

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

[PPR/P/HG/168/15-DD/04/INF/16-DC/930/18]

ORDER UNDER SECTION 21B(3) OF THE CHARTERED ACCOUNTANTS ACT, 1949 READ WITH RULE 19(1) OF THE CHARTERED ACCOUNTANTS (PROCEDURE OF INVESTIGATION OF PROFESSIONAL AND OTHER MISCONDUCT AND CONDUCT OF CASES) RULES, 2007.

PPR/P/HG/168/15-DD/04/INF/16-DC/930/18

In the matter of:

CA. Siddharth Shyam Shetye (M.No. 116188),
Aranyeshwar Park A Wing,
2nd Floor, Near Aranyeshwar Temple,
Sahakar Nagar 1,
PUNE - 411 009.

.....Respondent


MEMBERS PRESENT:

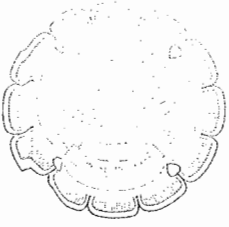
1. CA. Atul Kumar Gupta, Presiding Officer
2. CA. Amarjit Chopra, Government Nominee
3. CA. Rajendra Kumar P, Member
4. CA. Pramod Kumar Boob, Member

1. That vide findings under Rule 18 (17) of the Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007 dated 16.12.2019, the Disciplinary Committee was inter-alia of the opinion that **CA. Siddharth Shyam Shetye (M.No. 116188)** (hereinafter referred to as the **Respondent**) was **GUILTY** of professional misconduct falling within the meaning of Clauses (5) & (7) of Part I of Second Schedule to the Chartered Accountants Act, 1949.

2. That an action under Section 21B (3) of the Chartered Accountants Act, 1949 was contemplated against the Respondent and a communication dated 21st February, 2020 was sent to him thereby granting an opportunity of being heard in person and/or to make oral/ written representation before the Committee on 2nd March, 2020 at Delhi/Mumbai.

3. The Respondent was present before the Committee in Mumbai office of ICAI through video conferencing mode. The Respondent introduced himself to the Committee and acknowledged the acceptance of report dated 16-12-2019 sent to him in which he was found guilty. The Respondent was directed to make his submission on the findings of the Committee holding him


CA. Siddharth Shyam Shetye (M.No. 116188), Pune



THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA
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[PPR/P/HG/168/15-DD/04/INF/16-DC/930/18]

Guilty of professional misconduct within the meaning of Clauses (5) & (7) of Part I of Second Schedule to the Chartered Accountants Act, 1949.

4. At the time of hearing, the Committee noted the submissions made by the Respondent, the brief of which is as follows:-

- i. The Respondent stated that there were certain circumstances under which reporting was not done by him.
- ii. the Respondent submitted that he relied upon a legal opinion and hence, he did not give qualification in the Society's Balance Sheet.
- iii. The Respondent admitted the lapse on his part. Though, he reported the matter in the Balance Sheet of the Company, yet, skipped the same under Society's Audit Report prepared by him. Then he requested for taking a lenient view in his matter.

5. In view of the above, the Committee is of the opinion that the Respondent inspite of being aware of SEBI's orders on SJFIL, the Respondent did not give any qualification in his audit report more so when he was auditor of both the entities which indicates that he was grossly negligent in performing his duties as Statutory Auditor of the Society. Based on the above findings the Respondent being held guilty of professional misconduct, the Committee is of the view that ends of justice will be met, if the punishment awarded to the Respondent is commensurate with the seriousness of the nature of the misconduct.

6. Thus, keeping in view the facts and circumstances of the case, material on record and submissions of the Respondent before it, the Committee ordered that the name of the Respondent i.e. CA. Siddharth Shyam Shetye (M.No. 116188) be removed from the register of members for a period of 01 (One) Year.

