

**CONFIDENTIAL**

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

**[Constituted under Section 21B of the Chartered Accountants (Amendment) 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.**

**File No. : [PR/234/2017/DD/253/2017/DC/1023/2019]**

**In the matter of:**

**Shri Suresh Shadija,**

Director, M/s. S K Shadija Global Pvt. Ltd.,  
Shop No.108-109, Spark Plaza,  
Hotel Lal Baag Inn.,  
Opposite Airtel Office,  
Ring Road No.1, Telibandha,  
**Raipur (CG) – 492 006**

**....Complainant**

**Versus**

**CA. Sunil Kumar Agrawal ... (M.No.059526)**

M/s. Agrawal Gupta & Associates,  
Chartered Accountants  
Masnet – 6, Sector – 1,  
Shankar Nagar,  
**Raipur – 492 007**

**.....Respondent**

**MEMBERS PRESENT:**

**CA. Atul Kumar Gupta, Presiding Officer**

**CA. Amarjit Chopra, Government Nominee**

**CA. Rajendra Kumar P, Member**

**CA. Chandrashekhar Vasant Chitale, Member**

**DATE OF FINAL HEARING : 16.12.2019**

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

**PARTIES PRESENT:**

**Complainant: Shri Suresh Shadija**

**Respondent: CA. Sunil Kumar Agrawal**

**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 Clauses (6) and Clause (7) of Part I of the Second Schedule of Chartered Accountant Act 1949. The above Clauses (6) of Part I of Second Schedule states as under :-

*“(6) fails to report a material misstatement known to him to appear in a financial statement with which he is concerned in a professional capacity;”*

And Clause (7) of Part I Second Schedule of Chartered Accountant Act 1949 which states that:-

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

2. In this case complaint has been filed by the Complainant against auditor of another company M/s Akash Shadija Global Pvt. Ltd. for wrongful audit done by the Respondent particularly in stating shareholding of the company, the balance of the Company for the financial year 31.3.2015.

**Brief facts of the Proceedings:**

3. On the day of hearing, the Committee noted that Complainant was present. The Respondent appeared before the Committee. The Complainant as well as the Respondent were put on oath. In the presence 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 wishes to proceed with his defence. The Respondent made his submissions. After considering all papers available on record and pleadings, the Committee proceeded with the matter.

**Findings of the Committee**

4. On the matter stated above, the Committee reviewed that in reply, the Respondent stated that :

*"I say that the company was incorporated on 9<sup>th</sup> March 2010 and Mr. Pawan Kumar Shadija and Mrs. Sandhya Shadija were the subscriber of the Memorandum and Articles of Association and were appointed as the directors of the company. I had checked the Memorandum and Articles of Association and Form No. 32 filed by the company on 05<sup>th</sup> March 2010 to verify about incorporation of the company and its initial directors.*

*I say that while conducting audit of the accounts of the company for the financial year 2009-10, I found from the books of accounts that company had allotted 9,90,000 shares of Rs.10/- each at par to 4 private limited companies, as detailed below. I further say that I have verified the receipt of the payment by the company from the allottees, minute of the meeting of the Board of Directors held on 31<sup>st</sup> March 2010 and Form No. 2 (Return of Allotment) and the Register of Member showing the name of Mr. Pawan Kumar Shadija and Mrs. Sandhya Shadija as the holder of 5,000 share each (initial allotment) and the name of 4 allottees. I further say that as on 31<sup>st</sup> March 2010, the Register of Member of the company was showing following 6 persons as the shareholder of the company.*

