



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

**[PR-219/2014/DD/236/2014/DC/569/2017]**

**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-219/2014/DD/236/2014/DC/569/2017]**

**In the matter of:**

**Shri Niraj Sharma**  
**Vice-President**  
**National Spot Exchange Limited**  
FT Tower  
CTS No. 256/257  
Suren Road  
Andheri (East)  
**Mumbai - 400 093**

**..... Complainant**

**Versus**

**CA. Vikas Kumar Khaitan (M. No. 063352)**  
#3541 First Floor  
2<sup>nd</sup> Cross 13<sup>th</sup> H Main  
Hall II Stage, Indira Nagar  
14, 4<sup>th</sup> Cross,  
**Bangalore - 560 102**

**.....Respondent**

**Members present:**

**CA. Atul Kumar Gupta, Presiding Officer**  
**Smt. Anita Kapur, Member (Govt. Nominee)**  
**Shri Ajay Mittal, Member (Govt. Nominee)**  
**CA. Manu Agrawal, Member**

**Date of Final Hearing: 23<sup>rd</sup> January, 2021**

**Place of Final Hearing: New Delhi**

1. Vide report dated 16<sup>th</sup> December 2019 (**copy enclosed**) the Disciplinary Committee was of the opinion that **CA. Vikas Kumar Khaitan (M. No. 063352)** was **GUILTY** of Professional Misconduct falling within the meaning of Clause (7) of Part I of Second Schedule to the Chartered Accountant Act 1949 with respect to issuing incorrect Net Worth Certificate to M/s. Aastha Minmet (India) Pvt. Ltd. (hereinafter referred to as the "**Company**") as on 31.03.2011. It was stated that the Complainant had relied upon the said Net Worth Certificate and admitted the said Company as member of 'National Spot Exchange Limited (NSEL), the Complainant Exchange, and earmarked the limit based on the said net worth certificate issued and certified by the Respondent. Later the Company



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defaulted for huge amount of dealing with the Complainant. Accordingly, the Respondent is held guilty of Clause (7) of Part I of Second Schedule which states as under:-

*“does not exercise due diligence, or is grossly negligent in the conduct of his professional duties.”*

2. An action under Section 21B (3) of the Chartered Accountants Act, 1949 was contemplated against the Respondent and communication dated 4<sup>th</sup> January, 2021 was addressed to him thereby granting him an opportunity of being heard in person or through videoconferencing and/or to make a written representation before the Committee on 23<sup>rd</sup> January 2021.

3. The Committee noted that neither Respondent nor his authorized representative was present before it for hearing. The Committee further noted that Respondent vide his communication dated 13<sup>th</sup> January, 2021, sought adjournment stating that he was not comfortable in meeting over video conferencing and that he was heart patient and undergone heart surgery. He requested the Committee to wait for some more time so that he could appear in person to present his facts before the Committee. The Committee noted that the matter was fixed for hearing earlier too on 13<sup>th</sup> August, 2020, 17<sup>th</sup> September, 2020 as well as 7<sup>th</sup> December 2020 when he had also sought adjournment requesting the Committee to allow him to appear in person. At the present hearing, the Committee had granted him the opportunity to appear before it through either alternatives of appearing in person or through video conferencing still he failed to appear before it. The Committee viewed that sufficient opportunity had been given to the Respondent. In any case, it was noted that the Respondent vide his email dated 22<sup>nd</sup> January, 2021, had submitted his written representation to it. Accordingly, the Committee decided to proceed in the matter.

4. It was noted that the Respondent, interalia, submitted that the then applicable Companies Act, 1956 did not provide any specific head for share application money. The two directors of the Company together were holding the entire 100% of share capital and that they had agreed to take upon themselves the entire share application money being a private limited company. There was clear understanding among the directors that they would not ask for refund of share application money and also resolved to accept the shares allotted to them, which was also subsequently allotted and accepted by them as shareholders. Further, he argued that the total of Net Worth Certificate issued by him tallied with the aggregate of Share Capital and Reserves and Surplus as appearing in the Balance Sheet for the period ending on 31.03.2011. Thus, it could not be a case of Gross Negligence against him.

4. The Committee considered the written submissions made by the Respondent and noted that the charge in the extant matter was that Respondent was negligent in certifying the net worth certificate



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of the Company on which the Complainant relied upon and admitted the Company as member of the Complainant Exchange and earmarked an incorrect the limit based on the said net worth certificate resulting in default by the Company. The Committee noted that out of total value of Rs. 8,22,17,748/- net worth certified by the Respondent as on 31.03.2011, the share application money was of Rs.6,00,00,000/- **(C-22)**. It was noted that by mistake the amount of share application money was wrongly stated in findings. Further, in view of definition of the term 'networth' as given in Sec 29A, it was noted that, in extant case, the share application money was not created out of profits of the Company, so, it could not be considered as free reserves and that it was also not a part of paid up capital pending share allotment. Accordingly, as on the date of issuing net worth certificate, inclusion of share application money pending allotment for the purpose of computation of net worth was against the provisions of Companies Act, 1956. It was, accordingly, viewed that the Respondent had certified a networth certificate wherein the paid up capital was materially misstated.

