

CONFIDENTIAL

DISCIPLINARY COMMITTEE [BENCH-III (2018-19)]

[Constituted under section 21B of the Chartered Accountants 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/6/14/DD/4/INF/14-DC/534/2017

In the matter of:

**CA. Shubham Khandelwal (M.No.412128)
211, Royal Ratan,
7, M.G. Road,
INDORE-452 001**

----Respondent

MEMBERS PRESENT:

**CA. Naveen N.D. Gupta, Presiding Officer
Shri Ajay Mittal, IAS (Retd.), Member (Govt. Nominee)
Ms. Anita Kapur, Member (Govt. Nominee)
CA. Shyam Lal Agarwal, Member
CA. Sanjay Kumar Agarwal, Member**

DATE OF HEARING: 12th November, 2018

PLACE OF HEARING: NEW DELHI

PARTIES PRESENT

Counsel for the Respondent: CA. Santosh Deshmukh



Allegations made by the Informant:

1. A letter dated 13th September, 2014 alongwith other related documents was received from Ms. Meenakshi Dubey, Manager, Reserve Bank of India, Bhopal (hereinafter referred to as "RBI") containing allegations against CA. Shubham Khandelwal (hereinafter referred to as the 'Respondent'). It was alleged that the Respondent had failed to submit the Exception Report to RBI despite the fact that from the financial statements of M/s. Mahima Auto & Finance Limited, Indore (MP) (herein after referred to as the "Company") for the Financial Year 2011-2012, as audited by the Respondent, it was evident that 20% of the profit was not transferred to the Statutory Reserve Fund as per the requirement of Section 45-IC of RBI Act, 1934.

Proceedings:

2. At the time of hearing held on 21st May, 2018, the Committee noted the absence of the Respondent but his authorized Counsel was present. The Counsel for the Respondent, thereafter, made his submissions on the allegations. The then Committee further examined the matter in view of the information available and considered the submissions made by the Counsel present. Based on the documents available on record and after considering the oral and written submissions made by the Respondent before it, the then Committee directed the Office to seek certain Clarification/opinion from Auditing and Assurance Standard Board of ICAI with reference to Section 45IC of the RBI Act 1934. The Committee also directed that a letter be written to the RBI to seek the details of action taken against the Company in respect of reported non-compliance. In pursuance to further directions given by the Committee from time to time the following information was sought from the Respondent as well:

- a) Whether the Company in question had declared any dividend in the year under examination or thereafter without creating special reserve as required under section 45IC of the RBI Act.
- b) In case, dividend was not declared, the period when such Reserve was first created and the period(s) against the profit of which it was created with the copy of balance sheet concerned, highlighting the profits against which reserve was created and provide the name of the auditor of the company for the period(s) concerned.
- c) If the dividend was declared subsequently, then how much dividend was declared and whether special reserve was created only against the profits of that particular year or




against the entire surplus accumulated till then and to furnish details thereof as in (b) above.

d) Whether RBI had taken any action against the company in question and if so the details thereof.

3. At the time of hearing held on 12th November 2018, the Committee noted that the documents/information as sought from the Respondent had been received and the Counsel for the Respondent was present to appear before the Committee. The Committee, thereafter, informed the Counsel that since the composition of the Committee had undergone a change, an option of de-novo hearing in the matter was available to him. The Counsel stated that since substantial defence both in writing and orally had been submitted by him at the previous hearing, the hearing in the matter may be proceeded from the stage where it was left. The Committee agreed to the same and based on the documents available on record, the oral and written submissions made by the Respondent, the Committee concluded the hearing in the matter.

4. The Respondent in his written submissions had stated that the size of the Company was very small as for the year ending 31.03.2012 profit before tax was Rs.48,482/- and profit after tax was Rs.33,160/-. The company had not declared any dividend since its inception and had also not accepted public deposits. The argument of the Respondent was that since no dividend was declared by the Company since inception, there was no requirement for creating reserve under section 45-IC of the Reserve Bank of India Act, 1934.

