



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

[PR/24/2013/DD/29/2013/DC/562/2017]

**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.**

In the matter of:

Shri Ratnakar Agarwal, S/o Mr. Anil Kumar Agarwal, Agra

-Vs-

CA. Raj Kumar of M/s Raj Aryan & Associates, (M. No. 095407) Delhi

[PR/24/2013/DD/29/2013/DC/562/2017]

Date of Order : 12th October, 2020

MEMBERS PRESENT:

1. CA. Nihar Niranjana Jambusaria, Presiding Officer
2. Shri Arun Kumar, IAS (Retd.), Government Nominee
3. Ms. Nita Chowdhury, IAS (Retd.), Government Nominee
4. CA. (Dr.) Debashis Mitra, Member
5. CA. Jay Chhaura, Member

1. That vide report dated 03rd February, 2020, the Disciplinary Committee held **CA. Raj Kumar of M/s. Raj Aryan & Associates, (M. No. 095407) Delhi** (hereinafter referred to as the “Respondent”) **GUILTY** of professional Misconduct falling within the meaning of Clauses (6) & (7) of Part I of the Second Schedule to the Chartered Accountants Act, 1949 as amended from time to time.

2. That an action under Section 21B (3) of the Chartered Accountants (Amendment) Act, 2006 was contemplated against the Respondent and communication was addressed to him thereby granting an opportunity of being heard in person and/or to make a written representation before the Committee on 12th October, 2020.



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3. The Respondent appeared before the Committee on 12th October, 2020 through video conferencing and submitted written representations dated 27.05.2020 & 21.07.2020 on the findings of Disciplinary Committee dated 03rd February, 2020.

4. On perusal of findings of earlier Committee dated 03/02/2020, the Committee noted that *“auditee Companies had incurred cash losses in the current year as well as immediately preceding current years, accordingly, as per requirement of CARO 2003, the Respondent was required to report about the cash losses in his audit report related to these Companies but he failed to do so. Secondly, the Respondent was required to mention in his report that disposal of fixed assets (i.e. 98% of the total assets) affects the going concern status of the Company (Jaspark Speciality Chemicals Private Limited) but he failed to report the same”*.

5. The Committee considered the written as well as oral submissions of the Respondent made before it. The Committee noted that the Respondent had claimed auditee Companies who had sold 93% and 73% of their fixed assets during the year, going concern assumption does not depend on holding of fixed assets alone. When fixed assets sold were not inevitable to continue as a going concern, their sale would make no difference to going concern assumption.

5. Upon consideration of submissions of the Respondent, the Committee was of the considered view that CARO 2003 required an auditor to comment “if a substantial part of fixed assets have been disposed off during the year, whether it has affected the going concern; in case where a substantial part of the fixed assets has been disposed off during the year, whether such disposal has affected the going concern status of the Company. Further, Accounting Standard (AS) 1, “Disclosure of Accounting Policies” states, “the enterprise is normally viewed as a going concern, that is, as continuing in operation for the foreseeable future. It is assumed that the enterprise has neither the intention nor the necessity of liquidation or of curtailing materially the scale of its operations”. The auditor, in the normal course, when



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planning and performing audit procedures and in evaluating the results thereof, is required to consider the appropriateness of the going concern assumption underlying the preparation of financial statements in accordance with the requirements of Standard on Auditing (SA) 570, "Going Concern". However, nothing has been disclosed in the audit report by the Respondent as per requirements of CARO 2003. Accordingly, ends of justice can be met if severe punishment is given to him in commensurate with his above misconduct.

6. Thus, keeping in view the facts and circumstances of the case as aforesaid, the material on record, submissions of the Respondent before it, this Committee orders that the name of the Respondent i.e. CA. Raj Kumar Arora (M. No. 095407) be removed from register of members for a period of One (01) Year and a fine of Rs. 1,00,000/- (Rupees One Lakh only) be also imposed upon him to be paid within 30 days of receipt of this order.

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

Sd/-
(SHRI ARUN KUMAR, IAS (RETD.))
GOVERNMENT NOMINEE

Sd/-
(MS. NITA CHOWDHURY, IAS (RETD.))
GOVERNMENT NOMINEE

Sd/-
(CA. (DR.) DEBASHIS MITRA)
MEMBER

Sd/-
(CA. JAY CHHAIRA)
MEMBER



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CONFIDENTIAL

DISCIPLINARY COMMITTEE [BENCH – I (2019-2020)]

[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- 24/13-DD/29/2013/DC/562/17]

In the matter of:

Shri Ratnakar Agarwal

S/o Mr. Anil Kumar Agarwal,

R/o 19/6, Kooncha Sadhu Ram,

Phullati Bazar,

AGRA - 282 003

.....Complainant

Versus

CA. Raj Kumar Arora (M.No.095407)

WZ-578/ Rishi Nagar,

Shakur Basti,

DELHI - 110 034.