5 The Committee thus viewed that the misconduct on the part of the Respondent has been held and established within the meaning of Clause (7) of Part I of Second Schedule and keeping in view the facts and circumstances of the case as aforesaid, ordered that the name of the Respondent **CA. Vikas Kumar Khaitan (M. No. 029446)**, be removed from the Register of Members for a period of **01 (one) year** alongwith a fine of **Rs.10,000/- (Rupees Ten thousand Only)** be imposed upon him.

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

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

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

Sd/-  
[CA. Manu Agrawal]  
Member  
(approved & confirmed through e-mail)

Date : 23<sup>rd</sup> January, 2021



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**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.**

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**In the matter of:**

**Shri Niraj Sharma  
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**CA. Vikas Kumar Khaitan ...(M. No. 029446)  
#3541 First Floor  
2<sup>nd</sup> Cross 13<sup>th</sup> H Main  
Hall II Stage, Indira Nagar  
14, 4<sup>th</sup> Cross,  
Bangalore - 560 102**

**.....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 : 29.07.2019**

**PLACE OF FINAL HEARING : ICAI Bhawan, Chennai**

**PARTIES PRESENT :**



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**Complainant** : **Not Present**  
**Respondent** : **CA. Vikas Kumar Khaitan**  
**Counsel For the Respondent** : **CA. K. Ravi**

**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 (7) of Part I Second Schedule of Chartered Accountant Act 1949 which states that :-

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

2. In this case the allegation against the Respondent is that the net worth of the Company as on 31.03.2011 is certified by the Respondent to be of Rs.8,22,17,748/- as per the statement of computation. As per the Complainant, the Respondent was negligent in certifying the net worth certificate issued to the said Company and the Complainant relying upon the said Net Worth Certificate admitted the said Company as member of the Complainant, 'National Spot Exchange Limited (NSEL) and earmarked the limit based on the said net worth certificate issued and certified by the Respondent.

**Brief facts of the Proceedings:**

3. On the day of hearing, the Committee noted that Complainant was not present; on other side, the Respondent with his Counsel appeared before the Committee. The Respondent was put on oath. In the absence of the Complainant and with consent of Respondent, the charges were taken as read. On being asked to the Respondent whether he pleads guilty, he replied in negative. Thereafter, the Committee sought whether he wish to proceed



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with his defence. Thereafter, the respondent placed his defence on table. After considering all papers available on record, the Committee decided to proceed with the matter.

**Findings of the Committee**

4. On the matter stated above this committee noted that, at the time of hearing the Respondent appeared before this committee the counsel for Respondent submitted that the net worth certificate prepared by him is based on Resolution passed by the Company. In this regard, the terms 'net worth' and 'paid-up capital' has been defined in Section 2 of the Companies Act, 1956 as reproduced below:-

*“Section 2 (29A) ‘net worth’ means the sum total of the paid-up capital and free reserves after deducting the provisions or expense as may be prescribed.”*

*“Section 2 (32) ‘Paid-up capital’ or ‘capital paid-up’ includes capital credited as paid-up;”*

5. The Respondent certified Net Worth of the said Company at Rs. 8,22,17,748/- as on 31.03.2011. On this date the position of Capital and Reserve is as under:

Paid Up Share Capital	Rs.6,98,70,540/-
Share Application Money	Rs. 98,70,540/-
Reserve & Surplus (excluding revaluation reserves)	Rs.1,26,31,406/-
Number of Shares	987054

6. The Committee observed that in this case being the share application money has not been created out of profits of the Company, Hence, it cannot be considered as free reserves. Further, the same cannot be treated as paid up capital as the amount has not been credited to paid up capital. Accordingly, inclusion of share application money pending allotment for the purpose of computation of net worth is against the provisions of Companies Act, 1956.



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**Conclusion**

7. Thus, upon consideration of all facts, circumstances, record and law, the Committee is of the opinion that the Respondent is grossly negligent in performing his duty and did not exercise his due diligence while issuing Net worth certificate of the said Company as the Respondent had materially misstated the paid up capital in the computation of net worth. In terms of the reasoning as above, in the considered opinion of the Committee, the Respondent is held **GUILTY** in 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/-**  
**(CA. RAJENDRA KUMAR P)**  
**MEMBER**

**Sd/-**  
**(CA. CHANDRASEKHAR VASANT CHITALE)**  
**MEMBER**

**DATE : 16<sup>th</sup> December, 2019**  
**PLACE : New Delhi**