

**CONFIDENTIAL**

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

**(Constituted under section 21B of the Chartered Accountants Act, 1949)**

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

**File No. : PPR/P/15/N/13-DD/6/N/INF/13-DC/573/2017**

**In the matter of :**

**CA. Dinesh Kumar Gupta (M. No. 086824)**

Kirti Sadan

3507/6, Pyare Lal Road

Bank Street (Extn.)

Karol Bagh

**New Delhi – 110 005**

**--- Respondent**

**Members Present :**

**CA. Naveen N.D. Gupta, Presiding Officer**

**Smt. Anita Kapur, Member (Govt. Nominee)**

**Shri Ajay Mittal, IAS (Retd.), Member (Govt. Nominee)**

**CA. Shyam Lal Agarwal, Member**

**CA. Sanjay Kumar Agarwal, Member**

**Date of Final Hearing : 29<sup>th</sup> January, 2019**

**Place of Final Hearing : New Delhi**

**Allegations of the Informant RBI, Mumbai :**

A letter dated 15<sup>th</sup> May, 2012 (A3 to A4) was received from Dr. Tuli Roy, Deputy General Manager, Reserve Bank of India, Mumbai (hereinafter referred to as the 'Informant') containing allegations against the Respondent that as the auditor of M/s

Sak Industries Pvt. Ltd. (hereinafter referred to as the "Company") he had failed to file an 'Exception Report' to the RBI for the F/Ys 2008-09, 2009-10 and 2010-11 which was in violation of Section 45-IA and Section 45-MA of the RBI Act, 1934.

**Proceedings :**

2. At the time of hearing on 22<sup>nd</sup> August 2017, the Committee noted that the Respondent along with his Counsel, was present. The Respondent was put on oath. The Committee thereafter asked the Respondent as to whether he wished the allegations to be read out or the same may be taken as read. The Respondent stated that since he was aware of the charges, those might be treated as read. On being asked whether the Respondent pleaded guilty, the Respondent pleaded not guilty and opted to defend the case. The Counsel for the Respondent made his submissions in the matter. The Committee thereafter examined the Respondent and asked him to make his further written submissions in the matter. Accordingly, the hearing in the matter was adjourned.

3. At the time of last hearing on 29<sup>th</sup> January 2019, the Committee noted that the Respondent, along with his Counsel, was present. The Committee ,thereafter, informed the Respondent that the composition of the Committee had undergone a change, and therefore an option of de-novo hearing in the matter was available to him. The Respondent stated that since substantial defense both in writing and orally had been submitted by him at the previous hearing, the hearing in the matter be proceeded from the stage where it was left. The Committee agreed to the same and thereafter, based on the documents available on record, the oral and written submissions made by the Respondent, the Committee concluded the hearing in the matter.

**Findings of the Committee :**

4. The Committee noted that the charge alleged against the Respondent was that he being the auditor of the Company failed to file an 'Exception Report' to the RBI for the F/Ys 2008-09, 2009-10 and 2010-11 which was in violation of Section 45-IA and Section 45-MA of the RBI Act, 1934.

5. The Respondent in this regard submitted that the RBI had cast responsibility on the auditor under Section 45-MA of the RBI Act to report in relation to the public deposits received by the NBFC and in the stated case, the Company was not accepting any deposits so the said section was not applicable to it. The Respondent also stated that



Non-Banking Financial Companies Auditor's Report (Reserve Bank) Directions, 1998 came into force in 1998 and till that year none of the auditor(s) or the Management had ever categorized the Company as NBFC, and the RBI did not even take any cognizance about the status of this Company on the issue of requirement for registration as NBFC under the RBI Act. Since the status of the Company as to the NBFC was not clear, the Company sought expert opinion from an Advocate specializing in Corporate Laws and Financial Matters, viz Mr. Chaman Lal Sharma, who also opined that the Company seemed to be a core investment company and advised the Company to wait for the notification of the new guidelines by the Reserve Bank of India.

6. The Respondent further submitted that, rather he had advised the Company to write a letter to the RBI and to seek their considered opinion in the matter. Thereafter, based on his advice, the Company wrote a letter to RBI on 1<sup>st</sup> November, 2010 requesting for an advice as to whether the Company was required to apply for Certification of Registration (CoR) as NBFC or not. On receipt of advice from the RBI vide its letter dated 5th January 2011, the Management decided to stop all the NBFI activities immediately and then applied for CoR on 30th May, 2011. It was, however, pointed out that even till date, the RBI had not registered the Company as NBFC despite the fact that the Company had been in constant touch with RBI since the date of filing the application and replying to all its queries.