| Sr. No. | Name of the shareholder     | Registered Folio No. | Share Cert. No. | Distinctive No. | No. of shares |
|---------|-----------------------------|----------------------|-----------------|-----------------|---------------|
| 1       | Pawan Kumar shadija         | 1                    | 1               | 1-5000          | 5,000         |
| 2       | Sandhya Shadija             | 2                    | 2               | 5001-10000      | 5,000         |
| 3       | Handsome Sales Pvt. Ltd.    | 3                    | 3               | 10001-130000    | 1,20,000      |
| 4       | Desire Vincom Pvt. Ltd.     | 4                    | 4               | 130001-230000   | 1,00,000      |
|         |                             |                      | 7               | 580001-750000   | 1,70,000      |
| 5       | Credence Projects Pvt. Ltd. | 5                    | 5               | 230001-410000   | 1,80,000      |
|         |                             |                      | 8               | 750001-900000   | 1,50,000      |
|         |                             |                      | 9               | 900001-1000000  | 1,00,000      |
| 6       | Gravity Barter Pvt. Ltd.    | 6                    | 6               | 410001-580000   | 1,70,000      |

*I say that while conducting the audit for the financial year 2010-11, I had checked Register of Member of the company and found that on 29<sup>th</sup> May 2010, 9,90,000 shares of the company were transferred from the name of 4 transferor namely (i) Handsome Sales Pvt. Ltd., (ii) Desire Vincom Pvt. Ltd., (iii) Credence Projects Pvt.*

Ltd. and (iv) Gravity Barter Pvt. Ltd. to the name of Mr. Pawan Kumar Shadija (4,95,000 shares) and Mrs. Sandhya Shadija (4,95,000 shares). I further say that to satisfy myself about the said transfer, I have verified Transfer Deeds on the basis of which the said transfer was approved, Board Resolution where the Board has passed resolution for transfer of shares. I further say that as on 29<sup>th</sup> May 2010, the Register of Member of the company was showing following 2 persons as the shareholder of the company.

| Sr. No. | Name of the Shareholder | No. of shares |
|---------|-------------------------|---------------|
| 1       | Pawan Kumar Shadija     | 500000        |
| 2       | Sandhya Shadija         | 500000        |

*I say that as an Auditor I am not required to check whether any other shareholder had lodged the shares for transfer and whether the company has rightly or wrongly rejected transfer of shares.”*

5. As regards observation about date of certificate and date of share transfer form made in PFO, the Respondent submitted that :

*“I say that the observation of the Hon’ble Disciplinary Directorate under para 12.5 of its report requires reconsideration as according to my audit of the records of the company no transfer was recorded on the back date. I further say that on 31st March 2010, the company had allotted 9,90,000 shares and accordingly certificates of shares were issued to the said 4 allottees showing the date of allotment as 31st March 2010. I further say that according to the document shown to me, the said 4 allottees after allotment of shares in their name, sold the said shares and transfer was recorded by the Company on 29th May 2010 to Mr. Pawan Kumar Shadija and Mrs. Sandhya Shadija and executed the Transfer Deeds which were showing the date of signing as 8th May 2010. I respectfully say and submit that the date of transfer of shares is always after the date of allotment and therefore a certificate dated 31st March 2010 transferred on 29th May 2010 cannot be considered as back dated transfer as the finding recorded in para under reply. I further respectfully say and submit that there was no such discrepancy in the transfer of said shares, by considering the transfer deeds along with covering letter of transferees, I have not reported any discrepancy in my Audit Report for the year ended 31st March 2011.”*

6. The Committee noted that in the final submissions, the Respondent reiterated his stand. Based on the Respondent’s documents on record, the Committee observed that the shareholding stated in the balance sheet as on 31.3.2015 is in agreement with Register of members of the Company as has been demonstrated by the Respondent.

It is, therefore, noted that as an auditor the Respondent has duly verified statement of shareholding of balance sheet as on 31.3.2015 which was there earlier years also. Though the Respondent himself was the auditor. In terms of the findings, the Committee does not find the Respondent guilty of professional misconduct.

**Conclusion**

7. In view of the above findings, the Committee is of the view the Committee finds no merit in the complaint filed by the Complainant. Accordingly, in the considered opinion of the Committee, the Respondent is **NOT GUILTY** under Clause (6) and Clause (7) of Part I of the Second Schedule of Chartered Accountant Act 1949.
8. **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: 10-02-2020  
PLACE: New Delhi