



[PPR/P/57/W/13-DD/130/INF/16-DC/731/2017]

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/57/W/13-DD/130/INF/16-DC/731/2017

In the matter of:

CA. Nayan Rameshchandra Kothari (M.No. 124210)

304, Chitrakut Chambers,
Bank of Baroda Building,
R V Desai Road,
VADODARA 390 001

.....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 15.10.2019, the Disciplinary Committee was inter-alia of the opinion that **CA. Nayan Rameshchandra Kothari (M.No. 124210)** (hereinafter referred to as the **Respondent**) was **GUILTY** of professional misconduct falling within the meaning of Clause (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. Further, on 2nd March, 2020, the Committee noted that the Respondent was present at ICAI Bhawan, Delhi, and made his submissions as follows:-

i. The Respondent brings on record a letter dated 29-05-2015 addressing board of directors seeking explanation about the investment of funds in a manner that 50% of the same comprise financial assets.

CA. Nayan Rameshchandra Kothari (M.No. 124210), Vadodara



THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA

(Set up by an Act of Parliament)

[PPR/P/57/W/13-DD/130/INF/16-DC/731/2017]

- ii. The Respondent submitted that he intimated the Board within time but qualification was a technical lapse occurred on his part.
- iii. The Respondent also brings on record a letter submitted on 02-03-2020, wherein he stated that "Matters of professional misconduct are quasi criminal in nature and have far reaching effects on the Respondents and their families. Any punishment to a professional accountant can impair and cause irreparable harm to the professional career of the individual, as well as hurt the good name and reputation of the professional firm".
- iv. The Respondent also stated that the he had already explained at length the facts and circumstances of the matter and prays for disposing off the matter without awarding any punishment to him.

4. The Committee is of the opinion that the Respondent was grossly negligent while submission of exception report, had accepted that the facts given in earlier certificate were not correct and the second certificate was to rectify the earlier one. The Committee further noted that the letter shown to it is of 29.05.2015 which is also the date of signing of his report and hence seems to be an afterthought. 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 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 that the name of the Respondent i.e. CA. Nayan Rameshchandra Kothari (M.No. 124210) be removed from the register of members for a period of 01 (one) month.

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

Sd/-
(CA. RAJENDRA KUMAR P)
MEMBER

DATE : 02/03/2020

PLACE : Delhi

Certified Copy

Parvesh

PARVESH BANSAL

Deputy Secretary
Disciplinary Directorate

The Institute of Chartered Accountants of India
ICAI Bhawan, I.P. Marg, New Delhi-110 002

Sd/-
(CA. AMARJIT CHOPRA)
GOVERNMENT NOMINEE

Sd/-
(CA. PRAMOD KUMAR BOOB)
MEMBER

DISCIPLINARY COMMITTEE [BENCH-III (2019-20)]

(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

File No. : PPR/P/57/N/16/DD/130/INF/13-DC/731/17

In the matter of :

CA. Nayan Rameshchandra Kothari (M.No. 124210)
304, Chitrakut Chambers,
Bank of Baroda Building,
R V Desai Road,
VADODARA 390 001

-----Respondent

Members Present:

CA. Prafulla Premsukh Chhajed, Presiding Officer
Smt. Anita Kapur, Member (Govt. Nominee)
Shri Ajay Mittal, IAS (Retd.), Member (Govt. Nominee)
CA. Manu Agrawal, Member

Date of Final Hearing: 21st August, 2019 (decided on 23rd September, 2019)

Place of Final Hearing: Mumbai

Parties Present :

CA. Nayan Rameshchandra Kothari – Respondent
CA. A.P. Singh- Counsel for the Respondent

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Allegations of the Manager, Reserve Bank of India (RBI) :

1. It has been alleged by the Informant in the allegation letter that the Respondent had issued a Statutory Auditor's certificate (SAC) dated 29th May, 2015 for the financial year 2014-15 for Pacific Finstock Ltd. (hereinafter referred to as the "Company") in the capacity of Statutory Auditor. As per above certificate, the financial income was reported to be Nil and thus the Company had failed to meet the Principal Business Criteria (PBC) of Financial Assets and Financial Income as laid down by RBI for NBFCs. However, the Respondent certified that the Company was eligible to hold the Certificate of Registration (COR) issued to the Company under Section 45IA of the Reserve Bank of India Act, 1934 and thus the Respondent had failed to submit Exception report to the RBI as required in terms of Para 5 of their Notification no. DNBS. 201/DG(VL)-2008 dated 18th September, 2008.

Proceedings:

2. At the outset, the Committee in its meeting held on 21st August, 2019, noted that the Respondent along with his Counsel were present in person to appear before the Committee. Since it was the first hearing in the matter, the Respondent was put on oath. Thereafter, the Committee asked the Respondent whether he wished the charge be read out or it could be taken as read. The Respondent stated that he was aware of the allegation raised against him and the same might be taken as read. On being asked as to whether he pleaded guilty, he pleaded not guilty and opted to defend his case.

