



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

PPR/P/052/18-DD/12/INF/19/DC/1355/2020

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.

File No. : PPR/P/052/18-DD/12/INF/19/DC/1355/2020

In the matter of :

CA. Ukamanal Anand Mallikarjun (M.No.130139)
M/s. Anand M. Ukamanal & Co.,
Chartered Accountants,
Ashok Building, 1st Floor,
Behind S.S. Temple,
VIJAYAPURA - 586101

.....Respondent

Members present:

CA. Nihar N Jambusaria, Presiding Officer
Smt. Anita Kapur, Member (Govt. Nominee)
Shri Ajay Mittal, Member (Govt. Nominee)
CA. Chandrashekhar Vasant Chitale, Member
CA. P.K. Boob, Member

Date of Final Hearing: 31.03.2021 through Video Conferencing

Place of Hearing: Mumbai

Party Present:

CA. Ukamanal Anand Mallikarjun – Respondent (appeared from his residence)

1. That vide report dated 22nd January 2021 (copy enclosed), the Disciplinary Committee was of the opinion that **CA. Ukamanal Anand Mallikarjun (M.No.130139)** was **GUILTY** of Professional Misconduct falling within the meaning of Items (5), (6) (7) & (8) of Part I of the Second Schedule to the Chartered Accountants Act, 1949 in respect of audit of M/s. Shanti Jeevan Agro Foods India Pvt. Ltd. (Hereinafter referred to as the “**Company**”) for the Financial Years 2011-12 to 2013-14. It was alleged that the Respondent had failed to report in his audit report in respect of the Company being not available at its registered office as required under Section 12 of the Companies Act, 2013; no income or expenses being recorded since inception, there being only single item- advances against sale of goods being recorded which did not commensurate with the share capital (being Rs.1.5 lakh only) of the Company (455 times) or operating revenues of the Company which was nil. It was further alleged that none of the entries in balance sheet and Profit & loss account indicated any purchase/holding of goats whereas the Company claimed to offer several sales plan for the same. Accordingly, allegation of mobilizing deposits in the guise of goat schemes was raised which were shown as advance against goods and that huge amount accounted as preliminary expenses at Rs.4.34 Cr as on 31st March 2015 was not written off which was against the generally accepted

✓ (M)



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accounting principle. It was accordingly, alleged that the financials of the Company were not showing true & fair view of the affairs of the Company and thus, there was failure on part of Respondent to have exercised due diligence.

It was noted that Item (5), (6) (7) & (8) of Part I of the Second Schedule to the Chartered Accountants Act, 1949 states as under:-

Second schedule Part I

"(5) fails to disclose a material fact known to him which is not disclosed in a financial statement, but disclosure of which is necessary in making such financial statement where he is concerned with that financial statement in a professional capacity;

(6) fails to report a material misstatement known to him to appear in a financial statement with which he is concerned in a professional capacity;

(7) does not exercise due diligence, or is grossly negligent in the conduct of his professional duties; and

(8) fails to obtain sufficient information which is necessary for expression of an opinion or its exceptions are sufficiently material to negate the expression of an opinion;"

2. An action under Section 21B (3) of the Chartered Accountants Act, 1949 was contemplated against the Respondent and communication dated 19th March 2021 was addressed to him thereby granting him an opportunity of being heard in person and/or to make a written representation before the Committee on 31st March 2021 through video conferencing.

3. The Respondent appeared before the Committee on 31st March 2021 through video conferencing from his personal location and made his oral representations on the findings of Disciplinary Committee. The Committee considered both the oral submissions as well written submissions made by the Respondent vide his letter dated 17th March 2021. The Respondent, at the outset, submitted that all the irregularities were revealed in subsequent years, after he discontinued the audit and none of the irregularities were known to him. He further stated that he had obtained sufficient information which he honestly believed was necessary for his audit. Thus, he had discharged his duties in good faith and error of preliminary expenses (grouping) and depreciation had already been accepted by him. He also stated that there could be mistakes or errors of professional judgment but by no stretch of imagination, there was any mala fide intention on his part or he was grossly negligent or there was lack of any due diligence on his part. He, further, requested the Committee to take lenient view while awarding punishment in the matter.

4. The Committee considered both the oral as well written submissions of the Respondent and viewed that it is a fact that the Respondent was associated with the Company for a continuous period of three years, thus, he was in a position to understand if the Company was available at its registered

✓ (M)



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office in terms of Section 12 of the Companies Act, 2013 being fundamental to the operating aspects of the business and in case of non-compliance he should have reported the same. It was further noted that there were various instances in the matter viz.

