



[PR/17/16-DD/68/16-DC/552/17]

**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.**

PR/17/16-DD/68/16-DC/552/17

In the matter of:

CA. Gulab G. Bumb (M.No.037539)

Proprietor -

M/s. Gulab & Co.,

205, Kshitij Building,

Near Azad Nagar Metro, Opp. Sports Complex,

Andheri (West),

MUMBAI – 400 053

.....Complainant

-Vs.-

CA. Hemal Dineshbhai Bhatt (M.No.145258)

302, Twin Complex No. 2,

Opp Marol Fire Station,

Marol Maroshi Road, Marol Naka,

Andheri East,

MUMBAI 400 059

.....Respondent

MEMBERS PRESENT:

- 1. CA. Amarjit Chopra, Government Nominee**
- 2. CA. Rajendra Kumar P, Member**
- 3. 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. Hemal Dineshbhai Bhatt (M.No.145258)** (hereinafter referred to as the **Respondent**) was **GUILTY** of professional

CA. Gulab G. Bumb, Mumbai -Vs.- CA. Hemal Dineshbhai Bhatt (M.No. 145258), Mumbai



THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA

(Set up by an Act of Parliament)

[PR/17/16-DD/68/16-DC/552/17]

misconduct falling within the meaning of Clause (8) of Part I of First Schedule and Clause (1) of Part II 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. 3. That CA. Hemal Dineshbhai Bhatt appeared before the Committee on 2nd March, 2020 by opting option of Video Conferencing and submitted that he tried to contact the Complainant but was not entertained. He further submitted that pending fee was already paid to the Complainant. The Committee however noted that the Respondent failed to bring any documentary evidence in respect of payment of pending audit fee.

4. The Committee perused the above facts and looking into all these aspects as also the conduct of the Respondent vis-à-vis gravity of the matter is of the view that ends of justice will be met, if the punishment awarded to the Respondent is commensurate with the nature of misconduct.

5. Thus, keeping in view the facts and circumstances of the case, material on record and submissions of the Respondent before it, the Committee ordered to reprimand the Respondent i.e. CA. Hemal Dineshbhai Bhatt (M.No.145258) and further imposed fine of Rs. 25,000/- (Rupees Twenty Five thousands) which shall be payable by him within a period of 60 days from the receipt of the Order.

Sd/-
(CA. AMARJIT CHOPRA)
GOVERNMENT NOMINEE

Sd/-
(CA. RAJENDRA KUMAR P)
MEMBER

Sd/-
(CA. PRAMOD KUMAR BOOB)
MEMBER

DATE : 02/03/2020
PLACE : Delhi

CA. Gulab G. Bumb, Mumbai -Vs.- CA. Hemal Dineshbhai Bhatt (M.No. 145258), Mumbai
Page 2 The Institute of Chartered Accountants of India
ICAI Bhawan, I.P. Marg, New Delhi-110 002

Certified True Copy

Mukesh Kumar Mittal
Disciplinary Directorate

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 (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007

Ref. No. PR-17/2016-DD/68/2016/DC/552/2017

In the matter of:

CA. Gulab G. Bumb (M.No.037539)

Proprietor -

M/s. Gulab & Co.,

205, Kshitij Building,

Near Azad Nagar Metro, Opp. Sports Complex,

Andheri (West),

MUMBAI – 400 053

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302, Twin Complex No. 2,

Opp Marol Fire Station,

Marol Maroshi Road, Marol Naka,

Andheri East,

MUMBAI 400 059

.....Respondent

MEMBERS PRESENT:

CA. Atul Kumar Gupta, Presiding Officer,

Shri Rajeev Kher, IAS (Retd.), Government Nominee

CA. Rajendra Kumar P, Member

CA. Chandrashekhar Vasant Chitale, Member

DATE OF FINAL HEARING : 30.05.2019

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

PARTIES PRESENT:

Complainant : CA. Gulab G. Bumb

Respondent : Not Present



CHARGES IN BRIEF:-

1. The Committee noted that the Respondent was held prima facie guilty with respect to the following two charges:-

- i) The Respondent has not taken No Objection Certificate for Tax Audit and VAT Audit of SMS Scientific Products Pvt. Ltd (hereinafter referred to as the “**Company**”) from the Complainant.
- ii) The Respondent accepted the audit of the Company despite the fact that audit fees of Rs.85000/- + Service Tax of the Complainant was outstanding for the Financial Year 2013-14.

