



THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA
(Set up by an Act of Parliament)

[PR/202/13/DD/213//13/DC/497/2016]

**ORDER UNDER SECTION 21B(3) OF THE CHARTERED ACCOUNTANTS ACT, 1949 READ WITH
RULE 19(1) OF THE CHARTERED ACCOUNTANTS (PROCEDURE OF INVESTIGATION OF
PROFESSIONAL AND OTHER MISCONDUCT AND CONDUCT OF CASES) RULES, 2007.**

In the matter of:

CA. Pramod Kumar Mishra
111A/402B, Khanduja Bhawan,
80 Ft. Road, Ashok Nagar
KANPUR – 208012.

-Vs.-

CA. Shailendra Srivastava (M. No. 401597)
M/s. Srivastava Smriti & Associates,
Chartered Accountants,
117/22-A, N Block,
Rani Ganj,
Kakadeo,
KANPUR – 208 025.

[PR/202/13/DD/213//13/DC/497/2016]

MEMBERS PRESENT:

- 1. CA. Atul Kumar Gupta, Presiding Officer**
- 2. CA. Amarjit Chopra, Government Nominee**
- 3. CA. Rajendra Kumar P, Member**

1. That vide report dated 15.12.2016, the Disciplinary Committee was inter-alia of the opinion that **CA. Shailendra Srivastava (M. No. 401597)** (hereinafter referred to as the **Respondent**) was **GUILTY** of Professional Misconduct falling within the meaning of Clauses (8) & (9) of Part I of the First Schedule and Clause (1) of Part II of the Second Schedule to the Chartered Accountants Act, 1949. [as amended by the Chartered Accountants (Amendment) Act, 2006].



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2. That an action under Section 21B (3) of the Chartered Accountants Act, 1949 was contemplated against the Respondent and communication dated 03rd May, 2019 was addressed to him thereby granting an opportunity of being heard in person and/or to make oral/ written representation before the Committee on 15th May, 2019 at New Delhi.
3. Further, on 15th May, 2019, the Committee noted that the Respondent was not present and there was no representation from him on the findings of erstwhile Committee holding him Guilty of professional misconduct within the meaning of Clauses (8) & (9) of Part I of the First Schedule and Clause (1) of Part II of the Second Schedule to the Chartered Accountants Act, 1949. [as amended by the Chartered Accountants (Amendment) Act, 2006].
4. The Committee noted the charges against the Respondent as under:-
 - 4.1 The Respondent before accepting the appointment of M/s A2Z Mall Private Limited (hereinafter referred to as the “Company”) did not communicate with the Complainant and seek his NOC.
 - 4.2 The Respondent accepted the appointment of the Company knowing that the provisions of Section 225 have not been duly complied.
 - 4.3 The Respondent made falsification in the books of account as the Complainant payment was outstanding but he had shown the amount payable as nil whereas a sum of Rs. 7721/- was still receivable in the Complainants book for the year 2011-12.
5. The Committee noted the above facts and in the absence of the Respondent, the Committee perused the papers on record and noted that the Respondent is guilty of professional misconduct in all three above charges.

The Committee noted that the Respondent did not appear before the Committee and also did not make any representations in writing. In view of such kind of casual approach of the



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Respondent, and keeping in mind all above facts/findings, the Committee hereby was of the view that ends of justice would be met, if a punishment is awarded to the Respondent commensurate with his professional negligence as narrated above.

6. Thus, keeping in view the facts and circumstances of the case, the material on record before it, the Committee ordered that the name of the Respondent i.e. CA. Shailendra Srivastava (M. No. 401597) be removed from register of members for a period of 06 (Six) months and a fine of Rs. 10,000/- (Rupees Ten Thousand only) plus applicable taxes (i.e. total sum of Rs. 11,800/- including GST as applicable) be also imposed upon him to be paid within 30 days of receipt of this order.

Sd/-

(CA. ATUL KUMAR GUPTA)

PRESIDING OFFICER

Sd/-

(CA. AMARJIT CHOPRA)
GOVERNMENT NOMINEE

Sd/-

(CA. RAJENDRA KUMAR P)
MEMBER

DATE : 15/05/2019

PLACE : New Delhi



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CONFIDENTIAL

REPORT OF THE DISCIPLINARY COMMITTEE

[Constituted under Section 21B of the Chartered Accountants (Amendment) Act, 2006]

CA. Pramod Kumar Mishra , Kanpur

-Vs-

CA. Shailendra Srivastava (M.No. 401597),

M/s. Srivastava Smriti & Associates, Kanpur

[PR-202/2013-DD/213/2013/DC/497/2016]

MEMBERS PRESENT :

CA. Nilesh Shivji Vikamsey, (Presiding Officer)

Shri Amit Chatterjee, (Government Nominee)

Ms. Bindu Agnihotri, (Government Nominee)

CA. Naveen ND Gupta, (Member)

CA. Mangesh Pandurang Kinare, (Member)

In the matter of:

CA. Pramod Kumar Mishra,

Ca. Pramod Kumar Mishra, Kanpur - vs.- CA. Shailendra Srivastava, Kanpur (M.No.401597)



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111A/402B, Khanduja Bhawan,
80 Ft. Road, Ashok Nagar,
Kanpur – 208 012

..... **Complainant**

Vs.