Sd/-

(CA. ATUL KUMAR GUPTA)
PRESIDING OFFICER

Sd/-

(CA. AMARJIT CHOPRA)
GOVERNMENT NOMINEE

Sd/-

(CA. RAJENDRA KUMAR P)
MEMBER

Sd/-

(CA. PRAMOD KUMAR BOOB)
MEMBER

DATE : 02/03/2020

PLACE : Delhi

Certified Copy

Ajay Kumar Jain
Deputy Secretary
Disciplinary Directorate

CA. Siddharth Shyam Shetye (M.No. 116188), Pune

CONFIDENTIAL

DISCIPLINARY COMMITTEE [BENCH – II (2019-2020)]

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

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

Ref. No. PPR/P/HG/168/15-DD/4/INF/16/DC/930/18

In the matter of Information treated against:

CA. Siddharth Shyam Shetye....(M.No. 116188),
Aranyeshwar Park A Wing,
2nd Floor, Near Aranyeshwar Temple,
Sahakar Nagar 1,
PUNE - 411 009.

.....Respondent

MEMBERS PRESENT:

CA. ATUL KUMAR GUPTA, PRESIDING OFFICER,
CA. AMARJIT CHOPRA, GOVERNMENT NOMINEE
CA. CHANDRASHEKHAR VASANT CHITALE, MEMBER

DATE OF FINAL HEARING : 25.06.2019

PLACE OF FINAL HEARING : ICAI Tower, Bandra Kurla Complex, Mumbai

PARTIES PRESENT:

Respondent : CA. Siddharth Shyam Shetye

Counsel for the Respondent : CA. Sharad Vaze (M.No.034354)





CHARGE IN BRIEF:-

1. As regard the brief of the matter, the Committee noted that an investigation was conducted by the Commissioner for Co-operation & Registrar of Co-op. Societies, Govt. of Maharashtra in the matter of Samruddha Jeevan Multi State Multi-Purpose Cooperative Society Ltd. (hereinafter referred to as the “**Society**”). The report revealed that the Society was not working as a multi-state Co-operative Society under the provisions of the MSCS Act, 2002 on cooperative principles and diverted/transferred/invested a huge amount of Rs. 435.27 Crore out of the total investment of Rs. 438.33 crore during the year 2013-14 to their group companies which have been banned by SEBI under collective Investment Scheme (CIS). Also, around 98% of the total amount was invested as unsecured investment and the investors were highly under risk and there was possibility of their getting duped. The Committee noted that a number of charges were levelled against the Respondent but only in respect of following charge, the Respondent was held prima facie guilty:-

The Society transferred its funds in Samruddha Jeevan Foods India Ltd (**SJFIL**) whereas SJFIL was banned by SEBI to collect amount under Collective Investment Schemes (CIS). The arrangement made by the said Society, by way of transfer of huge funds to the other entity SJFIL was not allowed as per the provisions of the Securities and Exchange Board of India (Collective Investment Schemes) Regulations, 1999 and the Respondent being the auditor has not qualified his audit report regarding this non-compliance by the Society.

BRIEF OF THE DISCIPLINARY PROCEEDINGS:-

2. On the day of hearing i.e. 25.06.2019, the Respondent was present along with his Counsel. The Respondent was put on oath. On being enquired from the Respondent as to whether he is aware of the charges, the Respondent replied positively and accordingly, the charges were taken as read on record. The Respondent pleaded not guilty to the charges. The Counsel for the Respondent made submissions and the Committee posed questions to the Respondent. After hearing the submissions, the Committee concluded the hearing in the above matter.





FINDINGS OF THE DISCIPLINARY COMMITTEE

3. The Committee observed that the crux of the charge is that the Respondent as auditor failed to point out in his audit report about investment made in SJFIL which was not allowed as per the provisions of the Security and Exchange Board of India (Collective Investment Schemes) Regulations, 1999. Investment in the Company, SJFIL was barred by SEBI vide its Order no. WTM/SR/CIS/28/10/2013 dated 31.10.2013.

