



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

PR-131/2018/DD/149/2018/DC/1350/2020

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. PR-131/2018/DD/149/2018/DC/1350/2020

In the matter of:

Shri Ravi Churiwala
Constituted Attorney
Computek India Pvt Ltd
Kolkata

.....Complainant

Versus

CA. Lalit Kumar (M. No.212155)
M/s Kumar Bagri & Associates
Dwan Rama Road
GF Puraswalkam
Chennai 600084

.....Respondent

Members present:

Smt. Anita Kapur, Member (Govt. Nominee) & Presiding Officer
CA. Chandrashekhar Vasant Chitale, Member
CA. P.K.Boob, Member

Date of Final Hearing: 8th July, 2021

Place of Final Hearing: _____

Parties Present:

CA. Lalit Kumar (M.No. 212155)-Respondent (from personal location)

1. That vide report dated 11th February 2021 (copy enclosed), the Disciplinary Committee was of the opinion that CA. Lalit Kumar (M. No.212155) was GUILTY of professional misconduct falling within the meaning of Clause (7) of Part I of Second Schedule and Clause (1) of Part II of the Second Schedule to the Chartered Accountants Act, 1949 in respect of acting in dual capacity as statutory auditor of Novatium Solutions Pvt Ltd (hereinafter referred to as "Company") for financial year 2013-14 and also conducting internal investigation/management audit at the behest of the Board of the Company during the financial year 13-14. It was stated during the course of investigation/management audit, he did not disclose to the Complainant that beside being appointed as the statutory auditor, he had represented as an independent representative as well to collate information pertaining to dealing of the Company with the Complainant. On account of which following charges have emanated:-

i) That there was clear conflict of interest on part of the Respondent while acting as the as statutory auditor.



PR-131/2018/DD/149/2018/DC/1350/2020

ii) That there was misrepresentation in respect of the following matters in the audited financial statements of financial years from 2013-14 to 2016-17 which the Respondent failed to report in his audit report:-

- a) The Company recognized revenue without stock transfer against the advances made by the Complainant and non-disclosure of dues and liability outstanding to the Complainant.
- b) Non-disclosure of legal proceedings and financial claim of the Complainant in the audit report for the F.Y, 2016-17.

1.1 It was noted that Clause (7) of Part I of Second Schedule and Clause (1) of Part II of the Second Schedule to the Chartered Accountants Act, 1949 provides as under:

Second Schedule, Part I

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

Second Schedule, Part II

"(1) Contravenes any of the provisions of the Act/Regulations and Guidelines issued by the Council"

2. An action under Section 21B (3) of the Chartered Accountants Act, 1949 was contemplated against the Respondent and communication dated 19th June 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 8th July 2021 through video conferencing.

3. The Respondent appeared before the Committee on 8th July 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 20th March 2021. The Respondent, at the outset, submitted that his services were utilized by the Company for the limited purpose of verification of the disputed transactions with the Complainant and it was in the nature of litigation support service which was done much before his appointment as auditor. He had not done any non-assurance services to the client after being appointed a statutory auditor of the Company in August 2014 which was almost after a period of five months of having conducted the said assignment. He further stated that while recognition of revenue, he as an auditor had relied upon the requisite documentation in support and further the fact that advances were lying in the books of the Complainant could not have been considered for not recording the revenue in the books of the Company. He thereafter also stated to have accepted the decision of the Committee and assured that in future he would take care and accordingly requested for a lenient view.

4. The Committee considered both the oral as well written submissions of the Respondent and noted that during the F.Y. 2013-14, the Respondent had conducted a special audit of a commercial transaction between the Complainant and the Company as evident from the e-mail from the



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PR-131/2018/DD/149/2018/DC/1350/2020

