



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

ORDER UNDER SECTION 21B(3) OF THE CHARTERED ACCOUNTANTS (AMENDMENT), ACT 2006
READ WITH RULE 19(1) OF THE CHARTERED ACCOUNTANTS (PROCEDURE OF INVESTIGATION OF
PROFESSIONAL AND OTHER MISCONDUCT AND CONDUCT OF CASES) RULES, 2007.

File No. : PR-190/13-DD/189/2013/DC/439/2016

In the matter of:

Registrar of Companies, West Bengal,
Office of the Registrar of Companies,
Ministry of Corporate Affairs,
"Nizam Palace", II MSO Buildings, II Floor,
234/4, A.J.C. Bose Road,
Kolkata – 700 020

...Complainant

Versus

CA. Bhagirath Kumar Tibrewal (M.N.053582)
Trust House,
32A Chittaranjan Avenue,
5th Floor, Unit -C,
Kolkata – 700 012

... Respondent

Members Present:

CA. Naveen N D Gupta, Presiding Officer
Smt. Anita Kapur, Member (Govt. Nominee)
CA. ShyamLalAgarwal, Member

Date of Final Order: 30th November, 2018

Place of Final Order:Kolkata

1. That vide report dated 08.02.2018, the Disciplinary Committee was of the opinion that CA. Bhagirath Kumar Tibrewal(M.N.053582) was GUILTY of Professional Misconduct falling within the meaning of Clause (5) of Part I of the Second Schedule to the Chartered Accountants Act, 1949 with respect to the allegations relating to statutory audit of M/s. Thirdwave Securities Pvt. Ltd. (hereinafter referred to as the "Company") for the financial year ended 31st March, 2009 and 31st March, 2010 relating to non-disclosure of criteria for revenue recognition as per the requirement of Accounting Standard- 9.



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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 20th November 2018 was addressed to him thereby granting him an opportunity of being heard in person and/or to make a written representation before the Committee on 30th November 2018 at Kolkata.

3. That the Respondent had given his written representation dated 30th November 2018. The Respondent in his representation, inter alia, stated that entire revenue was credited to the bank account of the company and was carrying absolute certainty and guarantee by the recognized stock exchange, and only if there was amount outstanding with any uncertainty, disclosure under AS-9 would have arisen. His claim was that non existence of any uncertainty itself was enough to confirm the compliance of relevant accounting standards; hence qualification or disclosure of the same in financial statements and/or auditor's report was irrelevant. His contention was that in the audit report itself vide Para (d), it was clearly specified that the company had complied with accounting standards referred to in the Section 211(3C) of the Companies Act, 1956 and only if there was any deviation from the accounting standard, qualification of the same to the extent required had to be reported. He further stated that the figures in question were very immaterial and did not affect any of the stakeholders/creditors of the company and the Revenue Departments in any way.

4. The Committee considered the written submissions made by the Respondent. The Committee noted that the Respondent had made an application under section 621A of the Companies Act, 1956 before Regional Director, Eastern Region, Ministry of Corporate Affairs, Kolkata stating that offence under section 227 (3) (d) read with section 211 (3A) of the Companies Act relating to AS 9 for the years ended 31.03.2009 and 31.03.2010 be compounded. It further perused the compounding order dated 08/08/2013 wherein in para 2, it was stated that:

"Ms. Bhagwati Sharma, practicing Company Secretary authorized representative of the Respondent appeared and admitted the defaults and submitted that the applicant auditor had signed the Balance Sheets of the Company for the financial years ended 31.03.2009 & 31.03.2010 and his firm has resigned as auditors of the Company after the financial year ended 31.03.2010 and therefore the applicant auditor is not in a position to make any comment with respect to the state of subsequent annual accounts of the Company. Ms. Sharma therefore, prayed that the offence under section 227 (3) (d) read with section 211 (3A) of the Companies Act relating to AS 9 for the years ended 31.03.2009 and 31.03.2010 be compounded".

