



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

[PR-323/15/DD/45/2016-DC/1243/2019]

**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-323/15/DD/45/2016-DC/1243/2019]

In the matter of:

Shri S.P. Kumar, ROC, UP & Uttarakhand, Kanpur
O/o The Registrar of Companies,
10/499 B, Allenganj,
Khalasi Lines
Kanpur – 208 002. (U.P.)

..... Complainant

Versus

CA. Naresh Batra (M.NO.072128)
of M/s. Naresh Batra & Associates, Chartered Accountants,
Lucknow),
Office No. 111, Second Floor,
Eldeco Magnum Plaza,
Lucknow – 226010.

..... Respondent

MEMBERS PRESENT:

1. CA. (Dr.) Debashis Mitra, Presiding Officer
2. CA. Amarjit Chopra, Government Nominee
3. CA. Babu Abraham Kallivayalil, Member
4. CA. Rajendra Kumar P, Member

DATE OF MEETING : 13.05.2021 (Through 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 02.09.2020, the Disciplinary Committee was inter-alia of the opinion that CA. Naresh Batra

Shri S.P. Kumar, ROC, UP & Uttarakhand, Kanpur -Vs- CA. Naresh Batra (M.NO.072128) of M/s. Naresh Batra & Associates, Chartered Accountants, Lucknow



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(M.NO.072128) (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 to the 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 in the room from where he was appearing and was not recording the proceedings of the Committee. The Committee, while hearing the defense of the Respondent noted that Respondent relied upon his written submission and Email dated 04th / 10th May, 2021, though, the Respondent had to an extent admitted the professional misconduct on his part, yet, mentioning that he had filed RTI with the ICAI seeking various details regarding his hearing on 02nd September 2020 as his matter was heard ex-parte. The Respondent also mentioned that he already brought on record his medical certificate due to which he was unable to present himself before the Committee during the hearing stage. He requested before the Committee to relook his matter and give him one more opportunity to present his case. He further stated that there was no harm or financial loss caused to anyone due to the lapse. Therefore, he requested the Committee to consider his case mercifully and take a lenient view.

3. The Committee clarifies to the Respondent that RTI seeking various information/documents was filed by him is with the Institute. The Committee also clarified to the Respondent that the erstwhile Committee had given fair opportunity in his case to present himself before the Committee to which the Respondent failed to appear and the present Committee has no power to relook the matter decided by the then Committee.

4. Thereafter, keeping in view the facts and circumstances of the case, material on record and submissions of the Respondent before it, the Committee was of considered view that there was only a technical lapse to which no harm or loss was caused to anyone. Moreover



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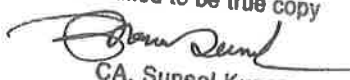
considering the Respondent's age and also his health conditions and also his request to take lenient view, the Committee ordered that the Respondent i.e. CA. Naresh Batra (M.NO.072128) to be reprimanded.

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

(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

CA. Suneel Kumar
Assistant Secretary,
Disciplinary Directorate
The Institute of Chartered Accountants of India
ICAI Bhawan, Vishwas Nagar, Shahdara, Delhi

DISCIPLINARY COMMITTEE [BENCH – I (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

Ref. No. PR-323/15/DD/45/2016-DC/1243/2019

In the matter of:

**Shri S.P. Kumar,
Registrar of Companies,
UP & Uttarakhand,
O/o The Registrar of Companies,
10/499-B, Allenganj,
Khalasi Lines
Kanpur- 208 002 (U.P.)**

.....Complainant

Versus

**CA. Naresh Batra (M.No.072128)
Office No. 111, Second Floor
Eldeco Magnum Plaza
LUCKNOW - 226010**

.....Respondent

MEMBERS PRESENT (Through Video Conferencing):

**CA. Nihar N Jambusaria, Presiding Officer,
Shri Jugal Kishore Mohapatra, I.A.S. (Retd.) (Government Nominee),
Ms. Rashmi Verma, I.A.S. (Retd.) (Government Nominee),
CA. G. Sekar, Member,
CA. Pramod Jain, Member**

**DATE OF FINAL HEARING : 02.09.2020
PLACE OF FINAL HEARING : Through Video Conferencing**

PARTIES PRESENT:

Complainant's representative - Shri Sudhir Kapoor (Through VC)

