



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

[PR-315/2014-DD/330/14-DC/640/17]

**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-315/2014-DD/330/14-DC/640/17]

**Shri Praveen Kumar Mundra,
41, Krishi Vihar Colony,
Near Tilak Nagar,
INDORE (M.P.) - 452 018**

.....Complainant

Versus

**CA. Shruti Prafulchandra Shah (M. No. 101499)
502, Sidhhagiri Apartment,
D.K. Sandhu Marg,
Chembur (East),
MUMBAI – 400 071**

.....Respondent

MEMBERS PRESENT:

- 1. CA. Atul Kumar Gupta, Presiding Officer**
- 2. Shri Rajeev Kher, I.A.S. Retd., Govt. Nominee**
- 3. CA. Amarjit Chopra, Government Nominee**
- 4. CA. Pramod Kumar Boob, Member**

DATE OF MEETING : 9.10.2020 (Through Video Conferencing)



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[PR-315/2014-DD/330/14-DC/640/17]

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. Shruti Prafulchandra Shah (M. No. 101499)** was **GUILTY** of Professional Misconduct falling within the meaning of Items (7) of Part I of the Second Schedule to the Chartered Accountants Act, 1949.

2. The Committee noted that the Respondent was present before it through video conferencing mode & gave declarations as to she was being alone in the room from where she was attending the hearing and also as to she was not recording the proceedings of the Committee. The Respondent made submissions in her defense. Among others, she emphasized that there was no merit in the allegations against her. She discussed issues regarding her viewing of the minutes etc. and the issue of witness as well.

3. The Committee noted that the Sh. Subhash Chaturbhuj Agarwal, former director of the concerned company had given his statement that he resigned on May 2011 which got regularised in 2014. He further submitted that management of the Company had also given an undertaking and affidavit to him that he would not be liable for any conduct in between the period. The Committee also noted that the director himself appeared before the Committee at the time of hearing and deposed that he signed the concerned Meeting Resolutions and Minutes (for the earlier periods) few days before the hearing of the



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Committee only. The Committee noted that the Respondent on basis of these minutes had performed the assignments. The Committee discussed various other aspects of the matter also and gave a patient hearing to the Respondent. In view of the statements given by the Respondent and in the light of other material on record before it, the Committee was of the view that there was a clear case of gross negligence on the part of the Respondent as she was not having any minutes' book or resolution for allotment of shares. The Committee hence was of considered view that ends of justice can be met if the Respondent is given reasonable punishment.

4. Keeping in view the facts and circumstances of the case, material on record and arguments of the parties before it, the Committee ordered that the name of the Respondent i.e. CA. Shruti Prafulchandra Shah (M. No. 101499) be removed for a period of Three Months.

sd/-

(CA. ATUL KUMAR GUPTA)
PRESIDING OFFICER

(approved and confirmed through e-mail)

(CA. AMARJIT CHOPRA)
GOVERNMENT NOMINEE

(approved and confirmed through e-mail)

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

(approved and confirmed through e-mail)

(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, Shahdra, 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-315/14/DD-330/2014/DC/640/17]

In the matter of:

**Shri Praveen Kumar Mundra,
41, Krishi Vihar Colony,
Near Tilak Nagar,
INDORE (M.P.) - 452 018**

..... Complainant

Versus

**CA. Shruti Prafulchandra Shah (M. No. 101499)
502, Sidhhagiri Apartment,
D.K. Sandhu Marg,
Chembur (East),
MUMBAI – 400 071**

..... 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 FINAL HEARING : 21.07.2019

PLACE OF FINAL HEARING : ICAI Bhawan, Mumbai

PARTIES PRESENT :

Complainant : Shri Praveen Kumar Mundra

Respondent : CA. Shruti Prafulchandra 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 guilty under Clause (2) of Part-IV of First Schedule and Clause (7) of Part I of the Second Schedule of Chartered Accountant Act 1949. The aforesaid Clause (2) of Part-IV of 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”

And 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;”

