



[PPR/P/8/W/13-DD/41/W/INF/13-DC/556/2017]

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/8/W/13-DD/41/W/INF/13-DC/556/2017

In the matter of:

CA. Viralkumar B. Shah (M.No. 118497)

704-706, Ratna Sagar Apartments,

Nr. Varachha Police Station,

Varachha

SURAT-395006

..... 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 11.01.2019, the Disciplinary Committee was inter-alia of the opinion that **CA. Viralkumar B. Shah (M.No. 118497)** (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.

CA. Viralkumar B Shah (M.No. 118497), Surat



THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA

(Set up by an Act of Parliament)

[PPR/P/8/W/13-DD/41/W/INF/13-DC/556/2017]

3. That **CA. Viralkumar B. Shah** appeared before the Committee on 2nd March, 2020 at ICAI Bhawan, New Delhi and submitted that he had made qualifications in his audit report and the lapses are technical breach which cannot be tantamount to gross negligence.

4. The Committee is thus of the view that the misconduct on the part of **CA. Viralkumar B. Shah** has been established, yet taking into consideration the repentant attitude of **CA. Viralkumar B. Shah** at the time of hearing and looking into the fact that the breaches alleged are technical in nature, the Committee is of the view that the ends of justice would be served if the professional misconduct on the part of the **CA. Viralkumar B. Shah** is met by reprimanding him.

6. Accordingly, the Committee ordered that the Respondent i.e. **CA. Viralkumar B. Shah (M.No. 118497)** be reprimanded.

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 True Copy

Mukesh Kumar Mittal
Assistant Secretary
Disciplinary Directorate
The Institute of Chartered Accountants of India
ICAI Bhawan, I.P. Marg, New Delhi-110 002

CONFIDENTIAL

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

[Constituted under section 21B of the Chartered Accountants]

(Amendment) 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

File no. : [[PPR/P/8/W/13/DD/41/W/INF/13/DC/556/17]

In the matter of :

**CA. Viralkumar B. Shah (M.No. 118497)
704-706, Ratna Sagar Apartments,
Nr. Varachha Police Station,
Varachha
SURAT-395006**

.....Respondent

Members Present:

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

Date of Final Hearing: 20th November, 2018

Place of Final Hearing: Mumbai

Parties Present:

- (i) CA. Viral kumar B. Shah - Respondent**
- (ii) Shri S. G. Gokhale - Counsel for Respondent**





Allegations of the Informant:

1. The Respondent was the auditor of the Company M/s New Look Retails Pvt. Ltd. (hereinafter referred to as the “Company”). During the course of inspection by the Informant Department, it was brought out that the Respondent being the auditor of the Company had violated the provisions of Section 227 read with sections 233 & 628 of the Companies Act, 1956. The specific allegations against the Respondent before the Disciplinary Committee with respect to his role as statutory auditor of the company for FY 2010-11 and 2011-12 are listed out herein below:-

(a) The Respondent had not given his adverse remarks in CARO (para 27) in italics or in bold letters which are required to be made as per Section 227 of the Act.

(b) The Company had taken loan from a director to the tune of Rs. 59.38 lacs as on 31st March, 2011 and as on 31st March, 2012, the amount outstanding was Rs. 13.99 lacs, whereas under clause 3 (c) and (d) of CARO 2003, it was reported that the Company had not taken loan from the parties listed under Section 301 of the Companies Act, 1956.

(c) Schedule 10 of the Balance Sheet for the year 2010-2011 shows an amount of Rs. 2.60 crores given as loans to the directors (C-113), their relatives and shareholders. However, the Respondent stated in 3(a) of the CARO, 2003 (C-83) that the maximum outstanding during the year was Rs. 47.15 lacs and the year-end balance was Rs. 35.33 lacs. Likewise, in the year 2011-12 (C-10), the Respondent had commented in the CARO that the Company had granted advance to 9 parties covered in the register maintained under Section 301 of the Act and the maximum balance outstanding during the year was Rs. 754.98 Lacs and year-end balance was Rs. 1485.67 lacs. Thus, it was alleged that the Respondent had not reported true facts in his report.

Proceedings:

2. At the time of hearing on 20th November, 2018, the Respondent was present in person along with his authorized Counsel to appear before the Committee. The Respondent was put on oath. Thereafter, the Committee asked the Respondent whether he wished the charges to be read out or these could be taken as read. The



Respondent stated before the Committee 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, he replied that he did not plead guilty and would defend his case. Thereafter, the Counsel for Respondent made his submissions in the matter. The Respondent was examined by the Committee on the submissions made by him. After that the Counsel for Respondent made his concluding submissions in the matter.

3. At the time of last hearing on 4th December 2018, the Committee noted that the Respondent was present along with his authorised representative to appear before the Committee. The Committee informed the Respondent 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 Respondent stated that since he had submitted his oral as well as written defense when matter was heard last time, the case may be proceeded from the stage where it was left. The Committee agreed to the same and thereafter, considering 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. It was noted by the Committee that the Respondent, in his defense, in his further written statements dated 24th June, 2017, had reiterated his previous contentions that he had conducted the audit in a proper manner.

5. As regard the charge that the Respondent did not give qualifications or adverse remarks in italics or in the bold letters as required under Section 227 of the Companies Act, 1956 the Respondent submitted that the qualifications or adverse remarks expressed in Auditor's report alongwith his CARO Report thereon, which did not deal with matters that had adverse effect on the functioning of the Company, need not be given in thick type or in italics. The Committee in this regard noted the provisions of Section 227(3) of the Companies Act, 1956 which states as under:

"The auditor's report shall also state-

.....