- purchase /inventories of the goats/ live stocks being not shown in the financial statements of the Company for the financial year 2011-12 to 2013-14 despite its claim that young goats were purchased and reared up over next few years;
- absence of working papers/ confirmation based on which huge amount of advances against goods were verified that constituted substantial portion of Balance Sheet in each of period audited by the Respondent;
- Non-qualifying the said advances which considering the clauses of 'Agreement to Sell' were deposits by nature and
- non-expensing of depreciation expenses in the profit & loss account instead capitalizing it in preliminary expenses which together with bank charges if debited to the Profit & Loss Account of the Company for the financial years under question would have turned the Company into loss making Company.

In view of the said discrepancies, the Committee noted that the Respondent had not only failed to exercise due diligence in discharging his professional duties as auditor of the Company for relevant financial years but he certified the state of affairs of the Company as being true & Fair without verifying either the nature of transactions or the way they were being recorded in the books of accounts of the Company which lead to material misstatements in the financial statements.

5. The Committee thus viewed that the misconduct on the part of the Respondent has been held and established within the meaning of Items (5), (6) (7) & (8) of Part I of Second Schedule to the Chartered Accountants Act, 1949 and keeping in view the facts and circumstances of the case as aforesaid, ordered that the name of the Respondent, **CA. Ukamanal Anand Mallikarjun (M.No.130139)**, be removed from the Register of members for a period of 2(two) years along with a fine of Rs. 50,000 (Rupees Fifty Thousand Only) be levied upon him that shall be payable within a period of 3 months from the date of receipt of the Order. In case the Respondent failed to pay the same as stipulated, the name of the Respondent, **CA. Ukamanal Anand Mallikarjun (M.No.130139)**, be removed for a further period of 1(one) month from the Register of members on the lines of Section 64 of the Indian Penal Code.

Sd/-

[CA. Nihar N Jambusaria]

Presiding Officer

Sd/-

[Smt. Anita Kapur]

Member (Govt. Nominee)



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Sd/-
[Shri Ajay Mittal]
Member (Govt. Nominee)
[approved and confirmed through e-mail]

Sd/-
[CA. Chandrashekhar Vasant Chitale]
Member
[approved and confirmed through e-mail]

Sd/-
[CA. P.K. Boob]
Member
[approved and confirmed through e-mail]

Date : 31st March, 2021

Certified to be true copy

Mohita Khanna

CA. Mohita Khanna
Assistant Secretary,
Disciplinary Directorate

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

CONFIDENTIAL

DISCIPLINARY COMMITTEE [BENCH – III (2020-21)]
[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/052/18-DD/12/INF/19/DC/1355/2020]

In the matter of:

CA. Ukamanal Anand Mallikarjun (M.No.130139)
M/s. Anand M. Ukamanal & Co.,
Chartered Accountants,
Ashok Building, 1st Floor,
Behind S.S. Temple,
VIJAYAPURA - 586101

.....Respondent

MEMBERS PRESENT:

CA. Atul Kumar Gupta, Presiding Officer
Smt. Anita Kapur, Member (Govt. Nominee)
CA. Manu Agrawal, Member
CA. Chandrashekhar Vasant Chitale, Member

Date of Final Hearing: 26th October, 2020 through Video Conferencing
Place of Final hearing: New Delhi

PARTIES PRESENT:

- (i) CA. Ukamanal Anand Mallikarjun – Respondent**
(ii) Shri Devendra Jain, Advocate – Counsel for Respondent
(Both appeared from their personal locations)

(M)

B
CA. Ukamanal Anand Mallikarjun (M.No.130139)

Brief Charges

1. The Committee noted that in the Prima-Facie Opinion formed by Director (Discipline) in terms of Rule 9 of the Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007, the Respondent was held prima facie guilty under Items (5), (6) (7) & (8) of Part I of the Second Schedule to the Chartered Accountants Act, 1949. The said Clause to the Schedule state as under:-

Second schedule

Part I

“(5) fails to disclose a material fact known to him which is not disclosed in a financial statement, but disclosure of which is necessary in making such financial statement where he is concerned with that financial statement in a professional capacity;

(6) fails to report a material misstatement known to him to appear in a financial statement with which he is concerned in a professional capacity;

(7) does not exercise due diligence, or is grossly negligent in the conduct of his professional duties;

(8) fails to obtain sufficient information which is necessary for expression of an opinion or its exceptions are sufficiently material to negate the expression of an opinion;”