2. Briefly, in this case, there was 7 allegation made by Complainant against the Respondent but the Director discipline found the Respondent guilty at prima facie stage only for two charges. The allegation of complainant wherein the Director hold the Respondent guilty is related to Form No. 20B being certified & filed by the Respondent for the year ended 31.03.2011 in respect of SCL Industries Limited (Now SCL Industries Private Limited) shows the transmission of 99% equity shares i.e. 487674 to Shri Sharan Shaun Agrawal (foreign citizen) Director of the Company on 31.03.2011 after the death of Shri Nikhil P. Nawathe, Spouse of one of the Directors. Nikhil P. Nawathe who had expired on 22.07.2006. Whereas in Form No.66 filed by practicing Company Secretary, M/s. Forum Kaushik Gandhi in her report vide Para 13(1) of the Compliance Certificate indicated that *there was no allotment/transfer of securities during the financial year under scrutiny*. The Respondent in spite of full knowledge willfully filed the form to help one of the Directors of the Company, Ms. Neeta Nikhil Nawathe (alias Neeta Agrawal) who was declared defaulter by Debt Recovery Tribunal, Mumbai to the extent of approximate Rs.

39 crores. The defaulter Director is involved in money laundering activities through the Respondent. Complainant submitted that As per Form No.2 filed on 29th March 2012, SCL Industries Ltd has issued 106300 fresh equity shares on 01.10.2011 and 400 shares on 31.03.2012 at a premium of Rs.990 per share which is incomparable with the Net Asset Value of each share and in the second charge that there was no proper quorum at the Board Meetings held after May 2011 but still filings made were certified by the Respondent that bears the signature of Shri Subhash Chatrabhuj Agrawal as a Director as on the date of filing when later had already resigned. It is alleged that his digital signature was used by the Respondent without his knowledge.

Brief facts of the Proceedings:

3. On the day of hearing i.e. 21/07/2019, the Committee noted that the Complainant was present; on the other side, the Respondent appeared before the Committee. The Respondent was put on oath. In the presence of the Complainant and with the consent of Respondent, the charges were taken as read. On being asked to the Respondent whether he pleads guilty, she replied in negative. Thereafter, the Committee sought whether she wishes to proceed with his defence. Thereafter, the Respondent placed her defence. After considering all the papers available on record, the Committee decided to conclude the matter.

Findings of the Committee

5. The Committee noted that the Respondent has submitted that the Complainant is a third party and not related to the Company either as a shareholder, director, debtor, creditor, or employee and habitual for harassing and threatening professionals. However, as pointed out by the Complainant, any person can complain against a member of ICAI, and presently, the Act/ Rules provide only for an examination of the complaint filed for judging the misconduct of Respondent. Hence this point is not taken further cognizance of at this stage.

 

6. The Committee also called for two witnesses i.e. Authorized Representative of SCL Industries Pvt. Ltd. And Shri Subhash Chatrabhuj Agarwal, One of the directors of the Company. The Committee noted the papers submitted by Complainant i.e. Documentary proof to establish that Shri Subhash Agarwal was not the Director of the Company at the time of signing of Balance Sheet and Proof to establish that Industries Namely Agrawal Engineering, Agrawal Trading, Bharat Berg and Kalina construction Co. Were related to SCL Industries Ltd; and
7. As far as the first charge is concerned for valuation of share as exorbitant value, the Respondent submitted that the financial statements of Financial Year 2011-12 on page 'C-48' of prima facie opinion discloses the issue of reported shares both under Note 1 - Share Capital and Note 2 - Reserves and Surplus, under the head "Share Premium". As regards, the amount of premium charged, prima facie, the Respondent's argument that a Statutory Auditor has no decisive role to play in the value of premium at which shares are issued is tenable.
8. The Committee noted that as far as the second charge is concerned about quorum, Respondent submitted that Mr. Subhash Chatrabhuj Agarwal in his letter to ROC on 7th March 2014 available on page 'C-45' of prima facie opinion has informed that balance sheet and annual return for the year ended 31.03.2012 and 31.03.2013 filed on 2nd September, 2011 and 20th February, 2014 respectively shows him as Director and shareholder when he had resigned in May, 2011. It is also to note that Mr. Subhash Agarwal in his letter dated 2nd June, 2014 available on page 'R-11 and R-13' of prima facie opinion that he has resigned on 11th May, 2011, and submitted this letter of June 2014 to regularize the matter. In view of the above, Respondent invited the attention of Committee on an affidavit dated 04th June, 2014 available on page 'D-15' of Prima facie opinion by Mrs. Neeta Nawathe who ensured that Mr. Agarwal will not be held responsible for all filings done by the Company after 11th May, 2011. It indicates that effectively Mr. Subhash Agarwal had resigned on 11th May, 2011, it was further noted that as per Para 4 of Compliance Certificate from May 2011 to 28th March, 2012 five Board Meetings were held.



