



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

[PR/04/13-DD/16/13-DC/390/14]

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/04/13-DD/16/13-DC/390/14]

Shri Manish Pratik,
12-A, Ground Floor, Sylvan View -1,
Eldeco Utopia, Sector 93A,
Noida

... Complainant

-vs-

CA. Naresh Tikamchand Jain (M.No.102032),
C/o N.T. Jain & Co.
Chartered Accountants,
Room No. 205, 2nd Floor,
Hari Chambers,
S.B.S. Road, Fort,
Mumbai -400 001

.... Respondent

MEMBERS PRESENT:

1. CA. Atul Kumar Gupta, Presiding Officer
2. CA. Amarjit Chopra, Government Nominee
3. CA. Pramod Kumar Boob, Member

DATE OF MEETING : 17.11.2020 (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. Naresh Tikamchand**



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Jain (M.No.102032), (hereinafter referred to as the Respondent”) was **GUILTY** of professional misconduct falling within the meaning of Clause (7) and (8) of Part I of Second Schedule to the Chartered Accountant Act, 1949.

2. The Respondent was not present before the Committee inspite of granting opportunities to the Respondent on 6th October 2020 and 27th October 2020. The Committee considered his written submissions dated 13th September 2020 on record in response to the findings of the Committee. The Respondent relied on his written submission denied the findings of the Committee and disputed that the Disciplinary Committee had not dealt with the facts and legal issues of the present matter. Further he submitted that the Director (Discipline) and Disciplinary Committee expanded charge beyond the complaint filed against him. He added in his written submissions that his submissions dated 16-03-2017 was taken on record but not considered by the Committee. The Respondent also stated that Disciplinary Committee overlook the fact that the complainant himself admitted that he was aware of the appointment and the engagement was appropriately conducted with his knowledge. The Respondent pleaded that he had already suffered mental agony of more than 6 years and Considering the fact that findings of DC stem erroneous understanding of facts, he should not be awarded any punishment in his case.

3. The Committee while looking into the matter and the conduct of the Respondent, is of the opinion that the guilt of the Respondent is already established that in his special audit report he failed to give correct findings in respect of items covered in it and this mistake resulted in issuance of corrigendum to the Special audit report after four years. Further as per guidance note on Audit Reports and Certificates for Special Purpose, an reporting auditor who issues audit report on specified elements, accounts or items of a financial statement, he is required to mention as to whether financial statement of the Company is audited or not audited but the Respondent in this matter failed to do so. Hence, the Committee is of the view that the Respondent failed to verify the relevant records before issuing the special audit report.



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Moreover, the submissions dated 16-03-2017 and other facts and legal issues are rightly dealt by the erstwhile Committee while pronouncing detailed findings in the present matter. The Committee is of the view that with regards to the above-said charge, there is a lapse on the part of the Respondent while issuing the special audit report without any verification of records. Accordingly, the ends of justice can be met if reasonable punishment is given to him.

4. 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. Naresh Tikamchand Jain (M.No.102032), be removed from the register of members for a period of 03 (Three) Months.

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

(approved & confirmed through email)
(CA. AMARJIT CHOPRA)
GOVERNMENT NOMINEE

(approved & confirmed through email)
(CA. PRAMOD KUMAR BOOB)
MEMBER

Certified to be true copy
Jyotika Grover
Jyotika Grover
Assistant Secretary,
Disciplinary Directorate
The Institute of Chartered Accountants of India,
ICAI Bhawan, Vishwas Nagar, Shahdara, Delhi-110032



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-04/13-DD/16/2013/DC/390/14]

In the matter of:

Shri Manish Pratik

12-A, Ground Floor, Sylvan View-1
Eldeco Utopia
Sector 93-A, Noida,
UTTAR PRADESH

..... Complainant

Versus

CA. Naresh Tikamchand Jain(M. NO.102032),
C/o. N.T. Jain & Co,
Chartered Accountants,
Room No. 205, 2nd Floor,
Hari Chambers,
S.B.S. Road, Fort
MUMBAI - 400 001.

