

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-306/15/DD-16/2016-DC/779/2018]

In the matter of:

Shri Sridhar G. Rao.,
DGM & Regional Head,
C/o Bank of Baroda,
Zonal Internal Audit Division,
5th Floor, Bank of Baroda Building,
Fuvara, Gandhi Road,
Ahmedabad- 380 001

..... Complainant

Versus

CA. Nikhil Kumar Hasmukhbhai Jani (M.No.124684)
M/s Zinzuwadia & Company,
Chartered Accountant,
301, ABHIRAJ,
68-B, Swastik Co-Op Society,
Navrangpura
Ahemdabad-380 009

.....Respondent

MEMBERS PRESENT:

CA. Atul Kumar Gupta, Presiding Officer
CA. Amarjit Chopra, Member (Govt. Nominee)
CA. Rajendra Kumar P, Member
CA. Chandrasekhar Vasant Chitale, Member

DATE OF FINAL HEARING : 04.09.2019

PLACE OF FINAL HEARING : ICAI Tower, Mumbai

PARTIES PRESENT:

Complainant : Not Present

Respondent: CA. Nikhil Kumar Hasmukhbhai Jani

Counsel for the Respondent: CA Deepak Shah

Charges in Brief:-

1. The Committee noted that in the Prima-Facie Opinion formed by Director (Discipline) in terms of Rule 9 of the Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007, the Respondent is held not guilty under Clause (7) and Clause (8) of Part I of the Second Schedule of Chartered Accountant Act 1949. The Board did not agree with the prima facie opinion of the Director and referred the matter to the Disciplinary Committee to proceed under Chapter V of the Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007.

The above said Clause (7) states as under:-

"(7) does not exercise due diligence, or is grossly negligent in the conduct of his professional duties;"

And Clause (8) of Part I of the Second Schedule states as under:-

"(8) fails to obtain sufficient information which is necessary for expression of an opinion or its exceptions are sufficiently material to negate the expression of an opinion;"

2. The allegation in the present case is that the Respondent firm M/s Zinzuwadia & Company, Chartered Accountants Ahmedabad did not mention in his audit report various anomalies in Account books of M/s ABC Cotspin Private Limited (hereinafter referred to as the "Company") one of the borrower of Mid Corporate Branch of Bank of Baroda, Ahmedabad for which Respondent firm was appointed as Concurrent Auditor. The above said firm reported that CA. Nikhil Kumar Hasmukhbhai Jani personally responsible.

3. The charge leveled against the Respondent is that he, being the Concurrent Auditor of Mid Corporate Branch of the Complainant Bank, failed report to the Regional Office or other Higher Authorities regarding certain irregularities in one of the borrower accounts of the said Branch i.e. M/s. ABC Cotspin Pvt. Ltd., which are as under:
- a. Discounting of bills by the Branch without acceptance and confirmation of due date of payment from L/C issuing Bank.
 - b. No regular follow-ups made by the Branch for acceptance of bills and due date confirmation and payment of dues.
 - c. Extension of due dates of bills without obtaining permission from competent authorities.
 - d. Overdue in the account / export bills discounted not reported in Monthly Monitoring Reports.

Brief facts of the Proceedings:

4. On the day of hearing i.e. 04/09/2019, the Complainant was not present nor any application for adjournment was moved by the Complainant. The matter was earlier adjourned once by the Committee on 20/07/2019 in order to provide one more opportunity to the Complainant to appear before the Committee. On the other side, CA. Nikhil Kumar Hasmukhbhai Jani (the Respondent) appeared along with his counsel 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 it can be taken as read. The Respondent stated before the Committee that he was aware of the charges made against him and same may be taken as read. On being asked to the Respondent whether he pleads guilty, he replied in negative. Thereafter, the Committee sought whether he wished to proceed with his defence. The Respondent's Counsel presented the defence on his behalf. After considering the oral defence and all papers available on record, the Committee decided to proceed with the matter.

Findings of the Committee



5. The Committee noted that regarding to the first charge the Counsel of the Respondent submits and draws attention on his submission dated 28 June, 2018 wherein the Counsel mentioned that initially in the Prima Facie Opinion the Director Discipline held the Respondent NOT GUILTY but that was being over-ruled by the Board of Discipline with the specific instructions to give under Para 5.8 and 5.9 to review the entire prima-facie opinion investigate. The relevant para are extracted as follows :-

"5.8 Frequent extension of the due dates of bills points out to some problems with the borrower. Such points merit disclosure in the Audit Report so as to bring the matter to the attention of higher authorities.

5.9 The Personal Guarantee of Shri Bhavesh Haridas Thakkar was an integral part of the terms and conditions of sanction. The personal guarantee has not been obtained. This fact should have been pointed out by the Concurrent Auditor. The Guarantor needs to execute separate documents i.e. LDOC33, LDOC 134 / 136(draft letter of undertaking) and to be signed and it is also required to be stamped as a Guarantor. The auditor should have satisfied himself on the actual evidence provided by the Branch and reported the facts. Mere signing of the sanction letters by the borrowers and guarantors does not constitute execution of guarantee documents."