CA. Shailendra Srivastava,
M/s. Srivastava Smriti & Associates,
Chartered Accountants,
C/O Sanjay Singh
83A/74, Juhi,
Near New Friend Medical Stores,
Kanpur – 208 014

..... **Respondent**

1. In his complaint duly verified in Form-I dated 14th August, 2013, **CA. Pramod Kumar Misra, Kanpur** (hereinafter referred to as the “**Complainant**”) made following allegations against **CA. Shailendra Srivastava (M. No. 401597) of M/s. Srivastava Smriti & Associates, (FRM No. 013082C) Kanpur** (hereinafter referred to as the “**Respondent**”):

1.1 The Respondent before accepting the appointment of M/s A2Z Mall Private Limited (hereinafter referred to as the “Company”) did not communicate with the Complainant and seek his NOC.



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- 1.2 The Respondent accepted the appointment of the Company knowing that the provisions of Section 225 have not been duly complied.
- 1.3 The Respondent made falsification in the books of account as the Complainant payment was outstanding but he had shown the amount payable as nil whereas a sum of Rs. 7721/- was still receivable in the Complainants book for the year 2011-12.
- 1.4 The aforesaid charges, if proved, would render the Respondent Guilty of professional misconduct falling within the meaning of Clause (8) & (9) of Part I of the First Schedule and Clause (1) of Part II of the Second Schedule to the Chartered Accountants Act, 1949.

2. The prima facie opinion formed by the Director (Discipline) (**enclosed without its enclosures as Annexure 'A'**) along with the Complaint, Written Statement of the Respondent and Rejoinder of the Complainant were considered by the Disciplinary Committee at its meeting held in January, 2016 at Mumbai.

2.1 The Committee on consideration of the same, concurred with the reasons given against the charge(s) and thus, agreed with the prima facie opinion of the Director that the Respondent is Guilty of professional misconduct falling within the meaning of Clauses (8) & (9) of Part I of the First Schedule and Clause (1) of Part II of the Second Schedule to the Chartered Accountants Act, 1949 and accordingly, decided to proceed further under Chapter V of the Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007. The Committee, also directed the Directorate that in terms of the provisions of sub-rule (2) of Rule 18, the prima facie opinion formed by the Director be sent to the Respondent and the Complainant including particulars or documents relied upon by the Director, if any, during the course of formation of prima facie opinion and the Respondent be asked to submit his Written Statement as per the time that shall be specified in the notice.



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3. The Respondent has not submitted Written Statement as per the requirement of Rule 18 (4) of the Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007.

4. The details of the hearing(s) fixed and held in the said matter is given as under:-

Sl. No.	Date(s), if any	Status/Remarks
1.	25 th July, 2016	Adjourned at the request of the Complainant
2.	05 th October, 2016	Heard and concluded

PROCEEDINGS :

5. At the time of hearing held on 05th October, 2016 at New Delhi, the Committee noted that the Complainant was present. However, an e mail dated 4th October, 2016 and letter dated 30th September, 2016 was received from the Respondent stating, inter alia, as under:

“I had already submitted papers/documents before the Committee in my previous reply and after verification of the records, if the Disciplinary Committee is of the opinion that I am guilty of professional misconduct then I am sorry and would like to submit apology for the same. However, I would like to make my humble request that kindly excuse me for my first mistake and drop any further proceeding against me. I am giving my unconditional acceptance on whatever decision is taken by the Committee in this case against me”.

6. In view of above mail/letter, the Committee decided to proceed with ex-parte, the Respondent. The Complainant was put on oath. The Complainant explained the charges in brief. The Complainant gave his submissions. After hearing the submissions of the Complainant, the Committee directed the Complainant to submit his



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appointment/engagement letter within seven days and concluded the hearing. But till day the Complainant has not submitted the same.

FINDINGS:

7. On perusal of the documents on record, namely, Complaint, written statement, Rejoinder, the prima facie opinion of the Director (Discipline) and upon recording the oral/written submissions of the Complainant, the Committee submits its findings as under:-

8. The Committee observed that there are three charges against the Respondent, which are as under:-

- (i) The Respondent before accepting the appointment of M/s A2Z Mall Private Limited (hereinafter referred to as the "Company") did not communicate with the Complainant and seek his NOC.
- (ii) The Respondent accepted the appointment of the Company knowing that the provisions of Section 225 have not been duly complied.
- (iii) The Respondent made falsification in the books of account as the Complainant payment was outstanding but he had shown the amount payable as nil whereas a sum of Rs. 7721/- was still receivable in the Complainants book for the year 2011-12.