4. In respect of above charge, the Respondent stated that provisions of Section 11A of the SEBI Act were made applicable to SJFIL and not to the Society. According to proviso (i) to Sub-Section 3 of Section 11A of the SEBI Act, any scheme or arrangement offered by a Co-operative Society registered under the Co-operative Societies Act, 1912 or a Society being a society registered or deemed to be registered under any law relating to co-operative societies for the time being in force in any State shall not be a collecting investment scheme i.e. CIS. Thus, the Society was out of purview of Section 11A of the SEBI Act. The submissions of the Respondent in brief is as under:

4.1 The Society entered into a leave and Licence agreement with SJFIL w.e.f. 1st April, 2013. Accordingly, the Society obtained 14 Livestock Rearing Farms from SJFIL for the consolidated rent of Rs.15 Crore. The Society has also made an agreement with SJFIL on 30th May, 2013 for in principal purchase of running business of SJFIL w.e.f. 13th May, 2013. The said MOU was entered into between both the parties pursuant to the resolution passed in the meetings of the Board of Directors of the Society held on 3rd April, 2013 and 8th May, 2013 as well as Special General Body Meeting of the Members of the Society held on 18th May, 2013. As per agreement, the Society was to take over the entire business operation of SJFIL w.e.f. 13th May, 2013.

4.2 SJFIL has agreed to transfer all rights, titles and interest in the business, movable properties and all other benefits relating to the business to the Society. Further, liabilities of SJFIL were to be paid off by the Society. All the payments already made by SJFIL were to be honoured by them and the Society was required to provide sufficient funds to SJFIL so as to honour such payments. Further to the



said MOU, a formal Agreement was executed on 18th June, 2013 between the Society and SJFIL whereby a consideration of Rs.600 Crores was payable by the Society to SJFIL towards purchase of movable and immovable properties.

4.3 SJFIL had executed Livestock Rearing Contract with thousands of its customers. The customers were required to pay the contract amount either in lump sum (upfront) or in instalments. The customers continued to pay their instalment to SJFIL as per Livestock Sales / Rearing Contracts. However, the said business since being taken over by the Society from 13th May, 2013, all such receipts by SJFIL, after 13th May, 2013, were received on behalf of the Society. This methodology was being used since May, 2013 (i.e. even before SEBI issues ban order under CIS regulations). The amount so received by SJFIL on behalf of the Society, were to be adjusted against the consideration of Rs.600 Crore payable as per Agreement dt. 18th June, 2013.

4.4 The balance of the debit of SJFIL account as on 31st March, 2014 was Rs.361.08 Crore. This amount was included as Sundry Debtors and Receivables in the Balance Sheet of the Society as at 31st March, 2014. The Respondent clarified that the said amount was not shown as Investment but included in 'Sundry Debtors and Receivables'. The reason for such disclosures is on account of receipt by SJFIL on behalf of the Society. In short, the net balance of Rs.361.08 Crores payment is towards consideration as per Agreement dated 18th June, 2013 and certainly not towards subscription towards and CIS of SJFIL.

4.5 The Respondent also stated that he had obtained legal opinion stating that "SEBI Act and CIS Regulations do not apply to unlisted public companies". On the basis of the said opinion, it was represented by SJFIL as well as the Society that the order of the SEBI passed under Section 11AA of the SEBI Act was void-ab-initio.

5. Upon perusal of the documents and submissions on record, it is noted that the Respondent's defence was that the Society had purchased the business and properties of SFIL for a consideration and of Rs.600 Crore and against the said purchase agreements, the Society had given Rs.321.80 Crore till the time when SEBI's ban order came to effect. Further, the aforesaid transactions were approved by the General Body. The Committee noted that till 31st March, 2014, Rs.361.08 Crore was given to the SJFIL against the aforesaid agreements of purchase of

business and properties. It is noted that the Respondent being the auditor of both the Society and the Company had signed the Audit Reports on 04th September, 2014 and 01st September, 2014 respectively. It is also noted that SEBI vide its Order no. WTM/SR/CIS/28/10/2013 dated 31st October, 2013 barred SJFIL from collecting any money under the existing schemes, disposing of any of the properties or alienate any of the assets of the schemes and from diverting any funds raised from public which were kept in the bank accounts etc.