5. Moreover in paras 3, 4 and 5 of said order, it was further stated that:

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"the offences with regard to contravention of provisions of section 227 (3) (d) read with section 211 (3A) of the Companies Act relating to AS 9 for the years ended 31.03.2009 and 31.03.2010 are hereby compounded with concurrence of the authorized representative of the applicant, by imposing compounding fee of Rs. 9,000/- (Rupees Nine Thousand) only to be paid by the applicant. Compounding fee of Rs. 9,000/- (Rupees Nine Thousand) only as stated above has been deposited by the applicant in the Central Government's account vide Challan no. B80798663 on 02/08/2013. As the applicant has deposited the compounding fee, the offence with regard to contravention of provisions of section 227 (3) (d) read with section 211 (3A) of the Companies Act relating to AS 9 for the years ended 31.03.2009 and 31.03.2010 have been compounded against him".

6. The Committee also noted the plea of the Respondent that in order to avoid undue harassment, the Respondent had accepted the compounding Order. It was viewed that such plea was of no relevance as he himself had made application before the Regional Director for compounding of his offence under section 227 (3) (d) read with section 211 (3A) of the Companies Act relating to AS 9 for the years ended 31.03.2009 and 31.03.2010.

7. The Committee is thus of the opinion that the misconduct on the part of the Respondent had been established and keeping in view the facts and circumstances of the case as aforesaid, orders the removal of name of Respondent **CA. Bhagirath Kumar Tibrewal (M.N.053582)** from Register of Members for a period of 6 months.

Sd/-

[CA. Naveen N. D. Gupta]
Presiding Officer

Sd/-

[Smt. Anita Kapur]
Member (Govt. Nominee)

Sd/-

[CA. ShyamLalAgarwal]
Member

Date:30th November 2018

Place:KOLKATA

Certified Copy

Ajay Kumar
Deputy Secretary
Discipline & Prosecution

The Institute of Chartered Accountants of India
ICAI Bhawan, I.P. Marg, New Delhi-110 002

CONFIDENTIAL

REPORT OF THE DISCIPLINARY COMMITTEE - II

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

Deputy/Assistant Registrar ROC, West Bengal, Kolkata

-Vs-

CA. Bhagirath Kumar Tibrewal (M. No. 053582) of M/s. B. K. Tibrewal & Associates, Kolkata

PR-190/13-DD/189/2013/DC/439/2016

MEMBERS PRESENT:

CA. Naveen N.D. Gupta, Presiding Officer
Shri Amit Chatterjee, Government Nominee
Mrs. Bindu Agnihotri, Government Nominee
CA. Manu Agarwal, Member

In the matter of:

Registrar of Companies, West Bengal,
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Trust House,
32A Chittaranjan Avenue,
5th Floor, Unit -C,
Kolkata – 700 012

.....Respondent

1. Shri Debasish Bandopadhyay, Registrar of Companies, West Bengal, Kolkata (hereinafter referred to as the "Complainant") has filed complaint in Form 'I'

dated 12th August, 2013 and verified as on 16th July, 2013 against **CA. Bhagirath Kumar Tibrewal, (M.No.053582) Kolkata** (hereinafter referred to as the "Respondent"). The Complainant in his complaint has alleged that the Respondent as auditor of M/s. Thirdwave Securities Pvt. Ltd. (hereinafter referred to as the "Company") have not made the following qualifications in their Audit Report resulting in contravention of Section 227(2)/3(d) of the Companies Act, 1956:-

- 1.1 In the Balance Sheets of the Company as at 31st March, 2009 and 31st March, 2010 and the Profit & Loss Accounts for the periods ending on the said dates, fixed assets with gross value, depreciation including accumulated depreciation and net fixed assets were not disclosed on the main page of the Balance Sheets resulting in contravention of Section 211 read with Part I of Schedule VI to the Act.
- 1.2 The investments disclosed in the Balance Sheets as at 31st March, 2009, 31st March 2010 and 31st March, 2011 and the Profit & Loss Accounts of the periods ending on the said dates the investments are not classified into trade investment or other investment resulting in contravention of Section 211 read with Part I of Schedule VI to the Act.
- 1.3 In the Balance Sheet as at 31st March, 2011, the complete name of the Company in which the investment of Rs. 281.35 lacs in the preference shares has been made is not disclosed resulting in contravention of Section 211 read with Part I of Schedule VI to the Act.
- 1.4 In the Balance Sheets as at 31st March, 2009, 31st March, 2010 and 31st March, 2011 and the Profit & Loss Accounts for the periods ending on the said dates, the current assets are not classified and disclosed in a manner as provided under the provisions of Part I of Schedule VI to the Act resulting in contravention of Section 211 read with Part I of Schedule VI to the Act.
- 1.5 In the Balance Sheet as at 31st March, 2011 and the Profit & Loss Account for the period ending on the said date, the terms of redemption or conversion (if any) of the preference shares together with earliest date of redemption are not disclosed resulting in contravention of Section 211 read with Part I of Schedule VI to the Act.