management of the Company (D-12) as well as the questionnaire before the Complainant (C-56 to 64), so subsequently when he undertook audit of the same period, may be in August 2014, he had assumed the position to review his own conclusion arrived during Special Audit whereby independence of the auditor, which is of paramount importance, was hampered/jeopardized as he acted in dual capacity. It also noted that (D19-D20) that sales of Rs.3.5 cr (approx.) were recorded in the Ledger of the Complainant in the books of the Company to have been made as on 4th June 2013 whereas as evident from Award Order, the stock was never supplied hence, the sales recorded in the financials of 2013-14 did not appear to have been properly verified by the Respondent. Further in the financial statements of 2013-14, neither any information of said sales/advances nor that of its dispute was given in either financial statements or its notes to accounts but the amount claimed as refund by the Complainant of Rs.2.04 Crores was quite material and could have substantially impact financial effect considering the size of the balance sheet (C-90). Thus, a substantial part of the revenue was under dispute which thereafter went into arbitration although in March 2017 but the Respondent beside being the statutory auditor of the Company since F.Y. 2013-14 and despite aware of the said contingent liability failed to reflect 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 within the meaning of Clause (7) of Part I of Second Schedule and Clause (1) of Part II of the Second Schedule and keeping in view the facts and circumstances of the case as aforesaid, ordered that the name of the Respondent, **CA. Lalit Kumar (M. No.212155)** be removed from the register of members for a period of 1(one) month along with a fine of Rs. 20,000/- 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. Lalit Kumar (M. No.212155)** 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.

(10)

Sd/-

[Smt. Anita Kapur]

Member (Govt. Nominee) & Presiding Officer

Sd/-

[CA. Chandrashekhar Vasant Chitale]

Member

[Approved and confirmed through e-mail]

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

Sd/-

[CA. P.K. Boob]

Member

[Approved and confirmed through e-mail]

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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. PR-131/2018/DD/149/2018/DC/1350/2020

In the matter of:

Shri Ravi Churiwala,
Constituted Attorney
Computek India Pvt Ltd
Kolkata

.....Complainant

Versus

CA. Lalit Kumar (M. No.212155)
M/s Kumar Bagri & Associates
Dwan Rama Road
GF Puraswalkam
Chennai 600084

.....Respondent

MEMBERS PRESENT:

Smt. Anita Kapur, Presiding Officer & Member (Govt. Nominee)
Shri Ajay Mittal, Member (Govt. Nominee)
CA. Chandrashekhar Vasant Chitale, Member
CA. Manu Agrawal, Member

Date of Final Hearing: 21st December, 2020(Decided on 22nd January 2021)
Place of Final Hearing: New Delhi (through Video Conferencing)

PARTIES PRESENT

- (i) Sh. Ganesh Agrawal – Complainant's Representative
- (ii) CA. Lalit Kumar - Respondent
- (iii) Shri R. Sundarajan – Counsel for Respondent

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Charges in Brief

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 *prima facie* held guilty of Professional Misconduct falling within the meaning of Item (7) of Part I of the Second Schedule to the Chartered Accountants Act, 1949. The said Item to the Schedule states as under:-

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

Brief Background and Allegations against the Respondent:

2. Novatium Solutions Pvt Ltd (hereinafter referred to as “Company”) was engaged in business of IT software products development and related services, deployment of such product and services throughout India. The Company had developed a proprietary cloud based software / technology for remotely managing computing devices like laptop, desktop, tablet, etc. The Company and the Complainant entered into an agreement dated 28.12.2012(C18-C29) for exclusive sale and distribution of production specifically in Northern and North Eastern states and for certain government order work in hand amounting to Rs.5.8 crores to be executed through the Complainant starting from January, 2013 with healthy margins. Relying on the representation made by the Company, the Complainant agreed to make an investment of Rs.5 crores in three instalments i.e. Rs.2 crore as signing amount on 28.12.2012 and balance amount of Rs.3 crores was agreed to paid in January, 2013 and February 2013 through instalments. The entire amount was to be paid to the Company for Rs.1 lakh nova products @ Rs.500 each and equivalent value of stock was to be supplied to the Complainant immediately after completion of the payment, which would start in the market from January, 2013 onwards. After the payment of Rs.2 crore was made, the Company failed to supply any stock to the Complainant within the agreed time frame. By 31.3.2013 a total of Rs.3.5 crore out of Rs.5 crore had already been paid to

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the Company and the Complainant was still awaiting the promised orders as well as stock.

2.1 However sometimes in April, 2013 the information came to the Complainant knowledge from market sources that the Company had directly collected Rs.5.3 crores against two orders of Assam promised for execution through the Complainant at the time of signing up. Thereafter, the Complainant brought the breach of trust and the betrayal by the Company over several meetings and requested for return of advance money of Rs.3.5 crores alongwith agreed return of 25%. A mail dated 7.5.2013(C-33) in reply was sent by the Company denying the allegation made by the Complainant but at the same time offered to coordinate in settling the matter through the officials of the Company.

