee also wishes to record that the Complainant neither appeared in person or through his authorized representative. The Complainant has not produced any material evidence which could lead the Committee to take a contrary view in this matter. Further, the Committee is also of the opinion that the Respondent has obtained sufficient information to warrant the expression of an opinion on financial statements of Plethico.

CONCLUSION :

7. Thus, taking an overall view of the facts and circumstances of the case and based on the further submissions/documents placed on record before it, in the considered opinion of the Committee, the Respondent is **NOT GUILTY** of Professional Misconduct falling within the meaning of Clauses (6), (7) & (8) of Part I of the Second Schedule to the Chartered Accountants Act, 1949 [as amended by the Chartered Accountants (Amendment) Act, 2006].

8. Accordingly, the Committee passes an Order for closure of this case under Rule 19(2) of the Chartered Accountants (procedure of Investigations of Professional and Other Misconduct and Conduct of cases Rules, 2007.

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

**Sd/-
(CA. AMARJIT CHOPRA)
GOVERNMENT NOMINEE**

**Sd/-
(CA. RAJENDRA KUMAR P)
GOVERNMENT NOMINEE**

**DATE : 06-08-2019
PLACE : New Delhi**