



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

[PR-175/2014/DD/201/14/DC/634/2017]

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.

[PR-175/2014/DD/201/14/DC/634/2017]

In the matter of:

Shri Suraj T Nanda
3, Manju, 286-A, Sher-E-Punjab
Opp. Maratha Sahkari Coop Bank,
Near Tolani Naka,
Mahakali Road, Andheri (E)
Mumbai - 400 093

.....Complainant

Versus

CA. Haresh Ramji Joshi (M. No. 033489)
Shop No. 9, First Floor,
Hi-Life Mall, P M Road, Santacruz (West)
Mumbai – 400 054

.....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 : 27.05.2021 (Through Video Conferencing)

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 02.02.2021 and in terms of the decision taken in meeting held on 27th January, 2021, the Disciplinary Committee was inter-alia of the opinion that **CA. Haresh Ramji Joshi (M. No. 033489)** (hereinafter referred to as the **Respondent**) was **GUILTY** of professional misconduct falling within the meaning of Item (2) of Part IV of the First Schedule and 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 through Mumbai office of ICAI. The Respondent was administered Oath. The



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Respondent relied upon his written submission and his email communication dated 23rd April, 2021. The Respondent admitted that there was only clerical mistake/typographical error on his part. The Respondent denied that the shares allotted on the same day of AGM was factually incorrect and shares were allotted in cash, so statement that no inflow of funds in the account of the Company as there was no bank account was factually incorrect. The Respondent also requested the Committee to relook his matter while considering his submissions. The Respondent raised the issue of typographical error in Committee report and accordingly mentioned that errors in his report are also accidental and unintentional. Regarding lacuna in entry of audit fee he stated that since company has no business no profit and loss was prepared this mistake has occurred and was debited to cash account. He further stated that there was no mala-fide intention on his part, and he acted in good faith. Therefore, he requested the Committee to consider his case mercifully and take a lenient view.

3. The Committee informed the Respondent that the present Committee has no power to take a fresh decision as it is the award of punishment which is the subject matter. The Committee questioned him with respect to various points such as mismatch of date in the Audit report and Balance sheet; inconsistency in dates of AGM's; filing of Form No. 2 with ROC consistently for 5 years by mentioning that share capital is Rs. one lakh; allotment of shares in cash on the same day of more so, when the company was not having any business; debiting cash account by crediting audit fee in balance sheet for several years etc. The Respondent failed to justify the same and accepted his mistake. The Committee looking into the gravity of charges alleged vis-a-vis the conduct of the Respondent was of the view that 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. Haresh Ramji Joshi (M. No. 033489) be removed for a period of 01 (One)Year.

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

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

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

sd/-
(CA. RAJENDRA KUMAR P)
MEMBER

Certified to be true copy


Jyotika Grover
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.

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Mumbai – 400 054

.....Respondent

MEMBERS PRESENT AS ON 08.09.2020:

CA. Atul Kumar Gupta, Presiding Officer
CA. Amarjit Chopra, Govt. Nominee
CA. Rajendra Kumar P, Member
CA. Pramod Kumar Boob, Member

DATE OF FINAL HEARING : 08.09.2020 (through Video Conferencing)

PARTIES PRESENT:

Complainant : Shri Suraj T Nanda
Counsel for Complainant : CA. Ajit Anekar, Advocate

Respondent : CA. Haresh Ramji Joshi
Counsel for the Respondent : CA. G.D. Gokhle

CHARGES IN BRIEF:

1. In the instant matter, the Complainant happens to be an undisputed shareholder of M/s Allwyn Colour and Construction Private Limited (hereinafter to be referred to as "**the Company**"), while on the other hand, the Respondent was the Statutory Auditor of the said Company. Broadly, the charges against the Respondent are mentioned as under –

1.1 In the first charge, allegedly, the Respondent in connivance with the Directors of the Company - M/s. Allwyn Colour and Construction Private Limited, had allotted 9990 fresh equity shares, of which 170 equity shares were already allotted in the past. Moreover, he certified as issued, subscribed and paid up share capital of the Company as Rs.1,00,000/- divided into 10,000 equity shares of Rs.10/- each as Statutory Auditors in the Balance Sheets of the Company for 5 years i.e., for financial year ending 31st March, 2007 to 31st March, 2011 on a single date itself and that too with retrospective effect dated 02nd February, 2000.

1.2 In the next charge, allegedly, the Respondent has filed **Form No.23B** for acceptance of his appointment as statutory auditor of the Company with the Registrar of Companies, Maharashtra, in one go in a single date itself i.e., on 5th September, 2012 and that too for all the five financial years i.e. 31st March, 2007 to 31st March, 2011. Similarly, he certified **Form No. 23AC** for filing of the Balance Sheet of the Company for five years i.e. 31st March, 2007 to 31st March, 2011 the same day - 7th September, 2012 i.e. again on a single date itself; and also certified **Form No. 20B** on a single date i.e. 31st August, 2012 for filing of the Annual Returns of the Company for five years i.e. as on 30th September, 2007 to 30th September, 2011.

BRIEF FACTS OF THE PROCEEDINGS:

2. On the day of hearing i.e., on 8th September, 2020, the Committee noted that the Complainant & the Respondent both were present before it along with their respective counsels through video conferencing mode. The parties introduced themselves to the Bench and thereafter gave self-declaration as to the fact that they were being alone in their respective rooms from where they were

appearing and were not recoding the proceedings of the committee being not permitted to do so.