2.2 The Respondent represented himself as third party auditor /investigator in March, 2014 and he was appointed by the board of directors of the Company to conduct the management audit and to investigate allegations of statutory, accounting and contractual malpractices levelled by the Complainant who was the former distributor of the company's product. During the course of audit, the Respondent did not disclose to the Complainant that they were appointed as statutory auditor of the Company in place of Deloitte Haskins and Sells. The Respondent represented himself as an independent representative as third party / auditors and met with the representative of the Complainant and administered a detailed questionnaire to the Complainant to collate information pertaining to dealing of the Company with the Complainant. They also collected various supporting documents from the Complainant. It was stated that the Respondent had failed to incorporate inside information shared with them in the audited financial statement in the capacity as statutory auditors of the Company from the financial year 2013-14 onwards.

3. In light of the above background, the allegations made against the Respondent are discussed as hereunder:

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3.1 That there was clear conflict of interest as being the statutory auditor of the Company, the Respondent also conducted internal investigation/management audit on allegation of accounting and other malpractices at the behest of the Board of the Company in violation of Section 144 of the Companies Act, 2013 during the financial year 2013-14.

3.2 That there was misrepresentation in respect of the following matters in the audited financial statements of financial years from 2013-14 to 2016-17 which the Respondent failed to report in his audit report:

a) The Company recognised revenue without transfer of goods and ownership. It was stated that as per revenue recognition accounting policy sales were recognised on transfer of significant risk and reward of ownership to the buyer. In the questionnaire obtained from the Complainant, it was made clear to the Respondent that no goods were ever delivered to the Complainant against the advance paid. The documentary evidence was also provided still revenue was recognised during the Financial Year 2013-14 which was approximately 35% of the total revenues of Rs. 10.30 Cr. recognized by the Company. It was stated that the entire amount was lying as advance in the books of Complainant so there was no question for recognising sales. The same facts were mentioned in the award received from High Court.

b) The Respondent did not disclosed dues and liability outstanding to the Complainant in the financial year 2013-14 despite the fact that the Complainant had provided the details about advances given to the Company to be refunded by them. In respect of the advances further it has been alleged that:

- i. The Respondent did not disclosed dues to MSME including that of Complainant as his Company was a micro, small and medium enterprise under MSMED Act 2006 and their dues were still not paid by the Company.
- ii. There was dispute between the Complainant and the Company and the matter was filed in various Courts, however, the Respondent did not disclosed the

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legal proceedings and financial claim of the Complainant in the audit report signed for the financial year 2016-17 (C86-C110) which was signed on 1.9.2017 in terms of the provision of Section 143(3) of the Companies Act 2013, which requires report on legal and other regulatory requirements wherein the Respondent had mentioned that the Company did not have any pending litigation which would impact its financial position (C-87). As per the Complainant, the said statement was incorrect as in the month of March, 2017; the Honourable Justice of Calcutta High Court had passed an order in AP106/2017 appointing Honourable Justice Ashok Kumar Gangly, the sole arbitrator in the matter of dispute between the Complainant and the Company (C-214). Despite having all the information, the Respondent had failed to disclose the same in the annual accounts of the company even for the year 2016-17.

Proceedings:

4. At the time of hearing on 21st December 2020, the Committee noted that the Complainant's representative and the Respondent along with his Counsel appeared before it from their respective location. Thereafter, they all gave declaration that there was nobody present except them in their respective rooms from where they were appearing and that they would neither record nor store the proceedings of the Committee in any form. Being first hearing, the Respondent was put on oath. Thereafter, the Committee asked the Respondent whether he wished the charges to be read out 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 him and the same might be taken as read. On being asked, as to whether the Respondent pleaded guilty, he did not plead guilty and opted to defend the case.

The Committee, thereafter, asked the Counsel for the Respondent to make his submissions on the matter. The Committee examined the Respondent in the matter and thereafter considered the submissions received from both the parties.



The Committee thereafter directed the Complainant to provide copy of the evidence, if any, to substantiate that the Respondent was privy to the information about the financial claim and the ongoing arbitration within a period of 7 days from the date of hearing while forwarding the same to the Respondent for his rejoinder on the same.

With the aforesaid directions, hearing in the matter was concluded and judgment was reserved.

5. Thereafter, on 22nd January 2021, the Committee noted that till then the Complainant had not submitted the requisite details and thus considered the documents/information as available on record along with the oral submissions made by both the parties before it and, accordingly, decided the matter.