6. The Committee noted submissions of the Counsel in regard to "Para 5.8" wherein the Counsel draw attention on page 'W-121' and 'W-122' of PFO wherein the Respondent reported extension of bill was reported for the first time. The counsel further stated that a bill of Rs.47.04 crore was due since 29-09-2014 and was reported in September 2014 report annexed on Page 'W-122' of PFO. The committee further noted that the Respondent have mentioned in his report that "Rs.166.24 crores acceptances are yet to be reviewed." Replying to this the Respondent submitted these bills were not provided by the Company but the Committee pointed out that the particulars of not providing bills are missing in the Report.
7. The Committee noted the submissions of the Counsel wherein The Counsel submitted that based on the Reserve Bank of India (RBI) guidelines the extension was granted to the Company for 3 Quarters and account was regularised then there is no requirement of reporting. And also in June 2015 the Respondent again reported the same annexed as Annexure-2 at page 'C-306' of PFO.
8. The committee further noted that with regards to the second charge regarding no regular follow-ups made by the Branch for acceptance of bills and due date confirmation and payment of dues. The Respondent submits before the


Committee that the Reporting to these bills was directly to the RBI not to the Regional office. This fact is mentioned at Page 'C-250' of PFO where in the relevant extract is stated below:

"The relevant Returns/Statements are submitted regularly. The Returns are regularly submitted to RBI, through Nodal Office, Mumbai. Other periodical half yearly, BEF & EBW, etc. statements as on 31.12.2014 are also submitted well in time."

9. The Committee noted that with regards to next two allegations on the Respondent which were related to the guarantor's papers. The Respondent in his oral submission brings on record that that the papers were available in this regard with him at the time of preparing financial statements and therefore, these were not required to be reported.

Conclusion

10. Thus, upon consideration of all facts, circumstances, record and law, in terms of the reasoning as above, the Committee is of the view that there was lack of acceptance with regards to above said 'para 5.8 and 5.9' which was available from the September 2014 in this case and was not regularized till March 2015 and also was not reported by the Respondent and with regard to the extension of due date which was supposed to be reported to the competent authorities such as regional office or the zonal office by the branch was also not reviewed by the Respondent. Thus, in the considered opinion of the Committee is of the view that the Respondent is held **GUILTY** in under Clause (7) and Clause (8) 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. RAJENDRA KUMAR P)
MEMBER

Sd/-
(CA. CHANDRASEKHAR VASANT CHITALE)
MEMBER

DATE: 10.02.2020
PLACE: NEW DELHI

Certified Copy

Ajay Kumar Jain
Deputy Assistant
Secretary
The Institute of Chartered Accountants of India
ICAI Bhawan, I.P. Road, New Delhi-110 002



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

[PR-306/15/DD-16/2016-DC/779/2018]

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-306/15/DD-16/2016-DC/779/2018]

In the matter of:

Shri Sridhar G. Rao.,
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-Vs.-

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M/s Zinzuwadia & Company,
Chartered Accountant,
301, ABHIRAJ,
68-B, Swastik Co-Op Society,
Navrangpura
Ahemdabad-380 009

.....Respondent

MEMBERS PRESENT:

1. CA. Atul Kumar Gupta, Presiding Officer
2. Shri Rajeev Kher, I.A.S. (Retd.), Government Nominee
3. CA. Amarjit Chopra, Government Nominee
4. CA. Rajendra Kumar P, Member
5. CA. Pramod Kumar Boob, Member

DATE OF MEETING : 03.07.2020 (Through Video Conferencing)

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. Nikhil Kumar Hasmukhbhai Jani (M.No.124684)** (hereinafter referred to as the **Respondent**) was **GUILTY** of



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

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professional misconduct falling within the meaning of Clause (7) and Clause (8) of Part I of Second Schedule to the Chartered Accountant Act, 1949.

2. The Respondent was present before the Committee in Ahmedabad office of ICAI through video conferencing mode. The Respondent agreed with the decision of the Disciplinary Committee holding him guilty and he pleaded before this Committee to take a lenient view.

3. The Committee while looking into the matter and the conduct of the Respondent, is of the opinion that certain irregularities with regards to account of one borrower were not reported by the Respondent in his concurrent audit and also with regard to the extension of due date which was supposed to be reported to the competent authorities such as regional office or the zonal office by the branch was also not reviewed/ reported by the Respondent. The Committee also noted that although the restructuring of account on instruction of RBI was not during the period in which the respondent was concurrent auditor, yet the fact remains that the Respondent failed in respect of reporting of NPA.

4. Accordingly, the Committee was of the opinion that end of justice shall be met if the name of the Respondent be removed from the Register of Members for a period of 15 days.

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 name of the Respondent i.e. CA. Nikhil Kumar Hasmukhbhai Jani (M.No.124684) be removed from the register of members for a period of 15 (fifteen) Days.

sd/-

(CA. ATUL KUMAR GUPTA)
PRESIDING OFFICER

sd/-

(CA. AMARJIT CHOPRA)
GOVERNMENT NOMINEE

sd/-

(SHRI RAJEEV KHER, I.A.S. RETD.)
GOVERNMENT NOMINEE

(approved & confirmed through email)

(CA. RAJENDRA KUMAR P)

MEMBER

Certified to be true copy


Mukesh Kumar Mittal
Assistant Secretary,
Disciplinary Directorate

(approved & confirmed through email)

(CA. PRAMOD KUMAR BOOB)

MEMBER