BRIEF OF THE DISCIPLINARY PROCEEDINGS:-

1. The Committee noted that on the day of hearing held on 2nd September, 2020, the Complainant's representative was present. The Respondent was not present. The Respondent's Counsel vide his e-mail dated 30.08.2020 stated that due to ill health of the Respondent, no personal hearing is sought and he requested to decide the case based on documents / written statement of the Respondent. In view of above, the Committee decided to continue with the hearing ex-parte the Respondent. The Complainant's representative was put on oath. The Complainant's representative stated that the Committee may go ahead based on documents on record. The Committee posed questions to the Complainant's representative and after hearing submissions of the Complainant's representative and on perusal of documents on record, the Committee decided to conclude the hearing in the above matter. With this, the hearing in the above matter was concluded.

CHARGES IN BRIEF AND FINDINGS OF THE DISCIPLINARY COMMITTEE:-

2. In the extent matter, the following charges were levelled against the Respondent:-

2.1 The first charge against the Respondent is that he acted as auditor of M/s Pioneer Trans- Energy Limited (hereinafter referred to as the "Company") despite being disqualified u/s 226(3)(e) of the Companies Act, 1956. It was alleged that the Respondent along with his family members was holding 104650 shares of the Company constituting 8.30% paid up share capital of the Company. Out of the above, 35,750 shares were held in the name of Mr. Naresh Batra HUF of which the Respondent was the Karta, therefore he stands disqualified to act as auditor of the said Company in terms of the provisions of Section 226 (3) (e) of the Companies Act, 1956.

2.2 The next charge against the Respondent is regarding giving false information in the Audit report dated 31.08.2010 that the Company has incurred losses whereas there was profit as per Profit & Loss Account of the Company.

2.3 The third charge against the Respondent is that being an auditor of the Company, he never filed Form 23B for his appointment.

3. In respect of first charge relating to disqualification of the auditor, the Respondent submitted in his written submissions that the shares were held by the HUF of the Respondent and the Respondent being the Karta was only one of the coparceners in the HUF. Thus, the shares were held as Trustee / nominee and accordingly, as per proviso to the Section 226(3)(e), the provisions of Section 226(3)(e) is not applicable. He submitted that shares held by HUF (through Karta) were not shares held by the Karta in his Individual name and accordingly, he was not beneficial owner of the shares. The Respondent submitted that the HUF of the Respondent which held 2.90% and the family members of the Respondent which held 5.59% of the total shares of the Company, the entire holding come to 8.49% which is less than the substantial interest in the Company being 20%. He never held shares but the HUF along with family members held less than 20% shares. Accordingly, the Respondent prayed that this charge be dropped.

3.1 In this regard, on perusal of the provisions of Section 226(3)(e) of the Companies Act, 1956 relating to disqualification of auditor, the Committee noted that the said section stipulate as under:-

*"None of the following persons shall be qualified for appointment as auditor of a company:
(e) a person holding any security of that company after a period of one year from the date of commencement of the Companies (Amendment) Act, 2000.*

Explanation - For the purposes of this section, "security" means an instrument which carries voting rights.

Provided that any shares held by such person as nominee or trustee for any third person and in which the holder has no beneficial interest shall be excluded in computing the percentage of shares held by him for the purpose of this clause.

The Committee also noted that the Companies Act, 1956 does not directly refer to the HUF becoming a shareholder or promoter of the Company, but since an HUF does not enjoy a separate legal entity, it cannot become a member / shareholder in its own name. A HUF can purchase shares in a Company through its Karta. In other words it is only the Karta who becomes a shareholder of the Company and not the other members of the HUF. Accordingly, since the Respondent was the Karta of Naresh Batra HUF, his contention that he was not having any security in his name but it was his HUF who was holding shares of the Company does not seems to be tenable. As the Respondent was holding the shares of the Company as a Karta of Naresh Batra HUF, the Respondent should have desisted from conducting the

audit of the said Company as the same may affect his independence of mind while conducting the audit. Further, it is also relevant to quote the following para from the Code of Ethics given under Clause (4) of Part-I of Second Schedule to the Chartered Accountants Act, 1949,

*"Public conscience is expected to be ahead of the law. **Members, therefore, are expected to interpret the requirement as regards independence much more strictly than what the law requires** and should not place themselves in positions which would either compromise or jeopardize their independence. Members must take care to see that they do not land themselves in situations where there could be conflict of interest and duty".*