BRIEF OF THE DISCIPLINARY PROCEEDINGS:-

2. On the date of hearing, the Committee noted that the Complainant was present. The Respondent was not present. Since there was no intimation from the Respondent about his absent from the present hearing and last hearing was adjourned in order to provide final opportunity to him, the Committee decided to proceed ahead with the matter ex-parte the Respondent. The Complainant was put on oath. The Complainant explained the charges against the Respondent and made his contentions on the same. The Committee posed questions to the Complainant. After hearing the submissions, the Committee decided to conclude the hearing in the above matter.

FINDINGS OF THE DISCIPLINARY COMMITTEE

3. First of all, the Committee noted that the Respondent did not submit any Written Submissions on the prima facie opinion. In absence of the Written Submissions of the Respondent on the Prima Facie Opinion, the Committee decided to go through the documents available on record including Written Statement submitted by the Respondent before the Director (Discipline) and oral submissions made by the Complainant before it.

4. As regard the first charge relating to non-communication with the previous auditor, it is noted that the Respondent stated that that he had put his efforts to obtain NOC from the Complainant / firm by visiting their office. However, the Respondent was not

entertained by the Complainant and the same was considered by the Respondent as no reply received from the Complainant within a reasonable amount of time. The Complainant stated that the he had nformed his unwillingness to continue as auditor to the client which the Respondent has construed as NOC. The Committee was of the view that mere unwillingness, if shown by the Complainant, cannot be taken as NOC granted in favour of the Respondent.

- 4.1 The Committee was of the view that the expression 'communication with the previous auditor' when read in the light of the instructions contained in 'Code of Conduct' cannot be interpreted in any other manner but to mean that there should be positive evidence of the fact that the communication addressed to the outgoing auditor by the incoming auditor reached his hands. No evidence to establish of personal visit to the office of the Complainant by the Respondent was available before the Committee. The Respondent failed to establish communication with the Complainant in such a manner as to retain in his hands positive evidence of such communication to the previous auditor i.e., the Complainant. It is, thus, evident that the Respondent has not complied with the provision of Clause (8) Part I of First Schedule to the Chartered Accountants (Amendment) Act, 1949 by effectively communicating with the Complainant. Accordingly, he is guilty of professional misconduct falling within the meaning of Clause (8) of Part I of First Schedule to the Chartered Accountants Act, 1949.
5. In respect of second charge relating to non-payment of undisputed audit fees, the Committee noted that the Complainant and the Respondent made so many statements / counter statements in their respective submissions for claiming outstanding fees and payment of the same by the auditee Company. However, on perusal of the requirements of the provisions of Code of Ethics, it is noted that in case where undisputed audit fees for carrying out statutory audit under the Companies Act, 1956 or various other statues having not been paid, the incoming auditor should not have accepted the appointment unless such fees are paid. Further, as per Council guidelines No. 1-CA/(7)/02/2008 dated 08.08.08, *Council has explained that the provision for audit fee in accounts signed by both the auditee or the auditor shall be considered as "undisputed" audit fee.*



5.1 In view of Council guidelines stated above, it is an admitted fact that audit fees should have been accounted for in the accounts both signed by the auditee and the auditor. But in present case, though there is nothing on record which provides the details of the quantum of outstanding fees of the Complainant yet, there are circumstantial evidences (i.e. written submissions of the Respondent, para no.4 on page no.W-6) which show that an outstanding fees of certain amount was pending when the Respondent accepted the audit assignment of the Company. Therefore, the Committee is of the view that the Respondent has violated the Council guidelines No. 1-CA/(7)/02/2008 dated 08.08.08 by accepting audit despite the non-payment of fees of the previous auditor. Accordingly, the Respondent is guilty of professional misconduct falling within the meaning of Clause (1) of Part II of the Second Schedule to the Chartered Accountants Act, 1949.

Conclusion

6. Thus in the considered opinion of the Committee, the Respondent is **GUILTY** of professional misconduct falling within the meaning Clause (8) of Part I of First Schedule and Clause (1) of Part II of the Second Schedule to the Chartered Accountants Act, 1949.

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

Sd/-
(SHRI RAJEEV KHER, IAS (Retd.))
GOVERNMENT NOMINEE

Sd/-
(CA. RAJENDRA KUMAR P)
MEMBER

Sd/-
(CA. CHANDRASEKHAR VASANT CHITALE)
MEMBER

DATE: 16.12.2019
PLACE: NEW DELHI

Certified to be True Copy

Mohita Khanna

(Mohita Khanna)
Assistant Secretary
Joint Directorate
The Institute of Chartered Accountants of India