Findings of the Committee:

6. At the outset, the Committee noted that the Director (Discipline) had in his *prima facie* opinion dated 22nd May 2020 held the Respondent guilty of the second allegation only. The Disciplinary Committee, at its 261st meeting held on 6th August 2020, considered the said *prima facie* opinion and while deliberating on the *prima-facie* opinion noted as regard the first allegation that it was reviewed only in context of Sec 144 of the Companies Act, 2013, though such conflict of interest was a threat to independence of the Respondent as auditor as well as in violation of "Guidance note of independence of auditors". The Committee had viewed that members are expected to interpret the requirement of independence much more strictly and should not place themselves in positions which would either compromise or jeopardise their independence. Thus, the Committee, accordingly, decided to proceed with the inquiry in respect of this charge also levelled against the Respondent.

In view of above, the Committee was of the view that a prima facie case was made out in all the matters alleged against the Respondent and therefore

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decided to proceed with the inquiry in respect of all the charges levelled against the Respondent and accordingly, the Committee arrived at a conclusion that the Respondent was prima facie **Guilty** of Professional Misconduct falling within the meaning of Item (7) of Part I and Item (1) of Part II of the Second Schedule to the Chartered Accountants Act, 1949 and accordingly, decided to proceed further under Chapter V of the Chartered Accountants (Procedure of Investigations of professional and Other Misconduct and Conduct of cases) Rules 2007. Accordingly, the Committee held the enquiry on the date of hearing on both the allegations as discussed in paragraph (3) above.

7. The Committee noted as regard the **first allegation** that there was clear conflict of interest on part of the Respondent while acting as the as statutory auditor as the Respondent had conducted internal investigation/management audit at the behest of the Board of the Company during the financial year 2013-14, the Counsel for the Respondent submitted that that neither he nor any of his partners had any financial interest in the said company and it was incorrect to state that he conducted internal/management audit as well as statutory audit for the same financial year as he had not done any internal/management audit of the Company for the same year. The Respondent accepted that his firm was appointed as auditor of the company in the month of August, 2014 and he was appointed as auditor for the financial year 2013-14 (**D-9**). During 2013-14, he did an assignment involving agreed upon procedure, regarding a particular financial transaction involving the Complainant (**W-7**). At the time of conducting this agreed upon procedure, his firm was not the statutory auditor. The Complainant had deliberately misused the term audit/management audit to make a case against the Respondent.

8. The Committee on perusal of papers on record noted that the Respondent in his written statement had submitted to have accepted and carrying out of the of the assignment to conduct management audit, to investigate allegations of statutory,

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accounting and contractual malpractices levelled by the Complainant, who were the distributors of the company's product. On perusal of the questionnaire conducted in March, 2014 (C56-C64), it was noted that a detailed questionnaire was provided by the Respondent and reply on the same was obtained from the Complainant. Though the Respondent has contended that he was not the auditor at the time of assignment but subsequently he accepted the audit for the same year in EGM of the company held on 9th August, 2014 (D7). However, on perusal of e-mails as available on record it was noted that the Board of Directors had ordered a special audit by an Independent audit firm (C-51) which so acknowledged by the Respondent himself while reverting to the Complainant on receipt of latter's input in the matter (C-54). The Committee in this context, noted the provisions of Standard on Auditing (SA) 200, "Overall Objectives of the Independent Auditor and the Conduct of an Audit in Accordance with Standards on Auditing" which provides as under-

"The auditor is subject to relevant ethical requirements, including those pertaining to independence, relating to financial statement audit engagements. Relevant ethical requirements ordinarily comprise the Code of Ethics issued by the Institute of Chartered Accountants of India. In the case of an audit engagement it is in the public interest and, therefore, required by the Code of Ethics, that the auditor be independent of the entity subject to the audit. The Code describes independence as comprising both independence of mind and independence in appearance. The auditor's independence from the entity safeguards the auditor's ability to form an audit opinion without being affected by influences that might compromise that opinion. Independence enhances the auditor's ability to act with integrity, to be objective and to maintain an attitude of professional skepticism.

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9. In view of the above, it is evidently clear that the auditor should act independently while forming an opinion on the financial statements of the company without being affected by the influences which might compromise his independence. In respect to the Independence of Auditor, ICAI has issued the Guidance Note on Independence of Auditors which further provides that:

“Independence of the auditor has not only to exist in fact, but also appear to so exist to all reasonable persons. The relationship between the auditor and his client should be such that firstly, he is himself satisfied about his independence and secondly, no unbiased person would be forced to the conclusion that, on an objective assessment of the circumstances, there is likely to be an abridgement of the auditors’ independence. In all phases of a Chartered Accountant’s work, he is expected to be independent, but in particular in his work as auditor, independence has a special meaning and significance. Not only the client but also the stakeholders, prospective investors, bankers and government agencies rely upon the accounts of an enterprise when they are audited by a Chartered Accountant.”