5. He stated that the Company had also interpreted the said provision accordingly and since no dividend was declared from its inception, following the said interpretation, reserve fund was not created under Sec 45-IC of the Reserve Bank of India Act, 1934. The Company had been regularly submitting the copy of audited balance sheet to Reserve Bank of India and Reserve Bank of India had never raised any objection on this issue or any other issue in any of the earlier years. The Respondent further stated that even if the interpretation of the company regarding creation of reserve fund was assumed to be not correct and if the reserve fund had been created, there was a requirement to create a reserve fund of Rs. 6,632 (20% of PAT Rs. 33,160/-) only for that year which was very small, insignificant and immaterial figure. The RBI neither took any action against the company nor against its Director, and no Penal Proceeding were initiated against the Company in relation to the said non-creation of Reserve u/s 45-IC. The Respondent also produced on record an affidavit duly sworn by Shri Ramesh Gupta, Director of the

Company in which he confirmed that the RBI had not taken any action against the company or its Director.

Findings of the Committee:

6. The Committee noted that the basic charge against the Respondent was that in the Audited Financial Statement of the Company for the Financial Year 2011-2012, as audited by the Respondent, 20% of the profit had not been transferred to the Statutory Reserve Fund as per the requirement of section 45-IC and the same was not reported by way of Exception Report by the Respondent.

7. The Committee perused the Balance Sheet and the Profit and Loss Account of the company for the year ended 2011-12 and noted that net profit before tax was reported at Rs.48,482, profit after tax amounted to Rs.33,160 and no dividend had been declared during the said financial year. The Committee also noted the provisions of Section 45-IC of RBI Act, 1934 in respect statutory reserve fund as quoted by the Respondent before the Committee which states as under:

45-IC Reserve fund:-

(1) Every non-banking financial Company shall create a reserve fund and transfer therein a sum not less than twenty per cent of its net profit every year as disclosed in the profit and loss account and before any dividend is declared.

8. It was noted that the Respondent had submitted that the company had not declared any dividend and, the requirement of transfer to Statutory Reserve Fund was not applicable on it till any dividend was declared. The Committee viewed that the extant case involves an interpretation of the legal provision whether the law requires transfer prescribed percentage of net profit to reserve fund only if dividend or irrespective of declaration of dividend. The Committee noted that Para 2.11 of 'Technical Guide on Audit of Non-Banking Financial Companies' issued in 2010 states as follows with respect of Reserve Fund:

"Every NBFC is required to create a Reserve Fund to which at least 20 percent of its net profits must be transferred before declaration of any dividend. The Reserve Fund can be used only for the purposes specified by the RBI from time to time. The Central Government has the power to exempt, on the recommendation of the RBI, an NBFC from this requirement provided the sum total of its statutory reserves and share premium account is not less than it's paid up capital. (emphasis added)"




9. It was noted that it was a matter of interpretation involves whether the phrase '*before any dividend is declared*' states the point of time when the reserve fund is to be set aside in the financial statements or defines the condition to create reserve fund and it was due to difference in such interpretation and lack of clarity that in the extant case allegation was raised against the Respondent by RBI. It was further noted from the submissions made by the Respondent that while auditing the accounts of the Company, he relied upon the interpretation that the transfer of the amount to statutory fund was mandatory only when the Company declared any dividend. The Committee was of the view that a plain reading of technical guide issued by AASB also gave an impression that every NBFC was required to transfer profits to Reserve Fund only before declaration of dividend.
10. It is an admitted position that the Company had not declared any dividend during the financial year(s) in relation to which allegation was made. Further, the reserve was created as soon as the matter was pointed out by RBI to the Company. Accordingly, it was viewed that the said act was unintentional and no malafide intent on the part of the Respondent was apparent for not giving an Exception Report, as he had relied on an interpretation in a bonafide manner that transfer to reserve fund was only required when the Company declares any dividend. Thus, the Committee decided that the Respondent was not guilty of the charges as alleged in the instant case.

Conclusion:

11. In conclusion, in the opinion of the Committee, the Respondent is **NOT GUILTY** of professional misconduct falling within the meaning of Clause (7) of Part I of the Second Schedule to the Chartered Accountants Act, 1949.
12. The Committee, accordingly, passes orders for closure of this case against the Respondent.

Sd/-
(CA. Naveen N.D. Gupta)
Presiding Officer

Sd/-
(Smt. Anita Kapur)
Member (Govt. Nominee)

Sd/-
(Shri Ajay Mittal, IAS(Retd).)
Member (Govt. Nominee)

Sd/-
(CA. Shyam Lal Agrawal)
Member

Sd/-
(CA. Sanjay Kumar Agarwal)
Member

Date: 11th January, 2019
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

