



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

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.

File No. [PR/75/12/DD/94/2012/DC/438/16]

In the matter of:

Mr. Sanjeev Khandelwal

Director

M/s. Lakshmi Cement and Ceramics Ind. Ltd.

ADD: B-38, Mona Shopping Centre,

J.P. Road, Near Navrang Cinema,

Andheri (West)

Mumbai - 400 038

..... Complainant

Versus

CA. B. Ramakrishna Shetty (M. No. 022394)

No. 163/15th Main Chamarajpet,

Opp. Karnataka Bank

Bangalore - 560 053.

..... Respondent

Members present:

CA. Atul Kumar Gupta, Presiding Officer

Smt. Anita Kapur, Member (Govt. Nominee)

Shri Ajay Mittal, Member (Govt. Nominee)

CA. Chandrashekhar Vasant Chitale, Member

CA. Manu Agrawal, Member

Date of Final Hearing: 21st September, 2020 through Video Conferencing

Place of Final Hearing: New Delhi

The following party was also present:

B Ramakrishna Shetty : the Respondent (appeared from his residence in Thiruvananthapuram)

1. That vide report dated 16th December 2019, the Disciplinary Committee was of the opinion that CA. B. Ramakrishna Shetty (M. No. 022394) was GUILTY of Professional Misconduct falling within the meaning of Clauses (5), (6), (7), (8) and (9) of Part I of Second Schedule to the Chartered Accountants Act, 1949 with respect to the Statutory Audit of M/s. Lakshmi Cement and Ceramics Industries Limited (hereinafter referred as the Company) for the Financial years 2006-07, 2007-08 and 2008-09 in respect to which instances of professional negligence / misconduct were alleged as instances of misappropriation / siphoning of funds of the Company by Ex-Directors of the Company which the Respondent failed to report in his audit reports pertaining to stated financial periods.



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It is noted that the Respondent is held guilty under Clauses (5), (6), (7), (8) and (9) of Part I of the Second Schedule which states respectively as under:-

Clause 5: "fails to disclose a material fact known to him which is not disclosed in a financial statement, but disclosure of which is necessary in making such financial statement where he is concerned with that financial statement in a professional capacity"

Clause 6: "fails to report a material misstatement known to him to appear in a financial statement with which he is concerned in a professional capacity"

Clause 7: "does not exercise due diligence, or is grossly negligent in the conduct of his professional duties."

Clause 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" and

Clause 9: "fails to invite attention to any material departure from the generally accepted procedure of audit applicable to the circumstances"

2. An action under Section 21B (3) of the Chartered Accountants Act, 1949 was contemplated against the Respondent and communication dated 11th September 2020 was addressed to him thereby granting him an opportunity of being heard in person and/or to make a written representation before the Committee on 21st September, 2020 through video conferencing.

3. The Respondent appeared before the Committee on 21st September 2020 through video conferencing from his personal location to make oral submissions and also submitted his Written Submissions vide e-mail dated 17th September 2020 wherein he had inter-alia stated that the extant complaint was filed against the auditors due to management dispute and was thus liable to be disposed off. As regard the first charge relating to not giving adverse remarks in respect of writing off of investments including NSC and IVP by ex-directors of the Company, he submitted that in Schedule 8 notes of accounts for the year ending 31.03.2006, it was clearly brought out that the investments were written off as the national saving certificate and Indira Vikas Patra were physically not verifiable during the course of audit. He further submitted that an amount of Rs.1,15,000/- out of total amount of Rs.1,78,00,000/- was not material enough to be disclosed separately.

As regard the second charge relating to advance of Rs.2.75 crores given during financial year 2007-2008 to one Mr. Divakar Babu, he submitted that the said advance was paid to explore the mining resources for which the company had the license but did not had the manpower and technical background which Mr. Diwakar Babu had and the said advance was to be adjusted in future at a predetermined rate. This arrangement was made by way of agreement and resolution.

4. The Committee considered the oral submissions as well as the written submissions made by the Respondent and noted as regard the first charge that at relevant time de-mating was not in vogue



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and if the hard copy of the scripts even that of National Saving Certificate was not available for the purpose of physical verification and thus were being written off then there existed a clear case of irregularity in respect of investments and sufficient reason for the Respondent to extend his verification accordingly. However, the Respondent failed to report the same in his Audit Report. As regard the second charge, the Committee noted the said advance payment of Rs. 2.75 crores was shown in the first year as a sundry debtors and later on converted as the advances and although the Respondent conducted the audit for the period from 2005 to 2010 and in all these five years, the advances were shown without being recovered but the Respondent failed to either give a qualification or a proper disclosure of such a huge amount i.e. Rs. 2.75 crore which was pending from one of the party for a long period.

5. The Committee was thus of the opinion that the misconduct on the part of the Respondent has been held and established within the meaning of clauses (5), (6), (7) (8) and (9) of Part I of the Second Schedule to the Chartered Accountants Act, 1949 and keeping in view the facts and circumstances of the case as aforesaid, ordered Respondent **CA. B. Ramakrishna Shetty (M. No. 022394)** be removed for a period of 3 (three) months from the Register of members alongwith imposition of fine of Rs.50,000/- (Rupees Fifty Thousand Only).

Sd/-
[CA. Atul Kumar Gupta]
Presiding Officer

Sd/-
[Smt. Anita Kapur]
Member, (Govt. Nominee)

Sd/-
[Shri Ajay Mittal]
Member, (Govt. Nominee)

Sd/-
[CA. Chandrashekhar Vasant Chitale]
Member

Sd/-
[CA. Manu Agrawal]
Member

Date: 21st September, 2020



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CONFIDENTIAL

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

[Constituted under Section 21B of the Chartered Accountants 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/75/12/DD/94/2012/DC/438/16]

In the matter of:

Mr. Sanjeev Khandelwal

Director

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Versus

CA. B. Ramakrishna Shetty (M. No. 022394)

No. 163/15th Main Chamarajpet,

Opp. Karnataka Bank

Bangalore - 560 053.

