



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

[PPR/P/43/2016-DD/46/INF/2016/DC/834/2018]

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.

[PPR/P/43/2016-DD/46/INF/2016/DC/834/2018]

In the matter of:

**CA. S. Shankar (M. No. 040476),
of M/s Shankar and Kaplani, Mumbai (FRN. 11761W), Mumbai in Re: Respondent**

MEMBERS PRESENT:

1. CA. (Dr.) DebashisMitra, Presiding Officer
2. Shri Rajeev Kher, I.A.S. (Retd.), Government Nominee
3. CA. Amarjit Chopra, Government Nominee
4. CA. Rajendra Kumar P, Member
5. CA. Babu Abraham Kallivayalil, Member

DATE OF MEETING : 06.04.2021 (Through Physical/Video Conferencing Mode)

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 22.12.2020, the Disciplinary Committee was inter-alia of the opinion that **CA. S. Shankar (M. No. 040476)** (hereinafter referred to as the **Respondent**) was **GUILTY** of professional misconduct falling within the meaning of Clause (7) of Part I of the Second Schedule to the Chartered Accountant Act 1949.

2. The Committee noted that the Respondent was not present before it. The Committee noted that the Respondent vide letter dated 23rd March, 2021 had submitted that he did not wish to appear before the Committee. The Committee also noted the submissions of the Respondent submitted vide letter dated 01st February, 2021. The Committee accordingly decided to proceed ex-parte the Respondent.



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3. The Committee noted that in present case the Respondent is negligent in the conduct of his professional duty which resulted not only in incorrect reporting but also non-compliance of criteria laid down under Section 45 IA of RBI Act 1934. The Committee looking into the gravity of charges alleged was of the view that the ends of justice shall be met if reasonable punishment is granted to him.

4. 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. S. Shankar (M. No. 040476) of M/s Shankar and Kaplani, Mumbai (FRNo. 11761W), Mumbai be removed for a period of six months along with a penalty of Rs 25000/- (Rupees Twenty Five Thousand Only) shall also be payable by him within a period of 30 days and in case of non-payment of penalty in stipulated time, the name shall be removed for an additional 1 month over and above the original punishment of six months.

sd/-
(CA. (Dr.) DEBASHIS MITRA)
PRESIDING OFFICER

(approved & confirmed through email)
(SHRI RAJEEV KHER, I.A.S. RETD.)
GOVERNMENT NOMINEE

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

sd/-
(CA. RAJENDRA KUMAR P)
MEMBER

(approved & confirmed through email)
(CA. BABU ABRAHAM KALLIVAYALIL)
MEMBER

Certified to be true copy

Mukesh Kumar Mittal
Assistant Secretary,
Disciplinary Directorate

CONFIDENTIAL

DISCIPLINARY COMMITTEE (BENCH - II (2020-2021))

[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. : [PPR/P/43/2016-DD/46/INF/2016/DC/834/2018]

In the matter of:

CA. S. Shankar (M. No. 040476), CA. Pawan Kumar Rungta (M. No. 042902) and
CA. SwapnilTavate (M.No. 136666) of

M/s Shankar and Kaplani, Mumbai (FRN. 11761W), Mumbai in Re: Respondents

MEMBERS PRESENT:

CA. Amarjit Chopra, (Govt. Nominee), Presiding Officer

CA. Rajendra Kumar P, Member

CA. Pramod Kumar Boob, Member

DATE OF FINAL HEARING : 17.03.2020

PLACE OF FINAL HEARING : ICAI Bhawan, Delhi

PARTIES PRESENT :

Respondent : CA. S. Shankar

Counsel for Respondent : CA. M.R. Vanketesh (For CA. S. Shankar and
CA Pawan Kumar Rungta)

