

CONFIDENTIAL

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

**[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**

PPR/P/8/14/DD/6/INF/2014-DC/695/2017

In the matter of:

CA. GirdharGarg,
409-411, Chetak Centre,
12/2, R.N.T. Marg,
Near Hotel Shreemaya,
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. ShyamLalAgarwal, Member
CA. Sanjay Kumar Agarwal, Member

Date of Final Hearing : 12th November, 2018

Place of Final Hearing : New Delhi

PARTIES PRESENT

Counsel for the Respondent: CA. SantoshDeshmukh

Allegations of the Informant, Manager, RBI, Bhopal:

1. A letter dated 13th September, 2013 along with related documents was received from **Ms. Meenakshi Dubey, Manager, Reserve Bank of India, Bhopal** (hereinafter referred to as "RBI") containing allegations against **CA. Girdhar Garg** (hereinafter referred to as the "Respondent"). It was alleged that the Respondent had failed to submit the Exception Report to the RBI despite the fact that from the Financial Statement of M/s. Palasia Leasing & Investment Pvt. Ltd., (hereinafter referred to as the "Company") for the Financial Year 2011-12, 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 the Reserve Bank of India Act, 1934.

Proceedings:

2. At the time of hearing held on 21st May 2018, the then Committee noted the presence of the Respondent along with his authorized Counsel. The Respondent was put on oath. Thereafter, the then Committee asked the Respondent as to whether he wished the charges to be read out or these could be taken as read. The Respondent stated that he was aware of the allegations raised against him and the same may be taken as read. On being asked as to whether he pleaded guilty to the charges, the Respondent pleaded not guilty and opted to defend the case. 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 along with the Respondent. 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 45-IC of the Reserve Bank of India 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 451C 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 the RBI had taken any action against the company in question and if so the details thereof.

3. At the time of last 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 company in question had not declared any dividend since inception till date and the special reserve was created in the F.Y. 2012-13 @ 20% for opening balance as on 01/04//2012 in the surplus in Profit and Loss a/c and on the profit of F.Y 2012-13 which signified that the Reserve Fund in terms of Section 45-1C of the RBI Act was created. His argument was that since no dividend was declared, there was no requirement for creating reserve. It was further submitted that 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 45-1C. The Respondent had also produced on record an Affidavit duly sworn by Director Shri Jitendra Kumar Jain, Director of the Company in which he confirmed that RBI had not taken any action against the Company or

its Director. With respect to profits earned and dividend declared, the Respondent had submitted that the company had earned profit during the year 2011-12, however, it had not declared any dividend and there were accumulated losses of Rs. 5,68,977/-. Though Company was of the view that they are not required to create fund as required under 45-IC, however, after receiving letter from RBI, reserve for the year 2011-2012 was created in the year 2012-2013.

Findings of the Committee:

5. 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 45-IC of the Reserve Bank of India Act, 1934 and the same was not reported by way of Exception report to RBI by the Respondent.

6. The Committee pursued the statement of Profit and Loss Account of the Company for the year ended 31.03.2012 and it was noted that during the said year, the Company had earned a profit after tax of Rs. 3,91,552.00(A-21), and there were accumulated losses of Rs. 5,68,977.00(A-27) and that, the Company had not declared any dividend. The Committee considered Section 45-IC of the RBI Act, 1934 in respect of statutory reserve fund 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.

7. 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 involved an interpretation of the legal provision: Whether the Law requires transfer of prescribed percentage of net profit to reserve fund only if dividend is declared 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 its paid up capital. **(emphasis added)**"*

8. It was noted that it was a matter of interpretation 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 was due to difference in interpretation and lack of clarity that in the extant case, allegation was raised against the Respondent by RBI.
9. 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 declared 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)

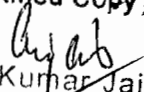
Sd/-
(Shri Ajay Mittal, IAS (Retd.))
Member (Govt. Nominee)

Sd/-
(CA. ShyamLalAgarwal)
Member

Sd/-
(CA. Sanjay Kumar Agarwal)
Member

Date: 11th January, 2019

Place: New Delhi

Certified Copy,

Ajay Kumar Jain
Deputy Secretary
Disciplinary Directorate
The Institute of Chartered Accountants of India
ICAI Bhawan, I.P. Marg, New Delhi-110 002