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- 1.6 In the Balance Sheets as at 31st March, 2009, 31st March, 2011 and the Profit & Loss Accounts for the periods ending on the said dates, the Company has disclosed dividend income but the said income are not classified into as to whether from trade investment or other investment resulting in contravention of Section 211 read with Part II of Schedule VI to the Act.
- 1.7 In the Balance Sheet as at 31st March, 2010, the Company has disclosed profit on securities dealings but the said income are not classified into as to whether from trade investment or other investment resulting in contravention of Section 211 read with Part II of Schedule VI to the Act.
- 1.8 In the Balance Sheets as at 31st March, 2009 and 31st March, 2010 and the Profit & Loss Accounts for the periods ending on the said dates, the Company has disclosed payment of rent, insurance and taxes in a consolidated manner, which is contrary to the provisions of Part II of Schedule VI to the Act resulting in contravention of Section 211 read with Part II of Schedule VI to the Act.
- 1.9 In the Balance Sheets as at 31st March, 2009, 31st March, 2010 and 31st March, 2011 and the Profit & Loss Accounts for the periods ending on the said dates, the Company has disclosed payment of remuneration to the directors without classifying the remuneration in a manner as provided in Part II of Schedule VI to the Act resulting in contravention of Section 211 read with Part II of Schedule VI to the Act.
- 1.10 In the Balance Sheets as at 31st March, 2009, 31st March, 2010 and 31st March, 2011 and the Profit & Loss Accounts for the periods ending on the said dates, the Company has disclosed payment of fees to the auditors but the fees of the auditors are not disclosed in a manner as provided under the provisions of Para 4B of Part II of Schedule VI to the Act resulting in contravention of Section 211 read with Part II of Schedule VI to the Act.
- 1.11 In the Balance Sheets as at 31st March, 2009, 31st March, 2010 and 31st March, 2011 and the Profit & Loss Accounts for the periods ending on the said dates, the amount due from micro and small industries are not disclosed under current liabilities resulting in contravention of Section 211 read with Part I of Schedule VI to the Act.

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- 1.12 In the Balance Sheet as at 31st March, 2011 and the Profit & Loss Account for the period ending on the said date, the amount of expenditure on repair and maintenance has been clubbed and disclosed in consolidated manner resulting in contravention of Section 211 read with Part II of Schedule VI to the Act.
- 1.13 In the Notes on accounts attached to the Balance Sheets as at 31st March, 2009 and 31st March, 2010 and Profit & Loss Accounts for the periods ending on the said dates, the criteria for revenue recognition are not disclosed resulting in contravention of Section 211(3A) read with Accounting Standard-9.
- 1.14 In the Balance Sheets as at 31st March, 2009 and 31st March, 2010 and Profit & Loss Accounts for the periods ending on the said dates, the investments are not classified into long term and/or current investment resulting in contravention of Section 211(3A) read with Accounting Standard-13.
- 1.15 The dividend income disclosed in the Balance Sheets as at 31st March, 2009, 31st March, 2010 & 31st March, 2011 are not classified into whether from long term and/or current investment resulting in contravention of Section 211(3A) read with Accounting Standard-13.
- 1.16 The amount of profit on securities dealing disclosed in the Balance Sheets as at 31st March, 2009 and 31st March, 2010 and Profit & Loss Accounts for the periods ending on the said dates are not classified into whether from long term and/or current investment resulting in contravention of Section 211(3A) read with Accounting Standard-13.
- 1.17 In the Balance Sheets as at 31st March, 2009 and 31st March, 2010 and Profit & Loss Accounts for the periods ending on the said dates, it is stated that the value of investments are stated at the average cost of acquisition but in the aforesaid Balance Sheets, the investments are not classified into whether long term and/or current investment and therefore, without classifying the investment into long term and/or current investment, the valuation method adopted by the Company is not in accordance with the provisions of Accounting Standard-13 resulting in contravention of Section 211(3A) read with Accounting Standard-13.
- 1.18 During the years ending on 31st March, 2009, 31st March, 2010 and 31st March, 2011 the Company has made payment of remuneration to the Directors but no

disclosure has been made in the related party disclosure made in the Balance Sheets and Profit & Loss Accounts for the aforesaid years resulting in contravention of Section 211(3A) read with Accounting Standard-18.