10. Thus, the independence of auditor is a pre-requisite and Code of Ethics has identified different type of threats to independence of auditor that include ‘Self-review threats’ which has been explained to occur when during review of any judgement or conclusion reached in previous audit/non-audit engagement. The example, thereat, also include a situation when auditor performs services that are themselves subject matter of audit. It was noted that the Respondent had during 13-14 conducted a special audit of a commercial transaction between the Complainant and the Company as evident from the e-mail from the management of the Company informing him the purpose of audit (D-12) as well as the questionnaire placed by the Respondent before the Complainant (C-56 to 64), so subsequently when he undertook audit of the same period, may be in August, he had assumed the position to review his own conclusion




arrived during Special Audit. It was accordingly viewed that independence of the auditor, in instant case, was hampered/jeopardised as the Respondent had acted in dual capacity. It was viewed that the Respondent had by accepting the position of statutory auditor when the special audit was also conducted by him had landed himself in a situation whereby not only he comprised upon his independence, there was conflict of interest with his role as the statutory auditor wherein he was expected to act independently. Thus, there was violation of Code of Ethics as well as Guidance Note on Independence of Auditors. In light of the same, the Committee was of the considered opinion that the Respondent was held guilty of Professional Misconduct falling within the meaning of Clause (1) of Part II of the Second Schedule to the Chartered Accountants Act, 1949 for extant charge.

13. The Committee noted that in the **second charge** there were two legs as discussed below:

- (i) One regarding recognition of revenue without stock transfer against the advances made by the Compliant, and non-disclosure of dues and liability outstanding to the Complainant, including non-disclosure of the said dues to MSME too in the financial year 2013-14 despite the fact that the Complainant had provided the details about advances given to the Company which was being claimed by it for refund and,
- (ii) Another leg regarding there being dispute between the Complainant and the Company and the matter was filed in various courts, and in the month of March, 2017, the Calcutta High Court had passed an order in AP106/2017 appointing the sole arbitrator (Honourable Justice Ashok Kumar Gangly) in the said dispute between the Complainant and the Company (**C-214**). However, it was alleged that the Respondent did not disclose regarding the legal proceedings and financial claim of the Complainant in terms of the provision of Section 143(3) of the Companies Act 2013 in his audit report for the financial year 2016-17 (**C86-C110**) which was signed on 1.9.2017

The Counsel for the Respondent made his submissions before the Committee at the time of hearing. He submitted that with respect to the matter pertaining to 2013-14,



that the matter was settled before the end of the financial period, hence there was no implication on the financials of the said period and that the issue arose in the year 2016-17 when an arbitrator was appointed in the month of March 2017 which was not known to the Respondent. He, on the basis of the financial records, which were available and the management representation letter, he received during the course of audit, he arrived at a conclusion that there was no contingent liability other than in respect of BSNL which he quantified as well. As far as this matter was concerned, since there was no specific information or input given by the management in their representation letter also, he did not have any information whatsoever about the element of arbitration proceedings.

14. The Respondent, on being asked by the Committee as regard the period for which the amount being claimed were outstanding, replied that the amount was not outstanding during the year 2013-14 and the accounts were closed in the year March 2014 itself and during the F.Y. 2014-15, 2015-16 there was no discussion in this regard. However, an additional dispute was raised by the party in the arbitration in respect of some amount of sales return in respect of particular software which was not returned and that dispute went into the arbitration in the month of March 2017. It was only somewhere in December 2018, when the Company called the Respondent for a meeting to discuss the amount of the liability, he became aware that arbitration had come to a conclusion and he attested the calculation and finally gave the report in the month of March 2018.