Allegations made against the Respondent

2. In the extant case, SEBI, the Informant Department, has alleged against the Respondent in respect of audit of M/s. Shanti Jeevan Agro Foods India Pvt. Ltd. (Hereinafter referred to as the “Company”) for the Financial Years 2011-2012 to 2013-2014, wherein it was alleged that the Respondent had failed to report in respect of the following contraventions of applicable laws, accounting standards and discrepancies including that related to the nature of business of the Company in his audit report of respective financial period:

2.1 That the Company was not available at its registered office as required under Section 12 of the Companies Act, 2013.

2.2 Further it was alleged that in the Balance Sheet of the Company for the financial year 2015, the Company had not shown any income and expenses from the date of incorporation till 31st March, 2015. Advance against the goods was shown at Rs.6.81 crores under current liabilities and the share capital of the Company was

CA. Ukamanal Anand Mallikarjun (M.No.130139)

Rs.1.50 lakhs. There was no other borrowing by the Company from banks. Thus, the current liabilities-advance against goods did not commensurate with the share capital of the Company (455 times) or operating revenues of the Company, which was nil.

- 2.3 That the Preliminary expense were shown as not written off Rs.4.34 Cr as on 31st March, 2015. It was alleged that such a huge amount which was accounted as preliminary expenses not written off was against the generally accepted accounting principles and was a way beyond the limit prescribed for eligible deduction under Income Tax Act, 1961.
- 2.4 Various discrepancies were reported in respect of Income/Expenses. It was alleged that the Company had nil turnover and had not booked any expenses till 31st March, 2015. Even as per the fixed assets schedule, depreciation for the year was Rs.3,69,269/- (A-68), however, the depreciation against the same was not even shown in the profit & loss account. The Company was having huge bank balance as per Balance Sheet and however, there was no interest income shown. Though there were a number of bank charges seen in the bank statement provided by the bank, no bank charges were shown in the balance sheet.
- 2.5 The Company claimed to offer several sales plan for purchase of goats ranging from 2 years to 7 years. However, none of the entries in balance sheet and Profit & loss account indicated any purchase of goat/holding of same. Thus, it was alleged that the Company was not intending to do any said scheme but was mobilizing deposits in the guise of goat schemes and money mobilized was shown as advance against goods.
- 2.6 In view of above, it was stated that such allegations indicated serious concerns with respect to veracity of the accounts of the Company and it appeared that the financials of the Company might not be showing true & fair view of the affairs of the Company and failure on part of Respondent to have exercised due diligence.

Proceedings:

3. At the outset, on 26th October, 2020, the Committee noted that the Respondent along-with his Counsel was present and appeared before it. Thereafter, they made

CA. Ukamanal Anand Mallikarjun (M.No.130139)

a declaration that there was nobody except them in their respective room from where they were appearing and that they would neither record nor store the proceedings of the Committee in any form as per protocol of e-hearing.

3.1 Being the first hearing, the Respondent was put on oath. Thereafter, the Committee asked the Respondent whether he wished to read out the charges or it could be taken as read. The Counsel for the Respondent stated before the Committee that he was aware of the charges made against Respondent and the same might be taken as read.

3.2 On being asked, as to whether the Respondent pleaded guilty, his Counsel replied that the Respondent did not plead guilty and opted to defend his case.

3.3 Thereafter, the Counsel for the Respondent made submissions in the matter. The Committee examined the Counsel and the Respondent and the Counsel for the Respondent made final submissions in the matter. After recording written/oral submissions, the Committee concluded the matter.

Findings of the Committee:

4. The Committee gave its findings in respect of charges as contained in paragraph 1 above as under:-

4.1 In respect of first charge, the Committee noted that Section 12 of the Companies Act, 2013 provided that that every company was required to have a registered office to which all communication and notice be addressed by various stakeholders.

4.1.2 Further, if there was change in address of the registered office at any time thereafter, the same was required to be informed to the Registrar of Companies (ROC) within stipulated time mentioned in the Act.

4.1.3 However, the Committee, on perusal of the documents on record, observed that the Company was having its registered office at Beside Padmanjali School, Ramesh Kadari Building, Near Bangara Cross, K.C. Nagar, Solapur Road, Bijapur – 586101. Further, the Company was having its Corporate Office at 2nd Floor, Arakeri Building, Banjara Cross, Solapur Road, Bijapur.

4.1.4 It was noted that sanction letter dated 22.06.2017 of Syndicate Bank brought on record by the Respondent was addressed to corporate office of the Company and not to the registered office of the Company. With respect to other documents brought on record by the Respondent, it was observed that they were internal documents which were prepared by the Company such as financial statement, income tax return of the Company. There was no external evidence / letter on record showing communication held with the Company at its registered office. The Committee asked the Respondent to produce any evidence issued by third party at its registered office viz. electricity bills to which the Respondent remain silent.