During the hearing, the Respondent submitted his written submission to the Committee. Thereafter, the Counsel for Respondent made his oral submission to defend the case. The Committee examined the Respondent in the matter. After hearing from the Respondent, the Committee directed the Respondent to submit the complete certificate as contended by him before the Committee within 7 days from the date of the hearing. Accordingly, the case was heard and concluded.

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3. On 23rd September, 2019, the Committee noted that till then no document as was being contended by the Respondent before it was produced on record. The Committee noted that due opportunity was given to the Respondent which he failed to avail. Accordingly, the Committee decided the matter based on written and oral submissions of the Respondent as well as documents as available on record.

Findings of the Committee:

4. The Committee noted that in the extant matter, it was alleged by the Informant that the Respondent who was the Statutory Auditor of the Company for the financial year 2014-15 issued a certificate dated 29th May, 2015 (A8) wherein he certified that the Company had continued the business of non-banking financial institution for the year 2014-15 and was requiring to hold the Certificate of Registration (CoR) issued to the Company under Section 45IA of the RBI Act, 1934. The Informant contended that since as per above mentioned certificate, Income from Financial Assets were shown at nil, the Company failed to meet the Principal Business Criteria of Financial Income for being eligible to carry the business of NBFC whereas the Respondent certified that the Company was eligible to hold the Certificate of Registration (CoR) issued to it under Section 45IA of the RBI Act, 1934. Secondly, the Respondent did not submit Exception report directly to the RBI as required in terms of Para 5 of RBI Notification no.DNBS.201/DG(VL)-2008 dated 18th September, 2008.

5. The Committee noted that the Respondent in his Written statement had submitted that the on receipt of Information letter from the Institute, he vide his letter dated 18th November, 2016 (B2-B6) submitted the Exception Report as required by the RBI. He also produced on record, the confirmation from RBI to have received the Exception Report and the same was found to be in order (B4-B5).

6. It was further noted that the Respondent, in his written submission, had pleaded that the case was not authorized as per Rule 3(3) and thus the case against the Respondent was not valid and that though there was a delay on part of the Respondent in filing the exception Report, but delay in filing does not constitute profession misconduct as the period of filing Exception report has not been specified in RBI Directions. Further, at the time of hearing, the Counsel for the Respondent had

submitted before the Committee that the certificate produced on record by the Informant was not a complete document.

7. The Committee noted that the extant case being proceeded against the Respondent was an Information case, accordingly, the submission of the Respondent, that the case was not authorized as per Rule 3 was not acceptable. Further, the Respondent had also failed to produce on record a copy of complete document as was being contended by him. It was noted that the Respondent was directed to submit the said document within 7 days from the date of last hearing. However, till the case was considered by the Committee no such document was received from him.

8. The Committee noted that the Respondent had signed the financial statement of the Company for the financial year 2014-15 on 29th May, 2015 (A18-A23) and also issued a certificate dated 29th May, 2015 (A8). After almost one and a half year, he submitted Exception Report on 5th December, 2016 (B5) that too after the Institute vide its letter dated 1st November, 2016 sought his explanation on the allegations made by the RBI. It further noted that the Respondent had in his Exception Report mentioned as under:-

i. The net owned funds of the Company is less than the minimum of Rs.200 lacs as prescribed under Section 45IA of the RBI Act and,

ii. The Financial Income of the Company is less than the 50% of the Gross Income.

*So in terms of Notification No.DNBS. 132/CGM(VSNM)-99 dated April, 21, 1999, the Company is **not eligible to hold CoR.***

9. On contrary to above, the Respondent in his certificate dated 29th May, 2015 had stated that the Company continued the business of non-banking Financial Institution for the F.Y. 2014-15 and was required to hold the Certificate of Registration (COR) issued to the Company under Section 45IA of the RBI Act, 1934. Thus, the Committee was of the opinion that the Respondent had on submission of exception report, had accepted that the facts given in earlier certificate were not correct and the second certificate was to rectify the earlier one. Accordingly, in light of above, the Committee held the Respondent guilty of professional misconduct falling within the meaning of Clause (7) of Part I of the Second Schedule to the Chartered Accountants Act, 1949.

✓ (1)

Conclusion :

10. Thus, in conclusion, in the considered opinion of the Committee, the Respondent was held **GUILTY** of professional misconduct falling within the meaning of Clause (7) of Part I of the Second Schedule to the Chartered Accountants Act, 1949.

Sd/-
(CA. Prafulla Premsukh Chhajed)
Presiding Officer

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

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

Sd/-
(CA. Manu Agrawal)
Member

Date : 15th October, 2019

Place : New Delhi

Certified to be True Copy
Mohita Khanna
(Mohita Khanna)
Assistant Secretary
Disciplinary Directorate
The Institute of Chartered Accountants of India