9. On the above submission, Committee is of the view that when the said director resigned in May 2011 Therefore, it raises a question on the diligence of the Respondent for using the digital signature of Shri Subhash Chatrabhuj Agarwal without the authorization. Hence, on this count, the committee called him witness along with the authorized representative of the Company Dr. Rohit Agarwal, who became director in the Company from 2014. Dr. Rohit Agarwal (witness) shown the Committee original minutes of Board of Directors from 2011 onwards and the Committee after perusal of the same returned the original board minutes to the witness. However, one Xerox copy of the same was taken on record from the witness. Thereafter, the Committee called its second witness, Shri Subhash Chatrabhuj Agarwal, who stated that he was the salaried director in the Company from 2002 to 2nd June, 2014. Though he has given resignation in 2001 the same was withdrawn by him. He is not aware of the transfer of shares. Initially, the witness denied that he has signed any balance sheet, later on, he deposed that he signed some reports. He further deposed that Subhash Chatrabhuj Agarwal remained in India during that period only for 8 to 10 days annually. On being inquired, about the Board Meeting and minutes thereof, the witness Subhash Chatrabhuj Agarwal accepted before the committee that these minutes and resolution are signed by him few days before in May 2019 on being asked for by the management.
10. On this the committee desired to look into the Copy of passport of Sharan Agarwal particularly showing the presence of Shri Sharan Agarwal on 22nd July, 2014, 1st September, 2014, 15th December, 2014, 2nd June, 2011 and 25th August, 2011 i.e. date of Board meeting wherein said allotment was resolved. The Respondent stated that looking into the Passport and physical presence of Directors is not part of Audit guidelines and procedure pronounced by the Institute and accordingly, she believed in the same documents provided and explanation given by the management for the resolution passed and acted upon.
11. The committee in his considered view and observed from facts of the case that the Sh. Subhash Chatrabhuj Agarwal who was made as Director by the Management actually resigned in May 2011 and his resignation was got regularized in 2014. In between periods, he was not involved in affairs of the

company wherein such allotment of the share was resolved. On being complaint got lodge for the misdeed of the management, they tried to shield their activities by showing Mr. Subhash Chatrabhuj Agarwal continuing as Director and attended the Board meeting but being questioned by him, an affidavit was given by management that Subhash Chatrabhuj Agarwal will not be responsible for any action in between of period from 2011 to 2014. The statement given before the committee by Witness (Subhash Chatrabhuj Agarwal) that he signed the meeting resolution and a minute few days before the hearing before this Committee clearly indicates that the Respondent was not having any minutes' book or resolution for said allotment of shares which reflect the negligence on her part. Looking into this committee decided to hold the Respondent guilty of Professional Misconduct under clause (7) of Part 1 of Second Schedule and do not find any merit to hold guilty under Clause (2) of Part- IV of First Schedule to the Chartered Accountants Act, 1949.

Conclusion

12. Thus, the Committee while looking into the above facts of the case found that there is gross negligence on the part of the Respondent. In terms of the reasoning as above and in the considered opinion of the Committee, the Respondent is held **GUILTY** under Clause (7) 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/-

(RAJENDRA KUMAR P)
MEMBER

Sd/-

(CA. CHANDRASEKHAR VASANT CHITALE)
MEMBER

Certified Copy


Ajay Kumar Jain
Deputy Secretary
Disciplinary Directorate

DATE: 10.02.2020
PLACE: New Delhi

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ICAI, Shauhan, I.P. Marg, New Delhi-110 002