- 2.1 The Committee, initiated the proceedings of the day in the present matter before it and noted the arguments presented by the Complainant's side and submissions made by the Respondent's side and cross questioned the parties to clarify the things. The Committee lent a very patient hearing to the parties and deliberated to connect the dots to arrive at a logical conclusion in both the charges alleged against the Respondent whereby the latter, allegedly, conspired with the management/ Directors of the Company to increase the capital of the said Company without complying with the statutory provisions of the Companies Act, bypassed the provisions of Articles of Association of the Company etc. and carried out certain certification work including filing of the same with RoC, of a long range of time period of 5 years in a single back date.
- 2.2 The Committee considered various aspects relating to the matter, documents on record and arguments & submissions of the parties and then concluded the hearing by reserving its decision in the matter and to pronounce its decision at a later date.
- 2.3 Thereafter this matter was placed in meeting dated 22nd January, 2021 for consideration of the facts and arriving at a decision by the Committee.

MEMBERS PRESENT ON 27.01.2021:

CA. Atul Kumar Gupta, Presiding Officer
Shri Rajeev Kher, I.A.S. Retd., Government Nominee
CA. Amarjit Chopra, Govt. Nominee
CA. Rajendra Kumar P, Member
CA. Pramod Kumar Boob, Member

FINDINGS OF THE COMMITTEE:

3. The Committee noted that the Company in question was incorporated in the year 1982 & the same was a defunct company for many years for non-filing of Balance Sheet & Annual Returns with the RoC and for not complying with the

minimum capital requirement as required by the provisions of the Companies Amendment Act, 2000.

3.1 The Committee also noted that the Company had filed the Balance Sheet & Annual returns for five continuous years i.e., FY 2006-07 to FY 2010-11 all at a once on a single date i.e., on 7th September, 2012 for all the five Balance Sheets and on 4th September, 2012 for all the five Annual returns. Noticeably, no filing with the RoC was made by the Company in between 2001 & 2005.

3.2 Noticeably, these Balance Sheets & Annual returns as mentioned above in Point No. 3.1 were not duly signed by the Directors & its Auditor, rather were filed with sd/- copy impersonating their signatures.

3.3 It is also noted that the Company did not give even a single day's notice to its shareholders and on the same date, all the Balance Sheets were signed and were approved in the AGM. Surprisingly, it was also noted that though, the shares were allotted on the same day of the day of AGM, there was no corresponding inflow of funds in the account of the Company as there was no Bank Account of the Company at all. This fact was also admitted by the Respondent. Moreover, there was a mismatch in between the two figures of share capital as reported in the Balance Sheet & the one reported to the Registrar of Companies.

3.4 The Committee noted that though, the Respondent's side defended his case by submitting due diligence on his part and even later accepted these charges as silly mistake on his part but denied having any role of any alleged conspiracy or fraud by shaking hands together with the Directors of the company.

4. The Committee observed that the accounts of the company for all five years in question were prepared all at once and were signed the same day on the date of AGM itself for which notice of not even a single day was given to by the Company to its shareholders. It also observed that fresh 9,990 equity shares were issued by the company which included the earlier already issued & paid up 170 shares. Besides, all these actions were carried out with

retrospective effect from year 2000. Noticeably, against the said issue of fresh equity shares, no corresponding cash was received in the books of the Company.

5. It was also observed by the bench that amount under the head audit fees payable was increasing each year by the same amount as the cash balance on the right-hand side of the Balance Sheet. When there were reportedly no transactions above the line in the Profit & Loss Account, then, how cash balance could increase with simultaneous increase in audit fees & that too with the same figure. This raised doubts on the conduct of the Respondent in the audit of the said company. It is also surprising to note that there were no supporting documents on record against the issue of share capital and the Respondent could not brought anything in this regard before the committee.
6. The Committee also noted the arguments presented by the Counsel of the Complainant that the case was not as simple and immaterial as it appeared where only a few hundreds of fresh equity shares with face value of Rs 10 each were issued without complying with the provisions of Companies Act etc., but the issue behind it was way too big off the light of the scene being presented by the Respondent. He stated that against the nominal number of shares counting into a few hundred in the year 1985, there happens to have been standing units allocated to its shareholders' which in turn represented the property worth crores of rupees. Therefore, he goes on to emphasis that even a small change in the shareholding pattern from the original one without proportionate allocation of fresh shares to the existing ones would cause huge loss to them as their share in the units would come down which in turn deteriorate their share in the property running into crores. The Committee evaluated the impact of this fact very sensitively and invited attention of the Respondent's side as well in this regard when the latter mentioned the allegations as silly mistakes on his part.

CONCLUSION :

7. In view of the above observation, considering the arguments, counter arguments & submissions of the parties and documents on record, the Committee held the Respondent guilty of professional and/ or other misconduct falling within the meaning of Item (2) of Part IV of the First Schedule and Item (7) of Part I of the Second Schedule to the Chartered Accountants Act, 1949.

sd/-

(CA. ATUL KUMAR GUPTA)
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. PRAMOD KUMAR BOOB)
MEMBER

DATE: 2ND FEBRUARY, 2021

PLACE: DELHI

Certified to be true copy
Shakti
Assistant Secretary,
Disciplinary Committee
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