..... 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 Bhawan, Mumbai

PARTIES PRESENT

Counsel for Complainant : CA. C.V. Sajan
Respondent : CA. Naresh Tikamchand Jain
Counsel for Respondent : CA. A.P. Singh

BRIEF OF THE DISCIPLINARY PROCEEDINGS:

1. On the day of hearing held on 8th April, 2019, the Committee noted that the Complainant along with his Counsel was present. The Respondent along with his Counsel was present. The Complainant and the Respondent were put on oath. On being enquired from the Respondent as to whether he is aware of the charges levelled against him, the Respondent stated that he is aware of the charges and he pleaded not guilty to the same. The Counsel for the Respondent stated that he would like take on record all the documents / evidence submitted earlier before the Committee. The Counsel for the Complainant stated that though he relied upon the documents / evidence submitted earlier yet he wishes to cross-examine the Committee' witness, Shri Arup Sen. The Office informed the Committee that there was a letter from Shri Arup Sen stating therein that due to ill health, he cannot come and attend the hearing on 18.04.2019. In order to provide the Complainant an opportunity of cross-examination of the Committee witness, the Committee decided to adjourn the hearing to a later date.

2. On the day of next hearing held on 8th May, 2019, the Complainant along with Counsel was present. The Respondent along with Counsel was present. With the consent of the Complainant and the Respondent, the hearing in the matter continued from the stage as it was left in last hearing. The Counsel(s) for the Complainant and the Respondent made their respective submissions. After hearing submissions, the Committee decided to call Committee witness (Shri Arup Sen). The Committee witness appeared before the Committee. He introduced himself before the Committee and he was put on oath. The Committee posed question to the witness. The Counsel(s) for the Complainant and the Respondent cross-examined the witness. After completion of cross-examination, the Counsel(s) for the Complainant and the Respondent made their respective final submissions. After hearing the submissions, the Committee directed the witness to submit the following information / details / documents within 7 days of hearing:-
 - i) As regard the issue of expenses being debited to the personal accounts of the directors, Copy of shareholders / board resolution were passed in this regard.
 - ii) Copy of the financial statement for the financial year 2004-05 and 2005-06 along with audit report on the same.
 - iii) Complete details of reimbursement made to Shri S.N. Gupta in respect of special audit.
 - iv) Explanation as to whether it was customary for the Company to make the payment without receiving the final report.
 - v) Details of disclosure made in the Board Report regarding the issued covered by the Special Audit report. In case of no reference, explanation / reasons as to why reference to special audit report is not coming in Director's report.
 - vi) Whether Special audit report was circulated to those directors to whom accounts personal expenses were debited.

The Committee also directed the Respondent to submit the following information/ documents within 7 days of hearing:-

- i) Details and evidence of reimbursement made to audit team by the Respondent and Company for visiting the Company office to conduct special audit.

After aforesaid directions, the Committee decided to conclude the hearing in the above matter. However, the Committee after deliberation decided to keep its judgment reserved subject to receipt of documents / information from the witness and the Respondent.”

2.1 In respect of above directions, it is noted that the witness vide letter dated 20th May, 2019 submitted his response to aforesaid directors of the Committee. The Respondent also vide his letter dated nil, received on 21st May, 2019, submitted his submissions. Apart from above, the Complainant vide his letters dated 20th May, 2019, 7th June 2019 and 12th June, 2019 submitted his final submissions / documents.

3. In order to provide one more opportunity to both the Complainant and the Respondent on the aforesaid documents submitted after the hearing held on 8th May, 2019, the Committee decided to fix one more hearing in the matter on 04.09.2019. The Committee noted that on the day of the final hearing held on 04.09.2019, the Complainant was not present but his Counsel was present. The Respondent along with his Counsel was present. The Committee informed the parties about the development took place in the matter after the hearing held in the matter on 08.05.2019. Thereafter, the Counsel(s) for the Complainant and the Respondent made their brief submissions. After hearing the submissions, the Committee decided to conclude the hearing in the above matter.

CHARGES IN BRIEF:-

4. 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 guilty under Clauses (7) and (8) of Part I of the Second Schedule and Clause (2) of Part IV of the First Schedule of Chartered Accountant Act 1949. The aforesaid Clause (7) of the Second Schedule states as under :-

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





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

"(8) fails to obtain sufficient information to warrant the expression of an opinion or his exceptions are sufficiently material to negate the expression of an opinion;"

And Clause (2) of Part IV of the First Schedule states as under:-

"(2) in the opinion of the Council, brings disrepute to the profession or the Institute as a result of his action whether or not related to his professional work."

4.1 Briefly, in this case, it is noted that the Complainant was director of Far Pavilions Tours & Travels Pvt. Ltd (hereinafter referred to as the "**Company**"). The Complainant's grievance against the Respondent was that in connivance with the management of the Company, the Respondent without verification of the documents issued the Special Audit Report. He also issued the corrigendum to the Special Audit report after a period of four years without being appropriately appointed. The Complainant also alleged that the Respondent was not authorized to carry out special audit. As per the Complainant, the director who appointed the Respondent was not on the Board and issued the appointment letter without any authority. In respect of above charge, the Committee noted that Special Audit report dated 6.3.2006 was issued for the financial year 2004-05 and a corrigendum was issued in June, 2010 based on which the instant complaint lies.

Findings of the Committee

5.1 The Committee noted that crux of the charges leveled against the Respondent was that he without being appointed legally issued special audit report and also issued the corrigendum after four years of issuance of special audit report. Further, he issued the Special audit report without any verification of records in connivance with the management of the Company. In respect of first issue related to appointment of the Respondent as Special Auditor, the submissions made by the Respondent in his defence were as under:-

- i) Appointment letter dated 5th April, 2005 was signed by Mr. Arup Sen, director of the Company [Page D-8-11]. The Respondent stated that at the preliminary stage of audit, he had discussions with Mr. S.N. Gupta and Mr. S.N. Gupta asked him to take up the particular assignment of the special audit. The Director (Discipline) concluded that the appointment is not proper because on the date of appointment, Mr. S.N. Gupta was not Director of the Company as he seized to be a Director in 2003.

- ii) Mr. S.N. Gupta was reappointed on 22nd June, 2005. After two years, the management reinstated him again. The fact of the matter is that he had discussion with Mr. S.N. Gupta.
- iii) Mr. Arup Sen in his affidavit confirmed that appointment letter was signed by him. Hence, there was no question of his appointment being considered invalid simply because that Mr. S.N. Gupta asked the Respondent to do the audit. The documents came from Mr. Arup Sen however, he verbally interact with Mr. S.N. Gupta.
- iv) In respect of corrigendum issued in 2010, the Respondent stated that he had given his special audit report to Mr. Arup Sen and thereafter, he kept on following up with the management of the Company to give their comments on the Special Audit report but the management did not turn to him. He stated that his fees was paid in November, 2005. However, in the year 2010, when the Management stated that there is a difference of Rs.1000 in one account and they are required to submit the corrected report, he issued a corrigendum to the Special Audit report.

5.2. In respect of above, the Complainant stated that at the prima facie stage, the Respondent had stated that his appointment was made by Mr. S.N. Gupta but after being found prima facie guilty, he is taking defence that his appointment was made by Mr. Arup Sen. The Complainant also raised question on the authentication of the appointment letter by stating that the logo and the letter head of the Company got changed in September, 2005 but the appointment letter and other documents are on old letter head of the Company. The Complainant stated that the Respondent was neither formally nor legally appointed to conduct the alleged special audit.

5.3 The Committee witness, Mr. Arup Sen in his deposition stated that he was direction in the Company from 21st May, 2003 till 2006. He stated that he knew the Respondent because he had been internal auditor of Cox & King Group. Subsequently, he appointed the Respondent as a special auditor for the Company in his capacity as director. The relevant noting from the verbal as well as written deposition of the witness was as under:-

- i. As regard his authority for appointing the Respondent as Special auditor, the witness stated that while reviewing some business deals, he felt necessary to appoint special auditor for the same. The witness stated that he did not discuss this matter with his fellow

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directors in the Board meeting. However, he had informed the shareholders regarding appointment of special auditor.

ii. The witness deposed that he had signed the appointment letter dated 5th April, 2005 for Special Auditor. Special Audit Report was submitted to the Company on 6th March, 2006.

ii) Mr. S.N. Gupta was a director of the Company from 20.11.1999 to 31.05.2003 and thereafter from 22.06.2005 to till date. The statutory audit report for the financial year 2004-05 was finalised on 30th May, 2005.

iii) To a question as to when the special audit report was considered by the Board of the Management of Far Pavilion, the witness could not give reply. The witness stated that final report was issued on 6th of March, 2006.

iv) The witness stated that legal counsel of the Company identified a few clerical errors in the Special Audit report when compared with the Statutory auditor's report for the financial year 2004-05. As per advice of legal counsel, the Company requested the Respondent to rectify minor clerical error, which was rectified by preparing corrigendum report. The witness stated that special audit report along with corrigendum was submitted to the different courts of law.

v) The witness stated that there was change in the logo. However, he stated that there was no clear policy of usage of Logo within the Company.

vi) Except the assignment of Special Auditor report, no other assignment was given to the Respondent or his firm by the Company.

