



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

[PR-07/14/DD/73/2014/DC/624/2017

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.

[PR-07/14/DD/73/2014/DC/624/2017

In the matter of:

Shri Abhimanyu Sharma,
Director, M/s. Arbuda Spinners Pvt. Ltd.,
J-14, Satellite Park,
B/H Star India Bazar,
Jodhpur Cross Road, Satellite
Ahmedabad-380 015 .

.....Complainant

-Vs.-

CA. Ashish Kamleshkumar Sanghvi (M.No.137254)
Shop No.5, 1st Floor,
Meena Bazar,
Mehta Market,
Surendranagar 363 001.

.....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 10.02.2020, the Disciplinary Committee was, inter-alia, of the opinion that CA. Ashish Kamleshkumar Sanghvi (M.No.137254) (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 Accountant Act, 1949.

Shri Abhimanyu Sharma, Ahmedabad – vs – CA. Ashish Kamleshkumar Sanghvi (M.No.137254), Surendranagar



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2. That an action under Section 21B (3) of the Chartered Accountants Act, 1949 was contemplated against the Respondent and a communication dated 4th March, 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 17th March, 2020 at Delhi/Mumbai.


3. The Respondent was present before the Committee in person in Delhi office of the Institute of Chartered Accountants of India. The Respondent submitted that he merely certified Form 32 on the basis of resolution. He further submitted the Complainant was removed because the Complainant appointment as director was faulty.

4. The Committee while looking into the matter and the conduct of the Respondent, noted the Respondent was not the auditor of the Company and he merely certified the form 32 based on the resolution. Accordingly, the Committee was of the view that ends of justice shall be met if the Respondent be reprimanded.

5. Therefore, 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 Respondent i.e. CA. Ashish Kamleshkumar Sanghvi (M.No.137254) be reprimanded.

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

Sd/-
(CA. RAJENDRA KUMAR P.)
MEMBER

Certified Copy

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

DATE : 17/03/2020

PLACE : Delhi

Shri Abhimanyu Sharma, Ahmedabad – vs – CA. Ashish Kamleshkumar Sanghvi (M.No.137254), Surendranagar

CONFIDENTIAL

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

**[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.:[PR/07/14/DD/73/2014/DC/624/2017]

In the matter of:

Shri Abhimanyu Sharma,
Director,
M/s Arbuda Spinners Pvt. Ltd.,
J-14, Satellite Park,
B/H Star India Bazar,
Jodhpur Cross Road, Satellite,
Ahmedabad - 380 015

..... Complainant

Versus

CA. Ashish Kamleshkumar Sanghvi (M.No.137254),
Shop No.5, 1st Floor,
Meena Bazar,
Mehta Market,
Surendranagar - 363001

..... Respondent

MEMBERS PRESENT:

CA. Atul Kumar Gupta, Presiding Officer
CA. Amarjit Chopra, Government Nominee
CA. Rajendra Kumar P., Member
CA. Chandrashekhar Vasant Chitale, Member

DATE OF HEARING : 04.09.2019

PLACE OF HEARING : ICAI Bhawan, Mumbai





PARTIES PRESENT:

Respondent : **CA. Ashish Kamleshkumar Sanghvi**
Counsel for Respondent : **CA. Deepak R. Shah**

Charges in Brief:-

The Complainant has charged the Respondent on two counts in this matter which are as under:

1. The Respondent has certified form - 32 which has resulted in the Complainant being removed from the directorship of the company M/s Arbuda Spinners Pvt. Ltd.,. The Complainant has stated that as per Article 19 of the Articles of Association of the company, permanent director shall not retire and shall continue to be a director for life.
2. The second charge of the Complainant is that the Respondent has signed form-2 affixing DSC regarding allotment of 1,89,200 equity shares of Rs.10/- each. And that the said allotment is in violation of prescribed Accounting Standards dealing with consideration, other than cash, loan and converting loan into equity capital. The amount standing as loan is converted into equity share capital in breach of formalities prescribed under the Companies Act, 1956.

