

**CONFIDENTIAL**

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

**[Constituted under section 21B of the Chartered Accountants Act, 1949]**

**Findings under Rule 18(17) read with 19(2) of the Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007**

**File no. : PR/144/14-DD/155/14-DC/568/2017**

**In the matter of :**

**Shri K.S. Kaushik,  
Deputy Director  
Serious Fraud Investigation Office  
Ministry of Corporate Affairs, Govt. of India  
2<sup>nd</sup> Floor, Paryavaran Bhawan, CGO Complex  
Lodhi Road  
New Delhi-110 003**

**.....Complainant**

**Versus**

**CA. Rajiv Kumar Shivprasad Khandelwal (M. No.36026)  
of M/s R.S. Khandelwal & Associates  
Chartered Accountants  
407, Prospect Chambers  
317 D N Road Fort  
Mumbai-400 001**

**.....Respondent**

**Members Present:**

**CA. Naveen N. D. Gupta, Presiding Officer  
Smt. Anita Kapur, IRS (Retd.), Member (Govt. Nominee)  
CA. Shyam Lal Agarwal, Member**

**Date of Final Hearing: 20<sup>th</sup> November, 2018**

**Place of Final Hearing: Mumbai**

**Parties Present:-**

- (i) Shri Pradeep Kumar Yadav – Representative of the Complainant
- (ii) CA. Rajiv Kumar Shivprasad Khandelwal: Respondent

**Allegations of SFIO, the Complainant:**

1. Shri K.S. Kaushik, the Deputy Director, Serious Fraud Investigation Office, Ministry of Corporate Affairs, Govt. of India, New Delhi (hereinafter referred to as the "Complainant") has filed complaint in Form 'I' dated 29<sup>th</sup> May, 2014 against CA. Rajiv Kumar Shivprasad Khandelwal (M. No.36026), of M/s R.S. Khandelwal & Associates, Chartered Accountants, Mumbai (hereinafter referred to as the "Respondent" and "Respondent firm"). The charge alleged against the Respondent is as below:

1.1 The Respondent had conducted the Statutory Audit of the M/s Panther Industrial Products Ltd. (hereinafter referred to as "Company") for the Financial Year ending 31.3.2000 and had given an unqualified audit opinion for the said Financial Year. It is stated that the Respondent in para no. 7 of the annexure to the auditor's report dated 27.6.2000 (prepared in pursuance to CARO, 2003) had stated that the Company had granted unsecured interest free loan to a Company listed in the register maintained under Section 301 of the Companies Act 1956 and to Companies under the same management within the meaning of erstwhile Section 370 (1B) of the Act and in his opinion the terms and conditions of such loans were not prima facie prejudicial to the interest of the Company except that such loans were interest free. It was alleged that the Respondent's said observation was evasive and misleading as Sub-Section 3 of Section 372-A of the Company's Act, 1956 prohibits a Company from giving any interest free loan to another Company.

**Proceedings:**

2. At the time of last hearing on 20<sup>th</sup> November, 2018, the Committee noted that both the Complainant's representative and Respondent were present to appear before the Committee. The office apprised the Committee that following details were sought from the Respondent at its previous hearing:
  - a. Nature of the amount paid to Classic Credit Ltd.
  - b. To prepare an excel sheet of all the three accounts in question in the extant case mentioning the date, narration, amount of loan/debt, interest received,

interest paid and the amount of interest calculated. Further, the calculation sheets be also placed as annexure to the said excel sheet prepared.

It was noted that the Respondent had submitted the required details. After considering the details submitted by the Respondent, the Committee asked the Complainant to make submissions. The Respondent, thereafter, made his final submissions in the matter. Based on documents available on record and after considering the oral and written submissions made by both the parties, the hearing in the matter was concluded.

**Findings of the Committee:**

3. On perusal of papers on record, the Committee noted that the charge alleged against the Respondent was that he had not qualified his audit report despite the fact that the Company had granted unsecured interest free loan to a Company listed in the register maintained under Section 301 of the Companies Act, 1956 and to Companies under the same management within the meaning of erstwhile Section 370 (1B) of the Act.
4. It was noted that the matter pertains to unsecured loans given by the Company (as per details given in Schedule G (C-39) (read with submissions made by the Respondent) to the following:

	Rs.
Panther Fincap & Management Services Ltd.	3,07,88,475
Panther Investrade Ltd.	2,137
Classic Credit Ltd.	8,78,850

5. The Committee noted that the Respondent had submitted that interest was charged on the loans given to Panther Fincap & Management Services Ltd. (PFMS) and Panther Investrade Ltd (PIL) which was credited as an interest income of Rs. 1.45 Crore (C-37) the details of which were given as below:

	Rs.
Panther Fincap & Management Services Ltd.	78,50,438
Panther Investrade Ltd.	66,70,359

In this context, it was noted that the Respondent had also submitted a statement of 'Calculation of Interest' charged by the Company from Panther Fincap & Management Services Ltd. (PFMS) and Panther Investrade Ltd (PIL) for the year ended 31st March, 2000 which indicate the detail, as per which such interest was charged from the respective parties. The Respondent had further furnished ledger accounts of the said companies which clearly indicate the interest charged on such loans from time to time and tax deducted thereon. Accordingly, it was viewed that interest was charged by the company on the loans given to PFMS and PIL, so there was no violation of Sec 372A of the Companies Act, 1956.

6. It was further submitted by the Respondent that the amount receivable from Classic Credit Limited (CCL) was not a loan but infact was an excess amount paid and hence was a debt recoverable, which could not be treated as a loan within the meaning of section 372A of the Companies Act, 1956. It was observed that a sum of Rs. 8.79 Lacs (C-39) is stated to be given to CCL as appearing in the Schedule G. Also, upon perusal of the ledger account of CCL for the period 1999-2000, it was noted that an amount of Rs. 50.25 lakh was payable to it which was paid in various tranches and the closing balance thus represent the excess amount paid which was then recoverable from the party. Hence, it was viewed that such balance was not a loan which was granted interest free. However as a matter of abundant caution, the Respondent had included such amount as loan being reported in the Annexure to the Audit Report (Point 7, C-33) as per CARO, 2003.
7. It was also noted that during the final hearing the Complainant, after considering the information received from the Respondent, agreed that interest was charged and therefore no charge survived against the Respondent on this ground. In view of the above, the Committee was of the considered opinion that the Respondent was not guilty of the alleged professional misconduct.



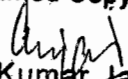
**Conclusion:**

8. Thus, in the opinion of the Committee, the Respondent is held **NOT GUILTY** of professional and/or other misconduct falling within the meaning of Clause (7) and (8) of Part I of the Second Schedule to the Chartered Accountants Act, 1949.
9. The Committee accordingly passes order for closure of this case against the Respondent.

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

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

Sd/-  
CA. Shyam Lal Agarwal  
Member

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

Date : 11<sup>th</sup> January, 2019

Place : New Delhi