



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

[PPR/P/95/16-DD/5/INF/17-DC/933/18]

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/95/16-DD/5/INF/17-DC/933/18]

In the matter of:

CA. Avinash Lalwani (M.No.048715), Mumbai

..... Respondent

MEMBERS PRESENT:

1. CA. (Dr.) Debashis Mitra, 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 22.01.2021, the Disciplinary Committee was inter-alia of the opinion that **CA. Avinash Lalwani (M.No.048715)** (hereinafter referred to as the **Respondent**) was **GUILTY** of professional misconduct falling within the meaning of Item (7) of Part I of the Second Schedule of Chartered Accountant Act 1949.

2. The Committee noted that the Respondent was present before the Bench through Video Conferencing mode and took oath as to the fact that he would speak only the truth and gave self-declaration as to he was being alone from where he was appearing and was not recording the proceedings of the Committee. The Respondent though accepted the mistake on his part, yet, he pleaded before the Committee for taking a lenient view while determining the quantum of punishment in his case.



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

[PPR/P/95/16-DD/5/INF/17-DC/933/18]

3. The Committee looking into the gravity of charges alleged, vis-a-vis admission of the Respondent before it was of the view that the ends of justice shall be met if reasonable punishment is granted to him.

4. Therefore, 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. Avinash Lalwani (M.No.048715), be removed for a period of Three Months.

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

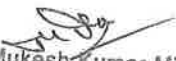
(approved & confirmed through email)
(SHRI RAJEEV KHER, I.A.S. RETD.)
GOVERNMENT NOMINEE

(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
The Institute of Chartered Accountants of India,
ICAI Bhawan, Vishwas Nagar, Shahdra, Delhi-110032

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/95/16-DD/5/INF/17-DC/933/18]

In the matter of:

CA. Avinash Lalwani (M.No.048715), Mumbai

..... Respondent

MEMBERS PRESENT:

CA. Atul Kumar Gupta, Presiding Officer

CA. Amarjit Chopra, (Govt. Nominee)

CA. Pramod Kumar Boob, Member

DATE OF FINAL HEARING : 6.10.2020 (Through Video Conferencing)

PARTIES PRESENT :

Respondent : CA. Avinash Lalwani

Counsel for Respondent : Advocate Rahul Sarda

Charges in Brief:-

1. The Committee noted that the present case before it against the Respondent had six charges in total in relation with audit being conducted by the latter for M/s Shukla Jewelries Ltd. (hereinafter referred as tot the "Company"). The Committee noted that the Directorate received the information from MCA about lapses on the part of the Respondent in conducting the said audit which the Respondent also confessed as negligence but not as lack of application of due diligence on his part. Noticeably, the Respondent was of the view that the said allegations on his part did not affect true & fair view in the case of financial picture being exhibited by the Company.
2. The Committee noted that charges against the Respondent were broadly & in brief were related to non-reporting of loan transactions with the Directors, non-disclosing

of EPS, non-compliance with the requirements of Schedule VI of the Companies Act, 1956, non-confirmation of balances with the sundry creditors & debtors of the Company, non-compliance with AS-18 and non-attachment of the Cash Flow Statement with the financials of the Company in question. It also noted that the Director (Discipline) in his prima facie opinion held the Respondent guilty of Professional Misconduct falling within the meaning of Item (7) of Part I of Second Schedule to the Chartered Accountants Act, 1949 for non-application of due diligence/ gross negligence on these above-mentioned grounds.

Brief facts of the Proceedings:

3. The Committee noted that the Respondent along with his Counsel was present before the Bench on the date of hearing i.e., 6th October, 2020 through Video Conferencing mode and both of them gave self-declarations as to they were being alone in the rooms from where they were appearing/attending the hearing and as to they were not recording the proceedings of the Committee. On being pointing out by the Committee that though, the Respondent himself had accepted the lapses on his part as alleged by MCA, yet, he was of the firm opinion that the said lapses were not affecting the true & fair view of the financials of the Company in question. 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. The Counsel for the Respondent offered to defend the case by presenting his arguments for each of allegations alleged against his client. On permitting by the Committee for the same, the Respondent/his Counsel made detailed submissions and argued vehemently 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.

Findings of the Committee

4. As far as the first charge is concerned, it alleged that the Respondent failed to report loan transactions happened between the Company in question and its directors to which the Respondent submitted that it was just a typographical error and not a case of lack of due diligence. The Committee noted that the Respondent/ his Counsel had submitted that the Respondent applied due care in checking the relevant documents. Moreover, the Committee also noted that the Counsel for the Respondent argued that his client had duly reported the so-called alleged transactions with Directors in financials though, it accepted that it was not reported in FY 2008-09 & 2009-10 due to typographical error. The Committee, while analysing the documents on record &

the arguments presented by Counsel for the Respondent, observed that firstly, the Respondent had erroneously reported that no loans were taken from or given to Directors by the Company and second, he reported that the terms of the lending was not prejudicial to the company. Accordingly, it was of the opinion that the same error of non-reporting of loans was repeating in two subsequent years back to back i.e., 2008-09 & immediate next year 2009-10 which could not be due to typographical error but possibly due to error in copy & paste of content from one year to next year. Moreover, even on being asked by the Committee, the Respondent was not able to produce before it the relevant working papers if he had examined the terms of lending etc. Accordingly in absence of any documentary evidence from the Respondent, the Committee was of considered opined that the Respondent did not exercise due care as expected from a professional as was not diligent enough to examine the relevant documents with regards to the loan transactions between the Company & its Directors and in reporting of the same in his Audit Report as per the requirements of the Companies Act. Hence, it held him guilty within the meaning of Item (7) of Part I of Second Schedule to the Chartered Accountants Act, 1949 as far as this first charge is concerned.

