

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. : [PPR/P/158/15-DD/53/INF/16/DC/627/17]

In the matter of:

CA. Dawoodi Ahmedibhai Rupawala (M.No.037674), Proprietor, M/s D.A. Rupawala & Associates (FRNo.108902W), Chartered Accountants, Ahmedabad in Re:

705, Mahakant,
Opp. V.S. Hospital,
Ellisbridge,
AHMEDABAD-380 006.

.....Respondent

MEMBERS PRESENT:

**CA. Atul Kumar Gupta, Presiding Officer
Shri Rajeev Kher, IAS Retd. (Govt. Nominee)
CA. Chandrasekhar Vasant Chitale, Member**

DATE OF FINAL HEARING : 10.08.2019

PLACE OF FINAL HEARING : ICAI Tower, Mumbai

PARTIES PRESENT :

Counsel for Respondent : CA. Deepak R Shah

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 is guilty under Clause 7 of Part I of the Second Schedule of Chartered Accountant Act 1949. The aforesaid Clause (7) of the Second Schedule states as under :-

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

2. This case is initiated as per the ‘information’ letter dated 30th June, 2016 read with the letter of RBI dated 20th August, 2015 later on, it was treated as “information” within the meaning of Rule 7 of the Chartered Accountants (Procedure of Investigation of Professional and Other Misconduct and Conduct of Cases) Rules, 2007.
3. The brief charge in the information case against the Respondent is that the Respondent firm i.e.M/s D.A. Rupawala & Associates being the statutory auditor of the Company M/s. Aeon Investments Private Limited, Ahmedabad failed to submit exception report as required in terms of ‘Para No. 5’ of the NBFC Auditors Report (Reserve Bank) Directions, 2008. The said Company was noticed violating Sec. 45-IA of the RBI Act,1934 by undertaking NBFI activities without Bank’s Certificate of registration (CoR) since last many years

Brief facts of the Proceedings:

4. On the day of hearing i.e. 10/08/2019, the Respondent’s Counsel appeared before the Committee. The matter was earlier adjourned on 21st July 2019 at the request of Respondent. Thereafter, the Committee asked the Respondent’s Counsel whether he wishes the charge to be read out or it can be taken as read. The Respondent’s Counsel stated before the Committee that he was aware of the charges made against him and same may be taken as read. On being asked to the Respondent’s Counsel whether the Respondent pleads guilty, he replied in

negative. Thereafter, the Committee sought whether he wishes to proceed with his defence. Thereafter, the Counsel placed his defence. After considering all papers available on record and pleadings, the Committee decided to proceed with the matter.

Findings of the Committee

5. The Respondent submitted that as per provision of Section 45(1A) of the RBI Act, 1934 Core Investment Companies (CIC) are not required to obtain registration under Non-Banking Financial Companies (NBFC) from Reserve Bank of India (RBI). Since the auditee company M/s. Aeon Investment Private Limited is a NBFC Company but as the Core Investment Company (CIC) not required to obtain registration as NBFC from RBI as per the above said provision of RBI Act.

6. The committee also noted that the Regularity Framework for Core Investment Companies issued by the Reserve Bank of India (RBI) vide RBI/2010-11/360 dated 5th January, 2011 to assess whether the auditee company falls under the category of 'CIC'. As per the Guidelines given in 'Para 2B' of above said notification on Regulatory Framework, Core Investment Company(CIC) means:-
"a non-banking financial company carrying on the business of acquisition of shares and securities and which satisfies the following conditions as on the date of the last audited balance sheet:-

- (i) it holds not less than 90% of its net assets in the form of investment in equity shares, preference shares, bonds, debentures, debt or loans in group companies;*
- (ii) its investments in the equity shares (including instruments compulsorily convertible into equity shares within a period not exceeding 10 years from the date of issue) in group companies constitutes not less than 60% of its net assets*

Net assets, for the purpose of this provisio, would mean total assets excluding –

- (i) cash and bank balances;*
- (ii) investment in money market instruments and money market mutual funds*
- (iii) advance payments of taxes; and*
- (iv) deferred tax payment.*

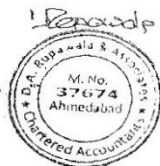
(iii)it does not trade in its investments in shares, bonds, debentures, debt or loans in group companies except through block sale for the purpose of dilution or disinvestment;

(iv) it does not carry on any other financial activity referred to in Section 45 I (c) and 45 I (f) of the Reserve Bank of India Act, 1934 except:

- a) investment in
 - i. bank deposits,
 - ii. money market instruments, including money market mutual funds,
 - iii. government securities, and
 - iv. bonds or debentures issued by group companies;
- b) granting of loans to group companies; and
- c) issuing guarantees on behalf of group companies.”

7. The Committee noted the Respondent also brought on record his calculation for the auditee company which is available on ‘page B6’ of the Prima-Facie Opinion (PFO) is reproduced as under :-

<u>AEON INVESTMENTS PRIVATE LIMITED</u>		B-6
<u>BALANCE SHEET WORKING AS AT 31ST MARCH, 2015</u>		
Total Assets		306900622
Less : Cash on hand	387	
Bank Balance (Excluding FDR)	22992159	
Advance tax & TDS	11625937	
Reliance Money Manager Fund	2222759	
Bank FDR	<u>30279435</u>	67120677
	Net Assets Rs.	<u>239779945</u>
	90% of Net Assets	<u>215801950</u>
Investment in Promoter Group & Group Companies		
Abhighna Trading Private Limited	100000	
0% CCD Altair Investments Private Limited	1000000	
Sneh Travels Private Limited	25000	
Arvind Mills Limited	2213243	
Atul Limited	<u>144813554</u>	148151797
Loans & Advance, Deposits in Associates(Group) Concerns		
Sheth Lalbhai Dalpatbhai HUF	54920297	
Athak Investments Private Limited	106887	
Amazon Investments Private Limited	53704	
Saunhya Farms & Organics Prod. Pvt. Ltd.	18000000	
Pelican Business Ventures Private Limited	<u>17049247</u>	90131136
		<u>238287741</u>
	99.37% of Net Assets Invested in CIC	



for Aeon Investments Pvt Ltd
Anandha Lakshmi
 Director

7.1 The Committee further noted that considering the above said calculation which shows 99.37% under investment in the group companies. The Committee is of the view that there is no violation of section 45(1A) of the RBI Act, 1934.

Conclusion

8. In view of the above facts and finding available on record and reasoning stated above and in the considered opinion of the Committee, the Respondent is **NOT GUILTY** in terms under Clause 7 of Part I of the Second Schedule of Chartered Accountant Act 1949.
9. 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/-
(SHRI RAJEEV KHER, IAS RETD.)
GOVERNMENT NOMINEE

Sd/-
(CA. CHANDRASEKHAR V. CHITALE)
MEMBER

DATE: 10-02-2020
PLACE: New Delhi