

**CONFIDENTIAL**

**DISCIPLINARY COMMITTEE [BENCH – II (2019-2020)]**

**[Constituted under Section 21B of the Chartered Accountants (Amendment) Act, 1949]**

**Findings 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.**

**File No. : [PR-36/2014-DD/65/2014/DC/705/2017]**

**In the matter of:**

**Shri Ashok Kumar Agrawal**  
103, Jaswant Apartment,  
Baldeo Bagh,  
Rajnandgaon (Chhattisgarh) - 400004

**.....Complainant**

**Versus**

**CA. Prakash Chand Jain, ....(M.No.79857)**  
**M/s. Omprakash S. Chaplot & Co.,**  
Sukh Samridhi,  
Near Kundan Palace,  
Police Ground Road,  
Byron Bazar,  
Raipur – 492001

**.....Respondent**

**MEMBERS PRESENT:**

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

**DATE OF FINAL HEARING : 06.08.2019**

**PLACE OF FINAL HEARING : ICAI Bhawan, Delhi**

**PARTIES PRESENT** :

**Respondent : CA. Prakash Chand Jain**  
**: CA. C. V. Sajan (Counsel for the Respondent)**

**Charges in Brief:-**

1. The Committee noted that in the Prima-Facie Opinion formed by Director (Discipline) in terms of Rule 9 of the Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007, the Respondent had been held Prima Facie guilty of professional misconduct under Clause (7) of the Part I of the second schedule to the Chartered Accountant Act 1949 which states as under :-

*“does not exercise due diligence, or is grossly negligent in the conduct of his professional duties;”*

2. There are mainly 4 charges against the Respondent in this case namely as follows :-
  - (i) The Respondent has not expressed qualification for non-provision for retirement benefits and accounting the same on cash basis.
  - (ii) The figures in the audited Balance Sheet for 2010-11 and records of the Company downloaded from MCA Portal, Share Capital is shown at Rs. 100 Lacs instead of Rs. 102 Lacs and Share Premium is shown at Rs. 2,34,10,000/- instead of Rs. 2,52,10,000/-
  - (iii) In the Balance Sheet there were preliminary expenses which were in respect of stamp duty, legal expenses and ROC filing fees paid in respect of increased authorised Share Capital being written-off over a period of 5 years. It is alleged that deferment of such expenses is a violation of requirements of Accounting Standard 26 which requires that expenditure on start- up activities (which includes preliminary expenses) are to be recognized as an expenses when it is incurred.

(iv) The Related Party disclosures as required under Accounting Standard 18 have not been made and the Respondent has not expressed qualification with respect to the same in the Audit Report.

**Brief facts of the Proceedings:**

3. On the day of hearing, the Committee noted that Complainant was not present; on other side, the Respondent with his Counsel appeared before the Committee. The Respondent was put on oath. In the absence of the Complainant and with consent of Respondent, the charges were taken as read. On being asked to the Respondent whether he pleads guilty, he replied in negative. Thereafter, the Committee sought whether he wish to proceed with his defence. Thereafter, the Respondent placed his defence. After considering all papers available on record, the Committee decided to conclude the matter.

**Findings of the Committee**

4. In view of the above submissions by the Counsel of the Respondent wherein it was submitted that the Complaint was withdrawn. However, the Board did not consider the withdrawal of the Complainant as per Rule 6 of Chartered Accountants (Procedure of Investigations of Professional and other Misconduct and Conduct of Cases) Rules, 2007 read with sub-section (4) of section 21 and sub-section (2) and (4) of section 21B of Chartered Accountants Act, 1949.
5. The Committee noted the submission of the Counsel of the Respondent wherein the Counsel submits that the Complainant has filed a case before The Institute of Company Secretaries of India (ICSI). In both the cases, the Complainant is rescued and the order is in the paper book submitted at the time of hearing. Further in his submission the Counsel added that this is an internal fight and Complainant is using this as a platform just for their ulterior motives and nothing else. But the Counsel agreed that there are certain points

which have been observed by the Director and he is not disputing them and will deliberate on those points.