15. The Committee, however, in light of the documents available on record and after considering the oral and the written submissions made by both the parties before it, noted that the Company and the Complainant entered into an agreement dated 28.12.2012(C-18 to C-29) for exclusive sale and distribution of specific products of the Company and the Complainant agreed to make an investment of Rs.5 crores in three installments i.e. Rs.2 crore as signing amount on 28.12.2012 and balance amount of Rs.3 crores was agreed to paid in January, 2013 and February 2013 through

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installments. After the payment of Rs.2 crore was made, the Company failed to supply any stock to the Complainant and failed to provide supply within the agreed time frame. By 31.3.2013 a total of Rs.3.5 crore out of Rs.5 crore had already been paid to the Company and the Complainant was still awaiting the promised orders as well as stock, when sometimes in April, 2013 the information came to the Complainant knowledge from market sources that the company has directly collected Rs.5.3 crores against two orders promised for execution through the Complainant at the time of sign up. Thereafter, the Complainant alleged the breach of trust and as the matter remained unsolved, the Complainant cancelled distribution agreement vide mail dated 5.5.2013(C31) and requested for return of advance money of Rs.3.5 crores alongwith agreed return of 25%. A mail dated 7.5.2013(C33) in reply was sent by the company denying the allegation made by the Complainant but at the same time offered to coordinate in settling the matter through the officials of the company and for the said purpose, the Respondent was appointed as third party auditor /investigator in March, 2014 by the board of directors of the Company to conduct the audit to investigate into the allegations levelled by the Complainant who was the former distributor of the company's product. The Respondent met with the representative of the Complainant and administered a detailed questionnaire to the Complainant to collate information pertaining to dealing of the company with the Complainant. On perusal of same,(C 56- C 64), it was noted that the Complainant had disputed the purchase of the licenses and an amount of Rs.2.04 Crores was claimed as refund by the Complainant on the company and thus there was a liability outstanding in the accounts of the company as the purchase transactions including purchase order, delivery challan, were disputed by the Complainant.

16. The Committee perused the 'Award' Order of the Arbitrator dated 3rd January 2018 (C 71- C 85) to understand the genesis of the transaction that was settled by the said Order. It was noted that the arbitration had emanated with respect to supply of 1,00,000 units of Dongles at Rs.500 and that after the agreement was terminated vide email dated 5th May 2013, the Order clearly state that the Company had failed to



refund the money (C-80) and accordingly the arbitration award was made. The Committee also noted that the Respondent although argued that the disputed matter for which he had held the Special Audit was squared off, but he failed to bring on record any document to support the same. It was further noted from the Ledger of the Complainant Company in the books of the Company (D19-D20) that sales of Rs.3.5 cr (apprx.) were recorded to have been made as on 4th June 2013 whereas the fact was the stock was never supplied as evident from Award Order, hence, the sales recorded in the financials of 2013-14 did not appear to have been properly verified by the Respondent. It was also noted from the financial statements of 2013-14, that neither any information of said sales/advances nor that of its dispute was given in either financial statements or its notes to accounts. Further, the Respondent had also failed to report the same in his Audit Report. It was viewed that considering the communication held by the Respondent in respect of the said matter, it could not be denied that he was well aware of the dispute. However, the Respondent had failed to bring on record any document on the basis of which he was convinced that the said matter was appropriately dealt with in the books of accounts. Hence, the Respondent had failed to perform his professional duties diligently. He was held guilty of professional misconduct falling within the meaning of Item (7) of Part I of Second Schedule to the Chartered Accountants Act, 1949.

17. Further, with respect to second leg of the charge, on perusal of the Audit report for the FY 2016-17, it was noted that the Respondent under the heading "Report on Legal and Regulatory Requirements" had mentioned in paragraph 2(f)(i) that (C-87) "*The company does not have any litigations which would impact its financial position*". Although the Respondent had brought on record the management representation letter which state that "provision has been made in the accounts for all known losses and claims of material amounts" and that "the Company is not involved in any litigation or arbitration proceedings relating to claims or amounts which are material". However, it was noted that the signature of Sh. Alok Singh, the representative of the Company, did not tally with that available on record (C-166 to C-167, D-7). This raised the doubt

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on the authenticity of the submissions being made by the Respondent before the Committee. It was noted that the amount claimed as refund by the Complainant of Rs.2.04 Crores was quite material and could have substantially impact financial effect considering the size of the balance sheet (C-90). It was ,accordingly, viewed that a substantial part of the revenue was under dispute which thereafter went into arbitration although in March 2017 but the Respondent beside being the statutory auditor of the Company since F.Y. 2013-14 also conducted the audit of the transaction entered into by the Company with the Complainant after he raised allegations of breach of trust on the Company, the said contingent liability was well within the knowledge of the Respondent and he was duty bound to ensure that the such liability as being claimed by the Complainant was reflected in the Financial Statements so that sufficient information was disclosed in the notes to the financial statements . The relevant extract of Accounting Standard 29, Provisions, Contingent Liabilities and Contingent Assests, states as under

68. