

DISCIPLINARY COMMITTEE [BENCH – I (2020-2021)]

[Constituted under Section 21B of the Chartered Accountants Act, 1949]

Findings cum Order under Rule 18(17) and Rule 19(2) of the Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007

Ref. No. PR 299/14-DD/02/16-DC/649/2017

In the matter of:

**Assistant General Manager,
Securities & Exchange Board of India
Eastern Regional Office, L & T Chambers, 3rd Floor
16, Camac Street
KOLAKTA – 700 017.**

.....Complainant

Versus

**CA. Jitendra Kumar Shaw (M.No. 302208)
2/1 Hari Nath Dey Road
Near Manicktala Telephone Exchange
KOLKATA – 700 001.**

.....Respondent

MEMBERS PRESENT (Through Video Conferencing):

**CA. Nihar N Jambusaria, Presiding Officer,
Ms. Rashmi Verma, I.A.S. (Retd.) (Government Nominee),
CA. G. Sekar, Member,
CA. Pramod Jain, Member**

**DATE OF FINAL HEARING : 20.01.2021
PLACE OF FINAL HEARING : Through Video Conferencing**

PARTIES PRESENT:

**Complainant - Not Present
Respondent - Not Present**

BRIEF OF THE DISCIPLINARY PROCEEDINGS:-

1. The Committee noted that on the day of hearing held on 20th January, 2021, neither the Complainant nor the Respondent was present. The Committee noted that the Complainant vide his letter dated 12th September, 2018 mentioned that personal hearing is not warranted in the extent matter and the Committee can proceed ahead with the matter as deemed fit and considered appropriate, based on the documents on record. The Committee also noted that the Respondent was absent from the hearing without any prior intimation in this regard. In view of above, the Committee decided to continue with the proceedings ex-parte the Complainant and the Respondent. The Committee perused the documents on record and after perusal of charges, submissions and documents on record, decided to conclude the hearing in the matter.

1.1 In respect of earlier hearing held in this matter, the Committee observed that the matter was part heard on 26th July, 2018. Thereafter, the hearings in the matter were fixed and adjourned in order to provide further opportunity to the Respondent to present his case before the Committee. On 26.08.2020, the Counsel for the Respondent was present and he pleaded not guilty to the charges on behalf of the Respondent. Thereafter, neither the Counsel for the Respondent nor the Respondent bothered to pursue the matter.

CHARGES IN BRIEF AND FINDINGS OF THE DISCIPLINARY COMMITTEE:-

2. In the extent matter, the following charges were levelled against the Respondent:-

2.1 The first charge of the Complainant is that in the unaudited financial statements of the Company signed by its Directors and submitted to SEBI for the year ended on 31.03.2013, amount of deposits and advances was Rs. 33.28 crores and 19.32 crores while in the audited financial statements for the same period, signed by the Respondent, there was no such amount against deposits and advances. The Complainant also alleged that the Respondent in his audit report stated that the Company has not accepted any deposits from the public.

2.2 The next charge against the Respondent is that the Company has received Interest Free Short Term Accommodation from its associates amounting to Rs. 52.60 crores in the year ending 31.03.2013 while the Respondent in his audit report certified that the Company has not taken any loans from Companies, firms or other parties covered in the register maintained under Section 301 of the Companies, Act, 1956.

3. In respect of first charge relating to non-reflection of amount of deposits and advance in the audited financial statement, the Respondent stated that he has not signed the unaudited balance sheet and he has not provided any report on the same and hence he cannot be held liable for the same. The Respondent also stated that the total of above two items i.e. Rs. 52,59,66,648/- (Rs. 33,27,49,381 + Rs. 19,32,17,267) has been shown in the audited balance sheet under Note no. 4, Short Term Borrowing under the caption of "Interest Free Short Term Accommodation" of note no. 4. The Respondent further stated that thus the amounts that were shown as due and payable in unaudited balance sheet were continued to be reflected in the audited balance sheet as well but under different heading.

3.1 The Respondent also submitted that in the balance sheet of the Company for the year ending 31st March, 2013, the figures of long terms borrowings are identical with the previous years figures as on 31st March, 2012 which shows that no debentures were issued during the year audited by the Respondent. It is seen that the Respondent in his defence also brought on record management representation letter dated 22nd August, 2013 and 24th August, 2013 wherein the Directors of the Company has given the following representation to the Respondent:-

- (1) "That the Company has not accepted any deposits from the public under the provisions of section 58A and 58AA or any other relevant provisions of the Act
- (3) That the Company has not issued any Debentures during the current financial year."

3.2 In respect of the above charge, the Committee noted that there nothing on record to show that the Company had accepted public deposits or accepted any amount from debentures holders during the financial year under question. On the contrary, the Respondent brought on record copy of management letter clearly mentioning therein that the Company has not accepted any public deposit and it has not issued any debenture during the current financial

year. The Committee further noted that the amount as alleged by the Complainant was shown under other Current Liabilities as under:-

*“Deposits against Mangalam Products : 332,749,381
Advance against Mangalam Products: 193,217,267”*

Hence, the Committee observed that it is a case of dispute on classification of amount of Rs. 52,59,66,648/- in the liability side of the financial statement. As per the Complainant, the amount was public deposit and advance received from the debentures whereas the Respondent claimed it as other liabilities. Keeping in view the facts that there was no evidence on record to show that the Company has accepted any public deposit or issued any debenture during the financial year under question and the fact that the amount was shown as other liabilities in the financial statement, it cannot be stated that the amount was wiped off from the financial statement as alleged by the Complainant and charge appears to be more in the nature of classification issue. However, keeping in view the above facts and in absence of any contrary evidence, the Committee decided to extend benefit to the Respondent, accordingly, it decided to hold the Respondent not guilty with respect to above charge.

4. In next charge against the Respondent it was alleged that the Respondent has given wrong reporting in respect of loans taken from companies, firm or other parties covered in the register maintained under Section 301 of the Companies Act, 1956. In this regard, the Respondent submitted that he had procured management representation letter wherein the management has asserted regarding the completeness of the information provided regarding the identities of related parties. Further, the Respondent brought on record copy of audit report wherein it was mentioned that *“the Company has granted and taken loans....”*. Thus, the words “neither” and “nor” appearing in the audit report brought on record by the Complainant are not appearing in the audit report brought on record by the Respondent with his written statement. The Respondent disputed the audit report brought on record by the Complainant and stated that It is plain and simple case of forgery by the management of the Company by using copy and paste of my original signature on the audit report that has been uploaded on MCA website. The Respondent stated there is no audit report with the contents as alleged by the Complainant with his original signatures. Keeping in view the audit reports brought on record by the Respondent wherein disclosures were made by the Respondent in respect of loan and advance taken from the parties covered in the Register maintained under Section

301 of the Companies Act, 1956, the Committee decided to hold the Respondent not guilty with respect to above charge.

Conclusion:-

5. Thus in the considered opinion of the Committee, the Respondent is **NOT GUILTY** of Professional Misconduct falling within the meaning of Clauses (7) & (8) of Part I of Second Schedule to the Chartered Accountants Act, 1949.

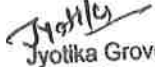
5.1 Accordingly, the Committee passed an Order for closure of this case under Rule 19 (2) of the Chartered Accountants (Procedure of Investigation of Professional and Other Misconduct and Conduct of cases) Rules, 2007.

sd/-
(CA. NIHAR N JAMBUSARIA)
PRESIDING OFFICER

approved & confirmed through email
(MS. RASHMI VERMA, I.A.S. (RETD.))
GOVERNMENT NOMINEE

sd/-
(CA. G. SEKAR)
MEMBER,

sd/-
(CA. PRAMOD JAIN)
MEMBER

Certified to be true copy

Jyotika Grover
Assistant Secretary,
Disciplinary Directorate
The Institute of Chartered Accountants of India,
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