5.4 From the submission and documents on record, it is noted that the Respondent was appointed vide letter dated 5th April, 2005 as Special Auditor to verify the various entries along with the documentary evidences related to travelling, sales promotion, staff welfare related to the Complainant and other two directors on which he gave the draft report dated 30.5.2005. It was clear from the documents and submissions on record that the appointment of the Respondent was not authorized by the Board of Directors of the Company. Neither the Respondent nor the witness brought on record any documentary evidence to show that the appointment of the Respondent was approved by the Board of Directors of the Company. Mr. Arup Sen, director of the Company and who signed the

appointment letter of the Respondent, deposed that since he found some business transactions not being appropriate, he appointed the Respondent as Special Auditor. The Committee was surprised to note that without the approval of the Board of Directors, Mr. Arup Sen appointed the Special Auditor and the report of the Auditor was used as tool for recovery of expenses from certain directors of the Company and it was also filed with various courts of law against the Complainant.

5.4.1 On perusal of the Appointment letter dated 5th April, 2005, it is noted that the Respondent was appointed to conduct a confidential verification of certain expenses. It was also mentioned that the auditor will use and rely on data, material and other information furnished to them by the Company. It was also mentioned that the Company shall also indemnify and hold harmless the auditor against any and all reasonable costs and expenses. From the above facts, it appears that the record and information of the Company was used by the Respondent to prepare the draft audit report. Further, it is noted that the draft audit report was addressed to the Company. The aforesaid facts indicates that the appointment letter and draft report has been prepared in such a manner as if decision of special audit was taken collectively by the Company in meeting of the Board of Directors. It is also observed that the special auditor was required to examine certain expenses incurred by the certain directors of the Company.

5.4.2 In view of above facts, the Committee is of the view that when information and record of the Company were used by the Respondent to prepare its draft report for giving its opinion on certain expenses incurred by the directors of the Company, the Respondent was required to check as to whether his appointment has been approved by the Board of Directors or not but the Respondent failed to verify the same. Hence, the Committee is of the view that the Respondent was negligent in discharging his professional duties as he conducted the special audit without any proper authorisation from the Board of Directors of the Company. Accordingly, he is guilty of professional misconduct falling within the meaning of Clause (7) of Part I of Second Schedule to the Chartered Accountants Act, 1949.

6. As regard the next allegation of issuing the special audit report without verifying the documents / records, the Respondent stated that Mr. Arup Sen (the then director of the Company) has provided the unaudited accounts and related information. During the review

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process, the Respondent raised queries to Mr. Arup Sen on operation of the Company, including its ordinary course of business conduct. During the course of review process, the Respondent came across several expenses that were not adequately supported with documentary evidence or were not attributable to the expenses that were connected with the business of the Company. In the special audit report, he identified that all such expenses should be treated as advances given to the directors / employees till the supporting documents are given by the respective directors / employees. The Respondent further stated that he only suggested the accounting treatment to be given to certain expenses that includes foreign travelling expenses, domestic travel, sales promotion, conveyance and telephone expenses. The Respondent also stated that the reduced figures for expenditures in the Company annual report vis-à-vis the unaudited accounts evidence that the Company factored in the findings of the Special audit report.

6.1 In respect of corrigendum to the Special audit report, the Respondent stated that the corrigendum was issued on 14th June, 2010 in response to the Company re-verification request. The Respondent reiterated that after submissions of the draft audit report, he followed up with the Company for its comments on the draft report but he did not get any response from the Company. The Respondent stated that the Company on 24th February, 2006 issued the finalisation request letter to the Respondent, indicating that the Company had no comments. It is only in pursuance of the finalisation request letter, the Respondent issued the special audit report without effecting any changes to the draft report. Later on, during the course of legal proceedings, the counsel of the Company identified some clerical error in the special audit report. Thereafter, the Company requested him to re-verify the figures and rectify the minor errors in the special audit report. He in response to the request of the Company, filed the corrigendum on 14th June, 2010. The Respondent stated that the difference in the corrigendum and the special audit report are attributable to (a) correction of couple of clerical errors (b) difference in the amounts recoverable from the directors as per the Company annual report for the financial year 2004-05.