Going by the definition of Section 226 (3) (e) of the Companies Act, 1956 as given above, the Companies Act, 1956 by not specifying any percentage of shareholding for the said disqualification seems to be barring a member from accepting the audit if he holds any kind/amount of interest in the auditee concern. Thus, in view of the above observations, since the Respondent as a Karta of HUF was holding shares in the Company, he was disqualified to be appointed as auditor of the Company as there was conflict of interest and accordingly, he should not have accepted the position of auditor. Under such circumstances, the act of the Respondent conducting audit of the Company appears to be an act of negligence on his part causing violation of the provisions of the Companies Act, 1956. Accordingly, the Committee held the Respondent guilty of professional misconduct falling within the meaning of Clause (7) of Part I of Second Schedule to the Chartered Accountants Act, 1949.

4. In respect of second charge of giving false information in the Profit & Loss Account of the Company, the Respondent submitted that it was a typographical error and the entire figure of the financial statement signed by the Respondent reflects true & fair view of the state of affairs of the Company. The Respondent submitted that the shareholders of the Company would go through the entire financial statements when they go to the report as the report is on the financial statements of the Company. He had prepared the audit report with due diligence and as per rules but due to inadvertence and oversight, it was mentioned in audit report that the Company had incurred losses.

4.1 The Committee observed that in audit report dated 31st August, 2010 for the year ending 31st March, 2010, the Respondent had reported as under vide para 2(f) (ii) :-

" in our opinion and to the best of our information and according to the explanation given to us, the said accounts, read with the notes to accounts, give the information required by the Companies Act, 1956 in the manner so required give a true and fair view:

ii) *In the case of Profit & Loss Account of the loss of the company for the year ending on that date." (D-3).*

Though the Respondent submitted that it was an unintentional error on his part yet while certifying the financial statement, he was required to be cautious. It is observed that the net profit of Rs.25,89,710 was shown in the Profit & Loss Account and hence, mentioning of the word "loss" instead of "Profit" in his audit report (D-3) gives a totally different and opposite view of the financial affairs of the Company. It appears that the Respondent signed his audit report in casual manner without verifying its contents with the financial statement and the same shows negligence on the part of the Respondent. Accordingly, the Committee decided to hold the Respondent guilty with respect to above charge, falling within the meaning of Clause (7) of Part I of Second Schedule to the Chartered Accountants Act, 1949.

5. In respect of next charge relating to non filing of Form 23B with ROC, the Respondent admitted his mistake that Form 23B was not filed with ROC. He also submitted that the same would not tantamount to misconduct as there was no change in auditor from previous year and he was a continuing auditor. In this regard, the Committee has gone through the requirement of provisions of Section 224 (1) and (1A) of the Companies Act, 1956 which read as under:-

Section 224(1) " Every company shall, at each annual general meeting, appoint an auditor or auditors to hold office from the conclusion of that meeting until the conclusion of the next annual general meeting and shall, within seven days of the appointment, give intimation thereof to every auditor so appointed".

(1A) Every auditor appointed under subsection (1), shall within thirty days of the receipt from the company of the intimation of his appointment, inform the Registrar in writing that he has accepted, or refused to accept, the appointment.

From the aforesaid provisions, it is clear that filing of Form 23B regarding appointment of auditor with the Registrar is mandatory. Since the Respondent admitted his mistake, there was non-compliance of the requirement of Section 224(1A) of the Companies Act, 1956. Accordingly, the Company decided to hold the Respondent guilty of professional misconduct.

falling within the meaning of Clause (7) of Part I of Second Schedule to the Chartered Accountants Act, 1949.

Conclusion:-

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


sd/-
(CA. NIHAR N JAMBUSARIA)
PRESIDING OFFICER

[approved and confirmed through e-mail]
(SHRI JUGAL KISHORE MOHAPATRA,
I.A.S.(RETD.)), GOVERNMENT NOMINEE

[approved and confirmed through e-mail]
(MS. RASHMI VERMA, I.A.S. (RETD.))
GOVERNMENT NOMINEE

sd/-
(CA. G. SEKAR)
MEMBER,

sd/-
(CA. PRAMOD JAIN)
MEMBER

Certified to be true copy

Anurag Sharma
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