Finding:

3. The Committee noted that the Respondent alongwith his counsel was present. He was put on oath. The Committee also noted that the Complainant was absent. The office submits that the notices of hearing sent to the Complainant have been returned as the address given by the Complainant was not correct and that the door of the said premises has been found locked by the postman. Having satisfied the Committee proceeded to hear the case in the absence of the Complainant taking on record the documents submitted by the Complainant alongwith the complaint. ↙

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4. The Respondent is charged with the allegation that he has certified form – 32 of a company by name M/s Arbuda Spinners Pvt. Ltd., in which the said complainant was the Director. The act of the Respondent in signing Form 32 has resulted in the Complainant being removed from the position of a Director of the said company. The Respondent has certified the form 32 in the absence of any resignation letter from the Complainant. The Complainant states that he is the permanent director as per Article 19 of the Articles of Association of the said company. The Respondent draws the attention of the Committee to page no.5, Clause no.19 of the said Articles which is reproduced below:


19. First Directors

The First Directors of the Company shall be:

- 1. Shri Manoj Maliram Sharma,*
- 2. Shri Kantilal Kalicharan Sharma,*
- 3. Shri Ratanlal Maliram Sharma*

All the Directors of the Company shall be permanent Directors and shall hold office till he/she resigns.

5. It is clear from the above that the Complainant is not the permanent director and thereby an attempt has been made by him to mislead the Committee. Consequently, his claim that he is a permanent director he cannot be removed from the Directorship fails.

6. The Committee wanted to know from the Respondent whether he has verified the resignation letter of the Complainant, before certifying Form 32. The Respondent draws the attention of the Committee to an abstract of Board meeting of M/s Arbuda Spinners Pvt. Ltd. dated 23rd February, 2012 which is signed by Mr. Ratan M. Sharma and Ms. Radhaben Sharma both directors. The contents of the said abstract is reproduced below: 



“RESOLVED THAT Mr. Abhimanyu Sharma who was holding position of director in the company hereby ceased to be director of the company as decided by the board with effect from 23rd February, 2012.”

7. The Committee notes that this is not the resignation letter as the words used are “ceased to be director of the company”. The Respondent is not able to bring any positive evidence in the form of resignation letter from the Complainant to prove that the said Complainant had actually tendered his resignation as director of the company. In view of this, the negligence of the Respondent in not looking into the resignation letter while filing form 32 is established.

8. In relation to the charge for shares allotted for consideration otherwise than in cash. The Committee has reviewed the form-2 attached with the complaint and on which reliance has been placed by the Respondent. The Respondent draws the attention of the Committee in the said form wherein he places reliance on the words “unsecured loans converted into capital”. The Respondent places reliance on ledger copies submitted by him wherein the unsecured loan have been converted into share capital. The Committee is satisfied that Respondent has adduced positive evidence to the fact that he has taken steps to ensure that the said Form 2 is the requirement of the Companies Act, 1956 and that they have also placed reliance on the ledger copies. After having gone through the records produced before it, Committee is satisfied that the Respondent is NOT GUILTY on this count.

9. In conclusion, the Committee finds that the Respondent is negligent in not looking into the actual letter of resignation of the Complainant but placing reliance on the resolution submitted by the Directors while filing form 32 which is the first charge in this matter. In the second charge, as has been detailed above, the Respondent comes clean.

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CONCLUSION:

10. In conclusion, the Committee is of the view that the Respondent is guilty of negligence of the first charge and not guilty in the second charge under clause (7) of part I of Second Schedule to the Chartered Accountants Act, 1949.



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

Sd/-
(CA. AMARJIT CHOPRA)
GOVERNMENT NOMINEE

Sd/-
(CA. RAJENDRA KUMAR P.)
MEMBER

Sd/-
(CA. CHANDRASEKHAR VASANT CHITALE)
MEMBER

DATE : 10th February, 2020

PLACE : NEW 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