6.2 The Respondent stated that he had access to the relevant books of accounts and vouchers for preparing the Special Audit Report. The Respondent further stated that he had in fact made specific observation in the Special Audit report, with respect to the expenditure incurred by the Complainant and others, which were not in the nature of

Company expenditure but were accounted for as Company expenditure. Though the appointment letter was signed by one of the directors of the Company but it is noted that the Respondent's appointment was never approved by the Board of Directors and the Respondent did not bother to check as to whether his appointment has been approved by the Board of the Director of the Company or not.

6.3 The Committee on perusal of the corrigendum to the special audit report noted the following observation of the Respondent:-

- i) Sales promotion expenses were Rs.37,49,132/- instead of Rs.38,19,954/- as reported in special audit report.
- ii) Subsequent to the Special audit report, additional personal expenses of Rs.1,59,81,649/- were debited to directors' account.
- iii) Revised figure and total payment of Rs. 13,68,827/- made for Goa office was debited to the Complainant's account.
- iv) Amount paid for the Complainant and other two directors' EMI / rent were Rs.9,13,850/-.
- v) An amount of Rs.6894/- was revised to Rs.8765/-

6.4 It is observed that annual accounts for the financial year 2004-05 was already audited on 20.07.2005 and the audited accounts were available to the Respondent. It appears that amount incurred on travel, sales promotions and telephone expenses were materially revised by issuing corrigendum by the Respondent. It is noted that total size of the balance sheet as on 31.03.2005 was Rs.2,88,90,349/-. Though the Respondent has not signed the financial statement of the Company for the financial year 2004-05 but it cannot be denied that special audit report issued by the Respondent was materially misstated which was rectified by the Respondent after four years of issuance of the special audit report. The Respondent could not give satisfactorily reply as to why he had issued corrigendum after four years of date of his special audit report. Since the foreign and domestic travel expenses, sales promotion expenses and amount of recoverable from directors were materially misstated in the Special audit report, it appears that the Respondent failed to obtain sufficient information and also failed to discharge his professional duties diligently which gives an opportunity to some directors of the Company to use the draft report as per their will for a period upto 4 years. The Respondent also failed to clarify as to what basis expenses of the Company were treated as personal expenses of certain directors.

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However, the Committee in absence of complete information on the nature of expenses, decided to refrain itself from giving any finding on the nature of expenses.

6.5 The Committee also noted that the Respondent in his submissions attempted to bring on record that amount of loan & advance receivable from the directors (after taking into effect of the corrigendum) were matching with the balance shown in the audited financial statement of the Company for the financial year 2004-05 but there was no submissions from the Respondent as to why he has not reviewed the audited financial statement which was available to him before issuing the special audit report. In this regard, the Committee observed that a per guidance note on Audit Reports and Certificates for Special Purpose, an reporting auditor who issues audit report on specified elements, accounts or items of a financial statement, he is required to mention as to whether financial statement of the Company is audited or not audited but the Respondent in this matter failed to do so. If the Respondent had ensured the compliance of the aforesaid guidance note, there would not have been any need to issue the corrigendum to the Special audit report. Hence, in view of the fact that special audit report did not give correct findings in respect of items covered by it and the mistake resulted in corrigendum to the special audit report after four years, the Committee is of the view that the Respondent failed to verify the relevant records before issuing the special audit report. Thus, the Respondent is guilty with respect to above charge falling within the meaning of Clauses (7) & (8) of Part I of Second Schedule to the Chartered Accountants Act, 1949.

Conclusion

7. Thus, in the considered opinion of the Committee, the Respondent is guilty of professional misconduct falling within the meaning of Clauses (7) & (8) 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 V. CHITALE)
MEMBER

DATE: 10th February, 2020
PLACE: NEW DELHI


Mukesh Kumar Mittal
Assistant Secretary
Disciplinary Directorate