5.1 During the course of hearing, when the Committee enquired from the Respondent as to whether he is aware what happened to the amount given to the SJFIL after 31.03.2014, the Respondent stated that he is not aware about the same as he was auditor of the Society till the financial year 2013-14. On further being enquired as to what disclosures were given by him in financial statements or in audit report about the amount given to SJFIL which came under threat due to ban imposed by the SEBI on SJFIL, the Respondent stated that the ban imposed by the SEBI was not permanent and it was only temporary. Further, relevant disclosures were made in the financial statements and audit report of the Company i.e. SJFIL.

5.2 To a specific question as to why disclosures have not been given in the financial statements of the Society and in his audit report as material amount of Rs.361.08 Crore was at stake due to SEBI's ban order, the Respondent could not give any satisfactorily reply. The Committee observed that the SEBI in its order dated 31.10.2013 in respect of SJFIL states in paras no.8.1 and 9 that "*SJFIL is prima facie engaged in fund mobilizing activity from the public, by floating / sponsoring / launching 'collective investment schemes' as defined in Section 11AA of the SEBI Act without obtaining a certificate of registration from SEBIthe Scheme or arrangement offered by SJFIL in the name of sale and purchase of livestock is nothing but a smokescreen for its fund mobilizing activity, I find that such fund mobilizing activity falls within the ambit of 'Collective investment Scheme'*".

5.3 In para no.10 of the aforesaid Order, SJFIL was directed by the SEBI as under:-

- a. *not to collect any more money from investors under the existing schemes;*
- b. *not to launch any new schemes;*
- c. *not to dispose of any of the properties or alienate any of the assets of the schemes;*



- d. *not to divert any funds raised from public at large which are kept in bank account(s) and/or in the custody of SJFIL.*
- e. *to immediately submit the full inventory of the assets owned by SJFIL out of the amounts collected from the "Purchasers" / investors under its various schemes.*

5.4 From the above, it is apparent that SJFIL was not in position to either return the money of the Society or transfer any business or property to the Society due operation of aforesaid Orders. Since, the amount given by the Society was at stake as on 31.03.2014, the Respondent as auditor for the financial year 2013-14 was required to point out in his report about the same. But as admitted by the Respondent during the course of hearing that he did not give any disclosures or qualify his report about impairment in the value of investment or assets as made in SJFIL or about Society's ability to continue as a going concern due to material uncertainty exists as on 31.03.2014 on account of operation of SEBI's order. Accordingly, the Committee is of the view that in spite of being aware of SEBI' orders on SJFIL, the Respondent did not give any qualification in his audit report which indicates that he was grossly negligent in performing his duties as Statutory Auditor of the Society.

CONCLUSION

6. Thus, taking an overall view of the facts and circumstances of the case and based on the submissions / documents placed on record before it, in the considered opinion of the Committee, the Respondent is **GUILTY** of Professional Misconduct falling within the meaning of Clauses (5) and (7) of Part I of Second Schedule to the Chartered Accountant Act, 1949.

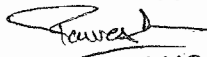


Sd/-
(CA. ATUL KUMAR GUPTA)
PRESIDING OFFICER

Sd/-
(CA. AMARJIT CHOPRA)
GOVERNMENT NOMINEE

Sd/-
(CA. CHANDRASEKHAR VASANT CHITALE)
MEMBER

DATE: 16.12.2019
PLACE: NEW DELHI

Certified Copy

PARVESH BANSAL
Deputy Secretary
Disciplinary Directorate
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