1.19 In the Balance Sheet as at 31st March, 2011 and Profit & Loss Account for the period ending on the said date, the Company has shown goodwill, which appears to have been generated internally, which is contrary to the provisions of Accounting Standard-26 resulting in contravention of Section 211(3A) read with Accounting Standard-26.

2. The aforesaid charges, if proved, rendered the Respondent guilty within the meaning of Clause (5) of Part I of the Second Schedule to the Chartered Accountants Act, 1949 [as amended by the Chartered Accountants (Amendment) Act, 2006].

3. The prima facie opinion formed by the Director (Discipline) (enclosed without its enclosures as Annexure 'A') on the Complaint and written statement were considered by the Disciplinary Committee at its meeting held on 03rd /04th June, 2015 at Mumbai.

3.1 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 Clause (5) of Part I of the Second Schedule to the Chartered Accountants Act, 1949 [as amended by the Chartered Accountants (Amendment) Act, 2006] and accordingly, decided to proceed further under Chapter V of the Chartered Accountants (Procedure of Investigation 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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4. The Respondent has submitted his Written Statement dated 21st March, 2016 (enclosed without its enclosures as **Annexure 'B'**) as per the requirement of Rule 18 (4) of the Chartered Accountants (Procedure of Investigation of Professional and Other Misconduct and Conduct of Cases) Rules, 2007.

5. The detail(s) of the hearing fixed and adjourned/held in the said matter are given as under:-

Sl. No.	Date(s) if any	Status
1	15 th December, 2016	Part heard and adjourned
2	28 th April, 2017	Heard and Concluded

PROCEEDINGS :

6. At the hearing held on 15th December, 2016 at Kolkata, the Committee noted that on behalf of Complainant Department, Shri Dip Narayan Chaudhary, Deputy Registrar of Companies, Ministry of Corporate Affairs, Kolkata was present. The Respondent was also present in person.

7. Both the Complainant and the Respondent appeared before the Committee. As per procedure, both the parties were put on oath. The Complainant explained the charges as contained in the complaint. The Presiding Officer enquired from the Respondent as to whether he would like to plead guilty of the charges to which the Respondent replied in negative.

8. The Complainant submitted that the Respondent has already pleaded guilty before Registrar of Companies and has applied for Compounding. The Respondent admitted before the Committee that he has accepted 'Compounding Order' of the Department. The Committee directed the Complainant to submit the copy of said Order. The

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Committee also directed the Respondent to file a copy of his submissions to Complainant department in this matter.

With above directions to the parties, the Committee decided to adjourned the case for a later date.

9. Thereafter, the hearing took place on 28th April, 2017 at Kolkata, whereat, on behalf of Complainant Department, Shri Dip Narayan Chaudhary, Deputy Registrar of Companies, Ministry of Corporate Affairs, Kolkata was present. The Respondent was also present in person.

10. As this matter was part heard on 15.12.2016, the Presiding officer asked whether the Complainant and the Respondent wished to have de-novo hearing or the hearing could be continued from the stage it was left earlier as composition of the Committee has been changed. Both parties stated that they wished to have the hearing continued from where it was left.

11. With the consent of the parties, the charges were taken as read, for which the Respondent pleaded not guilty. The Complainant submitted that he has nothing to add in the matter and as per directions of the Committee, he has submitted the Compounding Order dated 08/08/2013. The Respondent submitted that only one charge survives against him as per Prima Facie Opinion i.e. violation of Accounting Standard 9. Further, he stated that as it was a small Company, there was a nominal dividend income in year 2008-09 and in year 2009-10 there was small amount of profit on account of sale of securities and capital gain alongwith small dividend income. He further submitted that no amount was outstanding except a small amount of kotak securities which was pending.

12. The Committee perused the Compounding Order of the Registrar of Companies which was accepted by the Respondent and enquired from him that why he has accepted this Order if he plead not guilty before the Committee. The

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Respondent replied that to avoid un-necessary harassment, he had admitted the same at that time.

12. The Committee noted that as the Respondent has already admitted his mistake before one Government authority then he cannot change his stand before another authority i.e. Disciplinary Committee.