5. For the second charge with regards to non-disclosure of Basic & Diluted EPS in the financials, the Respondent submitted that he had duly calculated the same, however, by typographical error it picked zero amount on consolidation from respective sheet. The Committee looking into the same accepted the defense taken by the Respondent as far as this charge is concerned & exonerated the Respondent for the lapse on this part of the charge.

6. Third charge relates to non-compliance with the requirements of Schedule VI of the Companies Act, 1956 with regards to non- disclosure of details of investments of the Company. The Committee observed that the Counsel for the Respondent pleaded that there was no any investment in government of trust securities. In other words, under the said heads as alleged, there was no entry to disclose as far as FY 2008-09, 2009-10 & 2010-11 were concerned. The Committee observed that the details of the investment was shown by the Respondent on the face of the Balance rather than enclosing separate annexure. The Committee in the light of documents on record and decided to exonerate the Respondent as far as this charge is concerned.



7. As regards fourth charge being discussed by the Committee with regards to alleged non-confirmation of balances of sundry creditors & debtors by the Respondent, the latter submitted that he had secured the balance confirmation from the parties, however, the same were not available with him at the time signing of Balance Sheet. He mentioned that he tried to secure confirmation of balances from the debtors & creditors of the Company & this was one of the other audit techniques performed by him in checking balance accuracy like vouching bills, subsequent transactions with them, checking bank reconciliations etc. He further emphasised that it was all subject to judgement of the auditor in deciding which audit technique to apply. The Counsel for Respondent also mentioned the fact that due to poor command of the Respondent over English language he intended to mention in his audit report the fact that though, he had obtained sufficient audit evidence as far as ensuring genuineness of the parties were concerned except obtaining the physical confirmations from the said parties which was lacking on the part of the Respondent. The Committee also questioned the Respondent with regards to role performed by the latter as required under SA 505 with regards to balance confirmations. The issue with regards to un-dated letters of confirmations received from the parties was also discussed by the Committee especially with regards to fact that out of the available confirmation letters not even a single letter was dated by the concerned parties and all were undated. Further the Respondent himself admitted that he did not secure external evidence like confirmation from parties and relied on management only. The Committee on this charge noted that the Respondent failed to justify his role in securing audit evidence with regards to balance confirmation of sundry debtors & creditors. The Committee accordingly in respect of this charge hold the Respondent guilty of professional misconduct under Item (7) of Part I of Second Schedule to the Chartered Accountants Act, 1949.
8. The fifth charge against the Respondent was with regards to non-compliance with the requirements of AS-18 where certain disclosures like details of the transactions with related parties were supposed to be given, however, the same was lacking and the Respondent did not ensure reporting of the same in his audit report. The defense of the Respondent in this regard was that he ensured checking the transactions with the related parties, however, the same could not be reported due to typographical error on his part. The Committee also noted that the Respondent vide his submission dated 24.04.2019 submitted that the Company was closely held promoter Company and hence the matter may not be viewed seriously. The Committee discussed certain other aspects in relation with this particular charge noted that the details submitted by

the Respondent relating to related party was not in lines with the requirement of para 23 of AS-18. Accordingly due to admitted lapse by the Respondent, the Committee reached to the conclusion that the Respondent was guilty of professional misconduct falling within the meaning of Item (7) of Part I of Second Schedule to the Chartered Accountants Act, 1949.

9. The last allegation pertains to the issue of non – reporting of the fact of not attaching cash flow statement by the Company with the set of financial statements for three consecutive years one after the other. To defend his case as far this allegation is concerned, his Counsel submitted that the Respondent had duly prepared the Cash Flow Statement, however, it got skipped to attach with the financial statement at the end of Company. He further submitted that the Respondent had written a letter to the Company in this regard to address the issue. He added that attaching of the Cash Flow statement was the responsibility of the management and not that of the Respondent. He further added that though, he accepted his mistake on this part that the cash flow statement actually got skipped to be annexed with the Balance Sheet, yet, according to him the same was duly attached later on. On being questioned by the Committee if he had the letter's acknowledgment with him, he replied that the same was duly serviced on the Company but on which date it was acknowledged by the latter was not sure. The Committee noted the submissions of the Counsel cannot be accepted as there is no proof regarding submission of the letter. The Committee also noted that the same error continued for three years. Hence, looking into continuous lapse the Committee decided to hold Respondent guilty of professional misconduct falling within the meaning of Item (7) of Part I of Second Schedule to the Chartered Accountants Act, 1949.

Conclusion

10. While looking into the facts of the case vis-v-vis detailed submission made by the Counsel of the Respondent in his defence, the Committee found that the Respondent - CA. Avinash Lalwani (M.No.048715) **GUILTY** under Item (7) of Part I of Second Schedule to the Chartered Accountant Act, 1949.

sdl/-
CA. ATUL KUMAR GUPTA
(PRESIDING OFFICER)

[approved & confirmed through e-mail] [approved & confirmed through e-mail]
CA. AMARJIT CHOPRA CA. PRAMOD KUMAR BOOB
(GOVERNMENT NOMINEE) (MEMBER)

DATE: 22/01/2021
PLACE: NEW DELHI

Certified to be true copy