.....Respondent



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MEMBERS PRESENT:

CA. Prafulla Preamsukh Chhajed, Presiding Officer,
Shri Jugal Kishore Mohapatra, I.A.S.(Retd.), Government Nominee,
Ms. Rashmi Verma, I.A.S. (Retd.), Government Nominee,
CA. Babu Abraham Kallivayalil, Member,
CA. Dayaniwas Sharma, Member

DATE OF FINAL HEARING : 17.10.2019 (Decision taken on 17.12.2019)

PLACE OF FINAL HEARING : ICAI, New Delhi

PARTIES PRESENT:

Counsel for the Respondent : CA. C.V. Sajan



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BRIEF OF THE DISCIPLINARY PROCEEDINGS:-

1. On the day of hearing held on 17th October, 2019, the Committee noted that the Complainant was not present. The Respondent was not present but his Counsel was present. Since the Complainant was absent without any prior intimation, the Committee decided to proceed ahead in the matter ex-parte the Complainant. On being enquired from the Counsel for the Respondent as to whether he is aware of charges leveled against the Respondent, he replied in affirmative and pleaded not guilty on behalf of the Respondent. Thereafter, when the Committee asked the Counsel for the Respondent to make his verbal submissions in defense, he stated that he would like to file his further written submissions in defense. The Committee informed that he may file his written submissions within 15 days of hearing. The Committee also informed that if his written statement is not received within the stipulated time, the Committee would decide the matter on its merits. The Counsel for the Respondent did not raise any objection on the same. With this, the hearing in the matter was concluded and the Committee decided to keep its judgment reserved in the matter.

2. In respect of above directions, the Committee observed that the Respondent has not submitted his further written submissions on the charges.

CHARGES IN BRIEF AND FINDINGS OF THE DISCIPLINARY COMMITTEE:-

3. The Committee noted that the Respondent was auditor of different companies. He was held prima facie guilty with respect to the following charges related to different companies:-

i) That the Respondent has wrongly reported regarding the non- presence of any cash losses in current year as well as previous year. It has been alleged that in case of M/s Ganpati Sugar Limited, M/s. Ganpati Breweries Limited & M/s. Baweja Exports Private Limited, the Respondent in his audit report for financial year ending 31st March, 2011 mentioned that the Companies has neither accumulated losses nor it has incurred any cash losses during the current financial year and the immediately preceding financial year.



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ii) As per the Balance Sheet of financial year 2010-11 of M/s Jaspark Speciality Chemicals Private Limited, the fixed assets of the year were Rs. 5,08,981/-. It was alleged that all the assets have been disposed of in the year 2010-11 but no disclosure was made by the Respondent in this regard.

iii) In case of Jay Tel Mobile Pvt. Ltd., it is seen that net block of fixed assets is reduced from Rs. 35,50,18,208/- in the financial year 2009-10 to Rs.1,36,43,530/- in the next financial year 2010-11. The reduction in amount was Rs. 34, 13, 74,678/-. Further, on observing Cash Flow statement, it is seen that there was sale of fixed asset amounting Rs. 34,13,48,641/- and depreciation was Rs.26037/-, so net amount which was adjusted from the fixed assets comes to Rs. 34,13,74,678/-. There was sale of fixed assets which the Respondent failed to report in CARO report

4. In respect of above charges, the Respondent made the following submissions in his defense:-

4.1 In respect of first charge, the Respondent stated that accumulated losses of the Companies in all the three cases were less than 50% of their net worth as evident from the financial statements of these companies. Further, these companies had no business operations during the years for the financial years 2009-10 and 2010-11 as can be seen from the Profit & Loss Account in all the three cases. The requirement in CARO, 2003 is to report on cash loss and not on net loss. There has been no finding to the effect that the companies concerned had cash loss. These Companies having no operations cannot have cash loss.

4.2 In respect of second and third charges, the Respondent stated that according to AS – 10 on Fixed Assets, there is no requirement of additional or special disclosures regarding sale of fixed assets. The Respondent also stated that the reduction in value of fixed assets in both the cases is a well-established fact from the Balance Sheet and its annexures.