4.1.5 The Committee also observed that Section 146 of the Companies Act, 1956 required as under:-

“146. REGISTERED OFFICE OF COMPANY (1) A company shall, as from the day on which it begins to carry on business, or as from the thirtieth day after the date of its incorporation, whichever is earlier, have a registered office to which all communications and notices may be addressed.”

4.1.6 In absence of any external evidence showing communication also being held at the address of registered office of the Company, the Committee was of the opinion that in extant case the Respondent was associated as statutory auditor of the Company for a continuous period of three years. It was viewed that if the Company was not active at its registered Office, the auditor should have become more cautious to develop an understanding about the entity for conducting reasonable audit and such non-compliance of the provisions of Companies Act, 1956, being fundamental to the operating aspects of the business should have

been reported by him. Accordingly, the Respondent is held guilty with respect to the said allegation.

- 4.2 In respect of next charge, on perusal of the financial statement for the financial year 2014-15, the Committee noted that the Company had shown advance against goods at Rs.6.81 crores. Further, in the financial years 2011-12, 2012-13 and 2014-15, amount of advance against goods was shown as under:-

Financial years	Amount of advance against goods
2011-12	23.77 Lakh
2012-13	2.28 Cr.
2013-14	5.64 Cr.

- 4.2.1 The Committee also considered the submissions of the Respondent in this regard in which he claimed that advance was received from the customers as advance against sale of goats. Though the Respondent claimed that young goats were purchased and reared up over next few years yet on perusal of the financial statement for the financial year 2011-12 to 2013-14, it was observed by the Committee that the Company had neither shown any purchase of goats nor its inventories / live stocks in its financial statements.

- 4.2.2 The Respondent stated that the Company had made sale of Rs.10 Cr in the financial year 2015-16 (period immediate subsequent to his audit) against the advanced received in previous years. In this regard, the Committee also reviewed financials of financial year 2015-16 and noted that during that period purchase of raw material was shown at Rs.6.52 Cr but opening and closing inventory of livestock was shown as zero. It was also observed that against the sale of Rs.10 Cr, cost of raw material consumed (Rs.6.52 Cr) and other manufacturing expenses (Rs.2.18 Cr) had been debited as major expenses. When the said information was read with the information contained in financials of immediate previous period (i.e. the period audited by the Respondent), it was

(M) viewed that even if it was assumed that amount incurred on rearing up of young

goats were shown as preliminary expenses in the financial statement, the same was not expensed off/debited against the sale made in the financial year 2015-16 in the Profit & Loss Account of the period and the same clearly indicated that preliminary expenses did not represent expenses incurred on purchase and maintenance of goats.

4.2.3 Further, it was also noted that in significant accounting policies for Financial Years 2011-2012, 2012-2013 & 2013-2014 (A-15, A-30 & A-45) preliminary expenses were stated to be formation and registration expenses of the Company. Thus, the contention of the Respondent with respect to preliminary expenses shown in balance sheet was not acceptable.

4.2.4 Further, it was noted, advances shown against goods constituted substantial portion of Balance Sheet in each of period audited by him. The Respondent was not able to produce on record his working papers or external confirmations received in respect of the same. On reviewing of "Agreement to Sell" as submitted by the Respondent, it was noted that the depositors were stated to have invested their savings for certain period (i.e. 5.6 years in extant case) and that value standing at their credit on maturity date would be either refunded or utilised to purchase the goats. It was accordingly viewed that the said conditions clearly reflect that effectively the Company was into business of mobilising deposits. It was accordingly viewed that in extant case, the Respondent had failed to raise question and qualify the nature of advance being received by the Company. It was accordingly viewed that the Respondent had failed to obtain sufficient audit evidence to develop an understanding of the nature of business being carried by the Company which signifies his gross negligence in discharging his professional duties leading to material misstatements in the financial statements audited by him. Thus, he is held guilty of professional misconduct falling within the meaning of clauses (6), (7) and (8) of Part I of Second Schedule to the Chartered Accountants Act, 1949 with respect to above allegation.

(H)

4.3 With respect to next allegation about various discrepancies being noticed in respect of Income/Expenses like nil turnover, not booking any expenses till 31st March, 2015. Even as per the fixed assets schedule, depreciation for the year was Rs.3,69,269/- (A-68), however, the depreciation against the same was not being charged off in the profit & loss account. The Company having huge bank balance as per Balance Sheet still no interest income being shown. There being a number of bank charges in the bank statement but not being expensed.