9. In view of letter dated 30th September, 2016 and mail dated 04th October, 2016 of the Respondent, the Committee observed that the Respondent has accepted all three charges against him. Further, he has apologised for his said mistakes.

10. The Committee noted that in respect of first charge, the Respondent in his defence stated that when the Company informed him about his appointment as a Statutory Auditor in its EGM dated 06.11.2011 and through its letter dated 06.11.2011, he had sent a NOC letter to the Complainant at his registered address by Trackon Couriers Pvt. Ltd., POD No. 341213326 dated 11.11.2011. Even after passing of substantial period the Respondent had not received any



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objection letter from the Complainant, hence he assumed that the Complainant did not have any objection on the Respondent's appointment

The Committee was of the view that this defence of the Respondent is not acceptable in terms of the guidelines of the Institute regarding Clause (8) of Part I of the First Schedule to the Chartered Accountants Act, 1949 which states that *"the Incoming Auditor should always communicate with previous auditor in such a manner as to retain in his hands positive evidence of the delivery of the communication to the addressee. In the opinion of the Council, communication by a letter sent "Registered Acknowledgement due" or by hand against a written acknowledgement would in normal course provide such evidence"*.

Thus, in respect of this allegation, in the considered opinion of the Committee, the Respondent is GUILTY of professional misconduct falling within the meaning of Clause (8) of Part I of First Schedule to the Chartered Accountants Act, 1949.

11 Further in respect of second charge of the Complainant that the Respondent accepted the Appointment of the Company knowing that the provisions of Section 225 have not been duly complied, the Committee observed the submissions of the Respondent in which he has stated that he accepted his appointment after receiving duly signed appointment letter dated 06/11/2011 with certified copy of resolution passed in the EGM of the Company held on 06/11/2011. Therefore, his appointment has been made in properly convened EGM. The Respondent has also submitted copy of appointment letter and certified copy of Resolution passed at EGM for his appointment. However, it is seen that the Complainant in his rejoinder has sought to raise the issue of AGM having been convened in September, 2011 and non receipt of communication regarding EGM held on 08.11.2011. It was therefore evident that proper procedures in respect of compliance of Section 225 of the Company Act, 1956 had not been complied by the Company.



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Thus, in view of these contradictory facts and acceptance of the charges by the Respondent in his letter dated 30th September, 2016 and mail dated 04th October, 2016, the Committee was of the opinion that the Respondent is GUILTY of professional misconduct falling within the meaning of Clause (9) of Part I of First Schedule to the Chartered Accountant Act, 1949.

12 The Committee noted that last charge made out against the Respondent is that has made falsification in the books of account as the Complainant's professional fees was outstanding but he had shown the amount payable as NIL whereas a sum of Rs 7721/- is still receivable in the Complainant's books of accounts from the Company for financial year 2011-12. The Committee noted the defence of the Respondent in this regard, in which he has stated that all outstanding balance of the Complainant has been paid by the Company before his appointment and by just giving ledger account of the Company, the Complainant cannot claim that the fees is outstanding. He should have submitted some evidence that his bills of professional fees were accepted by the Company's authorised staff which he is claiming unpaid. The Audit fees payable is coming Rs. 8000/- in Balance Sheet of the Company as on 31st March, 2012. But as per ledger submitted by the Complainant he is stating audit fee Rs. 4000/- pending and tax audit fee pending Rs. 3000/- plus service tax of Rs. 721/- and this total amount coming out to be Rs.7721/- . So there is a variance between the Company books and the Complainant books in respect of the Audit fees outstanding,

However, the Committee observed that the Respondent had also not provided any tangible evidence to show that the outstanding /undisputed audit fees has been settled by the Company before accepting audit assignment by the Respondent. The Complainant in his rejoinder has categorically denied any payment having been received and has rejected the claim of payment by the Company to him as made out by the Respondent.

In view of the above and acceptance of the charges by the Respondent vide his letter dated 30th September, 2016 and mail dated 04th October, 2016, the Respondent is guilty of



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professional misconduct falling within the meaning of Clause (1) of the Part II of Second Schedule to the Chartered Accountants Act, 1949.

CONCLUSION :

13. Thus, in the considered opinion of the Committee, the Respondent is **GUILTY** of Professional Misconduct falling within the meaning of Clauses (8) & (9) of Part I of the First Schedule and Clause (1) of Part II of the Second Schedule to the Chartered Accountants Act, 1949. [as amended by the Chartered Accountants (Amendment) Act, 2006].

Sd/-

(CA. Nilesh Shivji Vikamsey)

Presiding Officer

Sd/-

(Amit Chatterjee)

Government Nominee

Sd/-

(Mrs. Bindu Agnihotri)

Government Nominee



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Sd/-

(CA. Naveen ND Gupta)

Member

Sd/-

(CA. Mangesh Pandurang Kinare)

Member

Date : 15th December, 2016

Place : Kolkata