7. The Respondent further vide his submissions dated 24<sup>th</sup> January 2019 stated that in view of the fact that the company did not hold CoR, no exception report was filed in the financial year 2008-09 and 2009-10 under the bona fide belief that the company was not engaged in the Non Banking Financial activities as :

- i. No Exception report was ever submitted by his predecessor CA firm
- ii. There was no change in the activity of the company since last many years.
- iii. No public funds were involved,
- iv. Funds available with the company were in the form of Paid Capital and free Reserves only
- v. No deposit from public was received and there was no non-compliance of Section 58A of the Companies Act, 1956. A

8. He further submitted that on receiving clarification from RBI vide its letter dated 5<sup>th</sup> Jan, 2011 he had duly disclosed this fact on the first page of his audit report for the subsequent period viz financial year 2010-11 whereby he had stated that as under:

*"Attention is invited to Note No II-8 of Schedule 9 of the financial statements with regard to issuance of letter by Reserve Bank of India (RBI) to the company instructing it not to carry on the business of Non Banking Finance Institution (NBFI). RBI has also advised the company to dispose off its financial assets and pass a board resolution for stopping all the NBFI activity without its approval. Accordingly, the company has passed the Board resolution in its board meeting dated January 13, 2011 and liquidated its most of the financial assets. The company is also in the process of making an application to RBI for obtaining Certificate of Registration (COR). The management has presented that it is hopeful of getting CoR from RBI. No provision is considered necessary by the management in these financial statements for any liability which may arise because of above"*

9. The Committee in this regard noted that had the Company been registered as NBFC, the responsibility of the auditor to report under the RBI Act would have certainly arisen. However, in extant case, the Company was not registered as NBFC and also the status of the Company was not clear in view of the impending clarification. The Committee considered Notification No. DFC.117/DG (SPT)-98 dated January 2, 1998 which states as under:

*"The auditor's report on the accounts of a non-banking financial company shall include a statement on the following matters, namely:*

*(A) In the case of all non-banking financial companies*

*whether the company has applied for registration as provided in Section 45IA of the Reserve Bank of India Act, 1934 (2 of 1934), if it is a company incorporated before January 9, 1997 and whether it has received any communication from Reserve Bank of India about the grant of or refusal of certificate of registration to it, and whether the company has obtained a certificate of registration from the Reserve Bank of India if it is a company incorporated on or after January 9, 1997."*

10. The Committee also noted that the Respondent has brought forward an opinion sought from an Advocate of Hon'ble High Court of Delhi (B-8 and B-9) wherein he had opined as under:

*"The Memorandum and Articles of Association of your Company incorporated on 17th January, 1962 in State of Delhi under Companies Act, 1956, has*



been examined. Further, Balance Sheet and Other relevant papers of the company have also been examined. The Reserve Bank of India having considered it necessary in the public interest and to regulate the credit system to the advantage of the Country issued Directions:-

As "Non Banking Financial Companies Acceptance of Public Deposits (Reserve Bank) Directions 1998" w.e.f. 31st January, 1988, the various circulars and notifications of RBI have also been examined.

Your Company has not accepted or received any public deposit, in our opinion, your company appears to be a core investment company (CIC).

In this connection, we may also bring to your kind attention that recently the Reserve Bank of India has issued Core Investment Companies (CICs) guidelines vide circular No. DNBS (PD):CC.NO.197/03.10.001/2010/11 dated August 12, 2010 in terms of which CICs were defined and only systematically important, CICs (CICs-ND-SI) were required to be registered with RBI by obtaining certificates of registration (CoR) within a period of six months from the date of the Notification. But these guidelines are yet to be notified by the Reserve Bank of India, hence we suggest you to wait for the notification of these guidelines and then apply to Reserve Bank of India for the CoR as CIC for your company."

11. The Committee thus noted that the Respondent was under a bona fide belief that the company was not engaged in the Non Banking Financial activities for the said Financial years as public funds were not involved and the Company was engaged in the business of investments in shares, loan to group Companies and investments in money market instruments like debt base mutual funds, and could be reasonably considered as CIC defined by RBI only in Aug, 2010. It was further noted from the Form No MGT-7 for the F.Y. 2017-18 that the principal business activity of the Company was the Financial and insurance activity and the other was manufacturing activity wherein the share of turnover from both the activities was approximately 36% and 64% respectively, thereby failing to meet the principal business criteria to identify a company as NBFC. The Committee found merit in the contention of the Respondent that the company had engaged in the investment activities of its own funds during the years it could not carry on manufacturing activities for certain reasons. It further noted that on receiving clarification from RBI, the Respondent had duly drawn the attention of the shareholders by disclosing the related facts on the first page of his audit report for the Financial year 2010-2011 as reproduced in para no 8 above. The Committee was thus of the opinion that a

technical breach had resulted from a bonafide belief and no malafide intent or gross negligence was involved on part of the Respondent.

**Conclusion :**

11. Thus in conclusion, in the considered opinion of the Committee, the Respondent is **NOT GUILTY** of professional misconduct falling within the meaning of Clauses (5) and (7) of Part I of the Second Schedule to the Chartered Accountants Act, 1949.

12. The Committee, accordingly, orders for closure of this case against the Respondent.

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

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

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

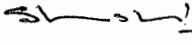
Sd/-  
(CA. Shyam Lal Agarwal)  
Member

(CA. Sanjay Kumar Agarwal)  
Member

Date : 29<sup>th</sup> January, 2019

Place : New Delhi



Certified Copy  
  
**SHASHI MAHAJAN**  
Deputy Secretary  
Disciplinary Directorate  
The Institute of Chartered Accountants of India  
ICAI Bhawan, I.P. Marg, New Delhi-110 002