13. With this, the Committee concluded the hearing.

FINDINGS :

14. On perusal of the documents on record, namely, the Complaint, Written Statement and Prima Facie Opinion and further written/oral submissions of the Complainant and the Respondent, the Committee gives its findings as under:-

15. The Committee noted that in complaint dated 16/07/2013, the Complainant has made approximately 19 charges against the Respondent. However, all other charges except non disclosure of criteria for revenue recognition as per the requirement of Accounting Standard 9 have been dropped at Prima Facie stage while accepting the Prima Facie Opinion by the Committee. Hence, the findings of the Committee are limited only to one charge i.e. alleged violation of Accounting Standard 9.

16. The Committee noted the submissions of the Complainant and the Respondent and noted that the Respondent has made an application under section 621A of the Companies Act, 1956 before Regional Director, Eastern Region, Ministry of Corporate Affairs, Kolkata stating that offence under section 227 (3) (d) read with section 211 (3A) of the Companies Act relating to AS 9 for the years ended 31.03.2009 and 31.03.2010 be compounded.

17. The Committee perused the compounding order dated 08/08/2013 of Regional Director, Eastern Region, Ministry of Corporate Affairs Kolkata. In said Order in para 2, it is stated that *Ms. Bhagwati Sharma, practicing Company Secretary authorized representative of the Respondent appeared and admitted the defaults and submitted*

that the applicant auditor had signed the Balance Sheets of the Company for the financial years ended 31.03.2009 & 31.03.2010 and his firm has resigned as auditors of the Company after the financial year ended 31.03.2010 and therefore the applicant auditor is not in a position to make any comment with respect to the state of subsequent annual accounts of the Company. Ms. Sharma therefore, prayed that the offence under section 227 (3) (d) read with section 211 (3A) of the Companies Act relating to AS 9 for the years ended 31.03.2009 and 31.03.2010 be compounded.

18. Moreover in paras 3, 4 and 5 of said order, it is stated that the offences with regard to contravention of provisions of section 227 (3) (d) read with section 211 (3A) of the Companies Act relating to AS 9 for the years ended 31.03.2009 and 31.03.2010 are hereby compounded with concurrence of the authorized representative of the applicant, by imposing compounding fee of Rs. 9,000/- (Rupees Nine Thousand) only to be paid by the applicant. Compounding fee of Rs. 9,000/- (Rupees Nine Thousand) only as stated above has been deposited by the applicant in the Central Government's account vide Challan no. B80798663 on 02/08/2013. As the applicant has deposited the compounding fee, the offence with regard to contravention of provisions of section 227 (3) (d) read with section 211 (3A) of the Companies Act relating to AS 9 for the years ended 31.03.2009 and 31.03.2010 have been compounded against him.

19. The Committee was of the view that the submissions of the Respondent that to avoid undue harassment he had accepted the compounding Order have no relevance. Because, the Respondent himself has made application before the Regional Director for compounding of his offence under section 227 (3) (d) read with section 211 (3A) of the Companies Act relating to AS 9 for the years ended 31.03.2009 and 31.03.2010.

20. In view of said order, the Committee was of the opinion that once the Respondent has accepted his offence before one Government authority, now for the same charge (s) he cannot change his stand before this forum. Hence, it is apparent that the Respondent is guilty of professional misconduct within the meaning of Clause (5) of Part I of the Second Schedule to the Chartered Accountants Act, 1949 [as amended by the Chartered Accountants (Amendment) Act, 2006].

CONCLUSION :

21. Thus, in the considered opinion of the Committee, the Respondent is **GUILTY** of Professional Misconduct falling within the meaning of Clause (5) of Part I of the Second Schedule to the Chartered Accountants Act, 1949 [as amended by the Chartered Accountants (Amendment) Act, 2006].

PH


Sd/-
(CA. NAVEEN ND GUPTA)
PRESIDING OFFICER

Sd/-
(AMIT CHATTERJEE)
GOVERNMENT NOMINEE

Sd/-
(Mrs. BINDU AGNIHOTRI)
GOVERNMENT NOMINEE

Sd/-
(CA. MANU AGARWAL)
MEMBER

DATE : 8th February, 2018
PLACE : New Delhi

Certified True Copy

Mukesh Kumar Mittal
Assistant Secretary
Disciplinary Directorate
The Institute of Chartered Accountants of India
ICAI Bhawan, I.P. Marg, New Delhi-110 002