5. The Committee noted that the Respondent was given 15 days' time to submit his further written submission but he has not submitted the same. From the same, it appears that the



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Respondent has nothing more to submit in the matter. The Committee went through the submissions and documents on records and noted that a number of allegations were made against the Respondent but he was prima facie guilty in respect of allegations as mentioned in paras 9.1 to 9.3 of the Prima Facie Opinion (as mentioned above in para 3 above).

5.1 In respect of first charge related to the failure to report accumulated losses and cash losses in case of M/s Ganpati Sugar Limited, M/s. Ganpati Breweries Limited & M/s. Baweja Exports Private Limited, it is noted that as per clause (x) of CARO, 2003, *an auditor is required to comment as to whether in case of a company which has been registered for a period not less than five years, its accumulated losses at the end of the financial year are not less than fifty per cent of its net worth and whether it has incurred cash losses in such financial year and in the financial year immediately preceding such financial year also.*

5.1.1 In respect of above charge, the Complainant brought on record copy of the financial statements of all the three companies for the financial year 2010-11. On perusal of the same, it is observed that accumulated losses were less than the 50% of the net worth of these Companies. In respect of charge related to reporting of cash loss, the Companies do not appear to be having any sales during the financial year 2009-10 and 2010-11 but they have incurred amount on purchase of goods and on operating and administrative expenses. Further, there was no increase in liabilities and the same indicates that the amount was paid in cash by these Companies. Keeping in view the said fact, it can be stated that these companies had incurred cash losses in the current year as well as immediately preceding current years, accordingly, as per requirement of CARO 2003, the Respondent was required to report about the cash losses in his audit report related to these companies but he failed to do so. Therefore, the Committee decided to hold the Respondent guilty with respect to above charge related to non-reporting of cash losses.

5.2 In respect of second and third charges, it is noted that though AS-10 does not require specific disclosure except certain quantitative information in respect of disposal of assets, yet it is noted that under CARO 2003, an auditor is required to mention that no fixed assets were disposed of



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during the year to affect the going concern status of the Company. In case of Jaspark Speciality Chemicals Private Limited, on perusal of the audit report for the financial year 2010-11, it is observed that the Respondent in his audit report mentioned that no fixed assets had been disposed of during the year to affect the going concern. However, it is noted that during the financial year 2010-11, 98% of the fixed assets amounting to Rs.5,56,05,930/- were sold by the Company.

5.2.1 Since the Company had sold its substantial part of fixed assets (i.e. 98% of the total fixed assets) and it was having operating loss during current financial year, the Committee failed to understand as to how it would not affect the going concern status of the Company. There was insufficient documentary evidence from the Respondent to establish that the Company shall be able to continue as a going concern for the foreseeable future despite the sale of substantial part of fixed assets. Accordingly, the Committee is of the view that the Respondent was required to mention in his report that disposal of fixed assets (i.e. 98% of the total assets) affects the going concern status of the Company (Jaspark Speciality Chemicals Private Limited) which he failed to do so. Hence, the Respondent is guilty with respect to above charge.

5.3.2 In case of Jay Tel Mobile Pvt. Ltd., on perusal of the audit report for the financial year 2010-11, it is observed that the Respondent in his audit report stated that no fixed assets were disposed of during the year to affect the going concern. However, it is noted that during the financial year 2010-11, 73% of the fixed assets were sold by the Company. Since the Company had sold its substantial part of fixed assets (i.e. 73% of the fixed assets) and it was having operating loss in the current financial year 2010-11 as well as previous year 2009-10, the Committee failed to understand as to how it would not affect the going concern status of the Company. The Respondent has not provided sufficient documentary evidence to establish that the Company shall be able to continue as a going concern for the foreseeable future despite the sale of substantial part of fixed assets. Accordingly, the Committee is of the view that the Respondent was required to mention in his report that disposal of fixed assets (i.e. 73% of the total assets) affects the going concern status of the Company (Jay Tel Mobile Pvt. Ltd.) which he failed to do so. Hence, the Respondent is guilty with respect to above charge.



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Conclusion:-

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

Sd/-

(CA. PRAFULLA PREMSUKH CHHAJED)

PRESIDING OFFICER

Sd/-

(SHRI JUGAL KISHORE MOHAPATRA, I.A.S. (Retd.))

GOVERNMENT NOMINEE

Sd/-

(MS. RASHMI VERMA, I.A.S. (Retd.))

GOVERNMENT NOMINEE

Sd/-

Sd/-

(CA. BABU ABRAHAM KALLIVAYALIL)

MEMBER

(CA. DAYANIWAS SHARMA)

MEMBER

DATE : 03rd February, 2020

PLACE : NEW DELHI