6. The Committee noted the submission of the Respondent's Counsel when the Committee asked about compliance with the Accounting Standard-15. The Counsel submitted by inviting attention to the paper book submitted by him to 'page-3' of the paper book wherein the amount of employee's liability coming is Rs.3,785/- only which is very nominal amount. There were only three employees working in the whole year whereas other people joined during the year. So, the workings have been given and thereafter it was found that it was nominal. But, for the abundant caution, the Respondent has written that employee's liability has been calculated and it is negligible and not considered. The Counsel accepted that it is an error, but not a grave one, on the part of the Respondent.
7. The Committee also noted that second charge on share capital the Counsel for the Respondent submits that the Complainant has not talked about this particular charge. The Counsel agrees that in this charge there are so much of minor mistakes. Further asking about Share Capital in ROC filling differ from Audited financial statements the Counsel submits that it might be due to wrong filling which is not rectifiable. The Counsel refers to page no.4 of the paper book wherein the Respondent collected a letter from the Company's Company Secretary who has requested to examine this issue in year 2010. The Counsel added to his submission that the share allotment has no financial background and there were no receipt regarding such money in the books of accounts therefore the Company did not reflect anything regarding share allotment.
8. The Committee also noted that with regard to paid up capital as reflected in Form-2 as attached on page 11 of the paper book is matching with the balance sheet but with regarding to Share Capital which is shown at Rs.100 Lacs instead of Rs.102 Lacs. The Counsel submits that it was based on hypothetical assumption of the Complainant wherein in the Complaint he (Complainant) says "that if this form was accepted". The Counsel adds that no

transaction took place so there is no such record available in the books. This was only uploaded on MCA portal which was not supported by any financial transaction which actually took place rather it was an irregular filling by third party.

9. The Committee noted that with regards to the third charge on the Respondent regarding the Preliminary Expenses not written off by him. The Counsel for the Respondent accepted that it was an error on his part but pleaded benefit of doubt before the Committee for the same. The Counsel submits that Accounting Standard-26 became mandatory from 2007-08 for the companies, but the Schedule-VI was operative in the meantime. So till financial year ending on year 2011, Schedule-VI carries this figure into the asset side deferred expenses to the extent not amortized. So, the people who are not well informed had willingly to apply in that particular format and continue the posting the amortized part in the balance sheet. And there has been some kind of mis-interpretation by the people and for which the benefit of doubt should be extended to the Respondent.
  
10. The Committee with regarding to the fourth charge noted that the Respondent's Counsel on Related Party transaction submits that there were no such transactions at all. There is no Managing Director; there were no shareholders who are having control. There is only group having 10 shareholders. Accounting Standard-18 requires that if there is any substantial interest, the same would be based on shareholding/voting power or an agreement. The Committee further asked the Counsel that "Related party name would be when there is relationship of subsidiary and holding company?" answering to this the Counsel submits that there is no such subsidiary or holding relationship moreover the list of shareholding is reflected on page no. 24 and 25 of the paper book. And the Director is neither getting any service nor is any conveyance paid to him.

### **Conclusion**

11. In view of the above, the committee could not find any positive evidence of negligence on the part of the Respondent to hold him guilty of the negligence

in performing his duties with regards to charge no.2 and charge no.4. In relation to Charge no.1 there is a small amount of employee liability which may be considered as bona-fide error on the part of the Respondent. As regards to Charge no.3 benefit of doubt may be extended due to recent amendments in AS-26 erroneously interpreted by the Respondent. Since there were no transactions with the related parties, the Charge no.4 is not established. Accordingly, in the considered opinion of the Committee, the Respondent is **NOT GUILTY** in terms of Clause (7) of Part I of Second Schedule to the Chartered Accountant Act, 1949.

12. 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)**  
**MEMBER**

**Sd/-**  
**(CA. CHANDRASEKHAR VASANT CHITALE)**  
**MEMBER**

**DATE:07.01.2020**  
**PLACE: MUMBAI**