[(e) in thick type or in italics the observations or comments of the auditors which have any adverse effect on the functioning of the company,...]"

6. The Committee noted that the following information was reported by the Respondent in the CARO Report(s) of FY 2010-11 & 2011-12 respectively:

"1a.However, we have been informed that proper records of fixed assets are still under completion (C-10 to C-83)"

"3(b)&(e)....In absence of terms of repayment of advance granted, we are not in position to make any comments regarding regularity of repayment of principal and interest."

"4.....However that controls over inventory in certain areas need to be enhance (C-11 & C-84). The company does not have internal auditor system (C-13 & C-85)"

"9(a)...On the basis of records produced to us, the company is regular in payment of undisputed statutory dues including Provident Fund, Employee's state Insurance, Sales Tax, Customs Duty, Wealth Tax, Excise duty, Cess and other statutory dues applicable to it with the appropriate authorities. However the Company is irregular in depositing Tax Deducted at Source. During the year, the company had paid statutory dues immediately after obtaining the registration with relevant authorities.

It is viewed that non-availability of proper records of inventory inadequate in term of controls on inventory no internal audit system in absence of repayment terms were together had adverse effect on functioning the company"

7. In view of the above, the Committee noted that observations extracted above certainly had an adverse effect on the financial of the Company and the Respondent was required to show the adverse remarks in the Audit Report in italics or in bold letters which is a requirement enacted in the law, which was not done in the instant matter by the Respondent. The Committee accordingly is of the considered opinion that as regard this charge, the Respondent is guilty of professional misconduct falling within the meaning of Clause (7) of Part I of the Second Schedule to the Chartered Accountants Act, 1949 on account of non-compliance of the statutory provisions of Section 227 of the Companies Act, 1956. 81

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8. As regard the charge mentioned at paragraph 1(b) above, the Committee noted that it was alleged against the Respondent that he had reported under clause 3 (c) and (d) of CARO 2003 for financial year 2010-11 that the Company had not taken loan from the parties listed under Section 301 of the Companies Act, 1956 (C-84) whereas, the Company had taken loan from a Director to the tune of Rs. 59.38 lacs as on 31st March, 2011 and as on 31st March, 2012, the amount outstanding was Rs. 13.99 lacs. In this respect the Respondent admitted before the Committee that it was a lapse on his part and for the F.Y. 2011-2012 such a lapse had been rectified and also contended that the same should not be considered as a professional misconduct. The Committee noted that as regard FY 10-11(C-83), the Respondent had stated that the Company had not taken loan from the parties listed under Section 301 of the Companies Act, 1956 (point no. 3(c) C-84), whereas under Schedule – 4 to the Balance Sheet an unsecured loan amounting to Rs. 59.38 lacs from one Mr. Gopal M. Shekhawat had been disclosed (C-111). It was noted that Gopal M Shekhawat was the Director of the Company. Thus, it was observed that there was proper reporting regarding loans taken from the parties under Section 301 of the Chartered Accountants Act in Financial Year 2011-12 but not in respect of F/Y 2010-11. The Committee accordingly is of the considered opinion as regard this charge the Respondent was guilty of professional misconduct falling within the meaning of Clauses (5) & (7) of Part I of the Second Schedule to the Chartered Accountants Act, 1949.

9. As regard the charge mentioned at S.No. (c) of paragraph 1 above, the Committee noted that it had been alleged against the Respondent that while Schedule 10 of the Balance Sheet for the year 2010-2011 reflected an amount of Rs. 2.60 crores given as loans to the directors, their relatives and shareholders (C-113), the Respondent had stated in 3(a) of the CARO, 2003 for the said year that the maximum outstanding during the year was Rs. 47.15 lacs and the year-end balance was Rs. 35.33 lacs (C-83). As regard financial year 2011-12, the Respondent had commented in the CARO that the Company had granted advance to 9 parties covered in the register maintained under Section 301 of the Act. The maximum balance outstanding during the year was Rs. 754.98 Lacs and year-end balance was Rs. 1485.67 lacs (C-10) but in Note 16 to



Balance Sheet, loans to Director, shareholders and their relatives was reported at Rs. 4.03 crores. Further details given in Note 16A were perused and noted that amount due to firms in which Director was a partner as well as private company in which Director was a member was reported as NIL which was contradictory to the details given in CARO Report. The stated two parties were parties covered under Section 301 of Companies Act, 1956. Thus, the Respondent had not reported the true facts in his report.

10. In this regard the Committee noted that during the course of hearing, the Respondent had submitted that as far as disclosures regarding advances given to parties u/s 301 of the Companies Act, 1956, were concerned, the same were disclosed in a different form and in a different context in the financial statements and there was no intention to suppress any information.

11. Considering the nature of non-compliances, the Committee is of the view that the Respondent had adopted a careless and casual approach in performance of his professional duties. Accordingly, the Committee is of the considered opinion that as regard this charge, the Respondent was guilty of professional misconduct falling within the meaning of Clause (7) of Part I of the Second Schedule to the Chartered Accountants Act, 1949.

Conclusion:

12. Thus, in conclusion, in the opinion of the Committee, the Respondent is **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.

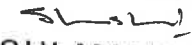
Sd/-
(CA Naveen N.D Gupta)
Presiding Officer

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

Sd/-
(CA. Shyam Lal Agarwal)
Member

Date: 11th January, 2019

Place: New Delhi

Certified Copy

SHASHI MAHAJAN
Deputy Secretary
Disciplinary Directorate
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