Charges in Brief:-

1. The Committee noted that present case is based upon the information received from the Reserve Bank of India, Ahmedabad which has alleged that the Respondent Firm had made wrong certification for the year 2014-15 in respect of M/s Roselabs Finance Ltd. i.e. the Company which does not meet dual principle business criteria as required in terms of Non-Banking financial (Non- Deposit Accepting or Holding) Companies Prudential Norms (Reserve Bank) Directions, 2015. It is stated that the income from

4. The Committee noted that the Respondent CA Swapnil Tavate vide letter dated 4th August, 2018 stated that he was in full time and was not holding

Findings of the Committee

financial assets to total income (after netting of purchase) is only about 12%, hence the Company failed to meet the dual principle business criteria required for doing NBFC business and despite the same the Respondent Firm issued certificate that the Company is entitled to hold certificate of Registration as an NBFC.

2. The Committee noted that the whole issue is regarding fulfillment of criteria of NBFC, wherein the Respondent Firm on one hand is giving certificate that the income from financial assets to total income is 11.45% and on other hand they are certifying that the Company is entitled to hold Certificate of Registration. Accordingly the Respondent was held Guilty in the Prima facie opinion of the Director (Discipline). Further, when the Company failed to meet the principal business criteria, the Respondent Firm was required to submit exception report to RBI as mentioned in **para 5 of Notification No. DNBS(PD)CC No. 334/03.02.001/2013-14 dated July 1, 2013**. Since no such statements as stated above have been included in the audit report signed by the Respondents, hence, the Respondents are held guilty of professional misconduct falling within the meaning of Clause (7) of Part I of the Second Schedule of Chartered Accountant Act 1949 for violation of the "Non-Banking Financial Companies Auditor's Report (Reserve Bank) Directions, 2013.

Brief facts of the Proceedings:

3. The matter was earlier fixed and adjourned on the request of Respondent(s) on 21st August, 2019 and 25th November, 2019. On the day of final hearing on 17/03/2020, the Respondent CA. S. Shankar was present alongwith his Counsel CA. M.R. Venketesh. Further the said Counsel also represented other Respondent CA. Pawan Kumar Rungta. However, other two Respondent(s) namely CA. Pawan Kumar Rungta and CA. Swapnil Tavate were not present in person. CA. S. Shankar was put on oath. Thereafter on being asked by the Committee as to whether the Respondent is aware about the charge, the Respondent's Counsel replied in positive. Accordingly charges alleged were taken as read. On being asked by the Committee whether he accepts the charges levelled against him, the Respondent pleaded not guilty and wished to defend the charges. Thereafter the Respondent/his Counsel made detailed submissions in favour of his defence. After considering all papers available on record and after detailed deliberations and recording the submissions, the Committee decided to conclude the matter.

4. The Committee noted that the Respondent CA Swapnil Tavate vide letter dated 4th August 2018 (received on 14th August, 2018) stated that he was in full time employment with Respondent Firm i.e. M/s Shankar and Kaplani and was not holding the certificate of practice during the said tenure. He further submitted that he was part of statutory audit team and his role was restricted to providing the complete information to the partners of the firm issuing the alleged certificate. In addition to the above the Respondent Firm vide written submission dated 09th November, 2019 in point no.2 also requested that the proceedings need to be considered to be maintainable only against one partner CA. S. Shankar and not against another partner(s) CA. Pawan Kumar Rungta and CA. Swapnil Tavate. The Committee further noted that during the course of hearing, CA. S. Shankar has himself agreed and placed his submission on record that he is the only member answerable to charge and CA. Swapnil has no role in this particular case. Accordingly, the Committee decided to exonerate CA. Pawan Kumar Rungta and CA. Swapnil in so far as this case is concerned.
5. The Committee noted the submission of the Respondent's Counsel wherein he submitted that CA. S. Shankar has already retired and presented before the Committee for his dignity. The reference was drawn by the Counsel that the Joint Secretary rank officer has not made the Complaint and hence the same is not maintainable. As far as the Respondents' professional work is concerned with respect to issuance of alleged report, the Counsel submitted that the Respondent has rightly issued the report from the available data. Further, the Counsel also wanted to summon and cross examine of RBI officials as according to him in absence of the same the Respondent will be deprived of his right of principal of natural justice.
6. The Committee clarified to the Respondent/his Counsel that this case is not a complaint case and rather is initiated from a letter received from RBI which is treated as Informant as prescribed Form 'I' is not filed by the RBI. The Committee noted that the Director (Discipline) by invoking his powers has rightly treated it as Information case within the meaning of Rule 7 of the Chartered Accountant (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007. As regards summoning the RBI officials, the Committee noted that all the documents to decide the matter are already on record and hence was of considered view that calling of RBI officials as witness is required in this case and hence the