.... Respondent

MEMBERS PRESENT:

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

4. CA. Chandrashekhar V. Chitale, Member

DATE OF FINAL HEARING : 03.07.2019

PLACE OF FINAL HEARING : ICAI, CHENNAI

PARTIES PRESENT:

Respondent : CA. B. Ramakrishna Shetty

Witness : Srinivasaiah Medisetty

Charge in brief:-



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1. The Charges in which the Respondent was prima facie held guilty are as under:-

1.1 The Respondent had not made any qualification or adverse remarks on illegal and fraudulent writing off of investments by Ex-Directors of the Company.

1.2 A total sum of Rs.2,75,00,000/- (Rs. Two Crore Seventy Five Lacs Only) was paid to one Divakar Babu during the period 17-12-2007 to 02-02-2008. This amount was shown as Divakar Babu mining advance under the heading "Sundry Debtors" in the account for the year 2007-2008. There are documents with the Company which show that this amount paid is for cancellation of mining lease illegally given to Divakar Babu and Rs. 2,75,00,000/- is refund / compensation in lieu of cancellation of earlier agreement. Amount received while giving lease is not accounted for in books of accounts and this amount of Rs.2.75 crores paid is not returnable. However, the same is shown as receivable in Balance Sheet.

Brief of Proceeding :

2. The Committee noted that the Respondent in person was present and appeared before it. The office apprised the Committee that the Complainant was not present, despite that notice was duly served upon him.

2.1 Further, present Director, Mr. Srinivasaiah Medisetty, who is also witness in this case, wish to withdraw the case is also present.

2.2 The Committee noted that presence of the parties and since this was the first hearing, the Respondent was put on oath.

2.3 In the absence of the Complainant, the office explained the charges to the Respondent and being enquired by the Committee, he plead not guilty and wish to defend the charges.

2.4 The Committee called the witness and put him on oath. After examining, the witness was discharged.



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2.5 The Respondent made final submissions to defend the charges. After recording the submissions of the Respondent, the Committee concluded the hearing in the caption matter.

FINDINGS :

3. The Committee noted that this case was filed by Mr. Sanjeev Khandelwal, earlier Director M/s. Lakshmi Cement and Ceramics Industries Ltd. against CA. B Ramakrishna Shetty Bangalore and where the present Director (new management) of the Company wish to withdraw this case.

Further, the Committee noted that to this effect, said present Director (Srinivasaiah Medisetty) submitted a letter dated 21/09/2017 before the earlier Disciplinary Committee meeting (s) and for authentication of contents of withdrawal letter, he was summoned as witness by the Committee.

3.1 As per direction of the Committee, Srinivasaiah Medisetty was present as a witness and the Committee enquired that why he wish to withdraw the present complaint. The witness mentioned that there was a dispute going on between the other directors. So, he didn't wish to continue with this complaint and he is withdrawing the same.

3.2 But the Committee was of the view that it has to see the conduct of the member whether that is falling under the four walls of the Code of Ethics being laid down by the ICAI being in the profession of the Chartered Accountant of India. The Committee decided to see the merit of the case.

3.3 Based on the two aspects related to the allegations, first one is relating to the writing off the investment Rs.1.78 crore and the second is related to Rs.2.75 crore shown as an advances.

3.4 As far as Rs.1.78 crore investment is concerned which was write off by Ex-Directors of the Company, the Respondent submitted that the National Saving Certificate 'Indira Vikas Patra' of around Rs.1.5 lakhs were missing and at the same time there were the stocks i.e. the shares of balance amount which was being written off.



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3.5 When the Committee enquired from the Respondent that whether the stocks/shares which were being written off were listed. Then, the Respondent mention that he could not see the share certificate at all. Because at that point of time de-mating was not there and even the hard copy of the scripts and even the National Saving Certificate was not available.

3.6 Thus, in view of above submissions, the Committee is of the opinion on this charge that it is a clear case of a irregularity being constructed in the Company which is not being reported under the CARO provision of 2003 and in the Audit Report by the Respondent.

And accordingly, he is guilty of professional misconduct for this kind of the negligence.

3.7 In respect of second charge, which is related to advance payment of Rs. 2.75 crores and was shown in the first year as a sundry debtors and later on being converted as the advances and as per the Respondent he conducted the audit for period 2005 to 2010 and in all these five years the advances were shown without giving any comment that there is a dispute going on and there are the chances when this amount may not be able to recover and accordingly again there is a needle of the suspicion is going on whether this is again a fraud being constructed by the Management.

3.8 And the witness also confirm that even today in 2019 after 14 years of advance being given that it is not being recovered. Accordingly, it was a duty of the Respondent to either give a qualification or the proper disclosure of such a huge amount i.e. Rs. 2.75 crore which is pending from one of the party for a long period.

Accordingly, the Committee is of the opinion that for this charge as well the Respondent is guilty of a professional misconduct.

CONCLUSION :

4. Thus, in the considered opinion of the Committee, the Respondent is **GUILTY** of Professional Misconduct falling within the meaning of Clauses (5), (6), (7), (8) and (9) of Part I of the Second Schedule to the Chartered Accountants Act, 1949.



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

Sd/
(CA. AMARJIT CHOPRA)
GOVERNMENT NOMINEE

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

Sd/-
(CA. CHHANDRASHEKHAR V.
MEMBER

DATE : 16-12-2019

PLACE : New Delhi