4.3.1 The Committee observed that the Respondent had admitted that there was no turnover till 31.03.2014 (during his tenure) and submitted that all expenses including rearing of goats were being added to the cost of goats and treated as work in progress. It was erroneously accumulated and nil expenses being recorded in profit & loss account. In fact no profit and loss account was being prepared. Depreciation deducted in fixed assets schedule was also not being expensed in profit & loss account but included under the head 'preliminary expenses'. He reiterated that there was no malafide though it was technically erroneous. As regards interest income, it was submitted that the amount was kept in current account and no interest was earned on current account. He stated that the balance sheet clearly showed that the bank balance was in current account.

4.3.2 In view of overall submissions made by the Respondent, the Committee noted that after Accounting Standard 26 becoming effective, any expenses if not capitalised with fixed assets should have been expensed off in profit & loss account until or unless the said expenditure meets the criteria as laid in Accounting Standard 26. In other words, preparation of profit & loss account in extant case was imperative the Respondent admitted that amount of depreciation was wrongly included in preliminary expenses. The depreciation expenses were required to be expensed off in the profit & loss account rather being included in preliminary expenses. Further, the Respondent remained silent on bank charges.

(M) It was viewed that if the amount of depreciation and bank charges were debited

to the Profit & Loss Account of the Company for the financial years under question, the same would have turned the Company into loss making Company and accordingly, the amounts involved had become material and the Respondent as auditor was required to point out about non preparation of profit & loss account and other related discrepancies in his audit report. But he failed to do so. It was viewed that non-preparation of profit and loss account or non-routing expenses through it, instead accumulating them in the balance sheet clearly reflected that the Respondent failed to disclose the material facts known to him- , that is non-preparation of profit and loss account despite incurrence of expenses which was known to him. It was viewed that it could not in any case be termed as a technical error. In fact it was a blatant violation of applicable accounting framework which the Respondent, being auditor failed to report in his professional capacity. Hence, the Respondent is held guilty of professional misconduct falling within the meaning of clauses (5), (6) and (7) of Part I of Second Schedule to the chartered Accountants Act, 1949 with respect to the said allegation.

- 4.4 In respect of fifth allegation, it is also noted that in significant accounting policies for Financial Years 2011-2012, 2012-2013 & 2013-2014 (A-15, A-30 & A-45) preliminary expenses were stated to be formation and registration expenses of the Company. Thus, the contention of the Respondent w.r.t. preliminary expenses shown in balance sheet was not acceptable. Since the Company was accepting advance money and no lives stock was shown in the Balance Sheet for continuous three financial years for which the Respondent was auditor, the same might have raised question on the nature of money accepted by the Company as advance against goods. It was viewed that "Agreement to Sell" read with the advances in hand clearly indicated that the Company was mobilizing deposit in the guise of goat schemes which the Respondent failed to point out in his audit report. Hence, the Respondent is held guilty of professional

(H) misconduct falling within the meaning of clauses (5), (6), (7) and (8) of Part I of

Second Schedule to the Chartered Accountants Act, 1949 with respect to this allegation.

4.5 In respect of last allegation, the Committee noted that the Respondent had stated that he started his practice in the year 2009 and the financial year under questions were his initial years of his practice. He stated that at that point of time his exposure was very limited but he exercised due diligence in carrying out audit. However, in view of observations/ discussions as made in the foregoing paragraphs, the Committee was of the view that there were ample evidence that in extant case the Respondent had not only failed to exercise due diligence in discharging his professional duties as auditor of the Company for relevant financial years but he certified the state of affairs of the Company as True & Fair without verifying either the nature of transactions or the way they were being recorded in the books of accounts of the Company which lead to material misstatements in the financial statements that were certified by him. It was viewed that the Respondent had failed to obtain sufficient audit evidence to form his opinion on financial statements. Hence, the Respondent is held guilty of professional misconduct falling within the meaning of Items (5), (6) (7) & (8) of Part I of Second Schedule to the Chartered Accountants Act, 1949.

Conclusion :

4. Thus, in the considered opinion of the Committee, the Respondent is **GUILTY** of professional misconduct falling within the meaning of Items (5), (6) (7) & (8) of Part I of Second Schedule to the Chartered Accountants Act, 1949.



Sd/-
CA. Atul Kumar Gupta
Presiding Officer

Sd/-
Smt. Anita Kapur
Government Nominee

Sd/-
CA. Manu Agrawal
Member

Sd/-
CA. Chandrashekhar Vasant Chitale,
Member

DATE: 22nd January, 2021

PLACE: New Delhi

[Handwritten initials]

Certified to be True Copy

Mohita Khanna

(Mohita Khanna)

Assistant Secretary

Disciplinary Directorate

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