request of the Counsel was not accented to. Accordingly, the Committee advised the Counsel to submit his defence on merits of the case.

7. The Respondent's Counsel also argued on the fact that after issuance of a certificate of entitlement to continue to hold Certificate of Registration, there is a prescribed procedure to cancel the same. He further submitted that till such cancelation the Company is entitled to hold the certificate and hence the entitlement to continue to hold Certificate of Registration is irrespective of the fulfilment of the dual criteria of asset and income. He further submitted that failure in fulfilment of the dual criteria of asset and income cannot be used as a weapon to de-register and disqualify companies from holding their Certificate of Registration based on a particular year Financial Statement. He further argued that the RBI has power to cancel the certificate. The Committee on the same was of view that the responsibility of the auditor was to report as to whether the Company is entitled to continue the Certificate of Registration or not in terms of asset/income pattern. The Respondent was required to provide the actual information/facts to RBI as to whether dual criteria is met and whether the Company is entitled to continue certificate of registration or not. The Committee further opined that responsibility of the Respondent to report to RBI was not dependent upon event of cancelation of certificate by RBI and the Responsibility of the Respondent is automatically triggered on the date when the Company failed to meet the principle of dual criteria.
8. The Committee observed from the Respondent's own certificate that the principle of dual pattern as required in the case of the NBFC was not fulfilled. Neither the income from financial assets was more than 50% of the gross income nor the financial assets are more than 50% of the total assets, which are mandatorily required for an NBFC to continue holding certificate of registration as required under section 45IA of RBI Act, 1934. So, accordingly, the Committee is of the opinion that the member is guilty of gross negligence. Further, the Respondent also failed in his duties with respect of submitting an exception report to RBI as mentioned in para 5 of Notification No. DNBS(PD)CC No. 334/03.02.001/2013-14 dated July 1, 2013. Since the Respondent CA. S. Shankar declared himself as member answerable and also the alleged certificate was signed by him, the Committee accordingly held him guilty under Clause (7) of Part I of Second Schedule to the Chartered Accountant Act, 1949.

9. Thus, while looking into the facts of the case vis-a-vis detailed submission made by the Counsel of the Respondent in his defence, the Committee found that the Respondent is negligent in the conduct of his professional duty which resulted not only in incorrect reporting but also non-compliance of criteria laid down under Section 45 IA of RBI Act 1934. In terms of the reasoning as above and in the considered opinion of the Committee, the Respondent i.e. CA. S. Shankar is held **GUILTY** under Clause (7) of Part I of Second Schedule to the Chartered Accountant Act, 1949.

(approved & confirmed through email)

(CA. AMARJIT CHOPRA)
GOVERNMENT NOMINEE
PRESIDING OFFICER

sd/-

(CA. RAJENDRA KUMAR P)
MEMBER

(approved & confirmed through email)

(CA. PRAMOD KUMAR BOOB)
MEMEBER

DATE: 22/12/2020

PLACE: DELHI

Certified to be true copy

Jyotika
 Jyotika Grover
 Assistant Secretary,
 Disciplinary Directorate

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 ICAI Bhawan, Vishwas Nagar, Shahdra, Delhi-110032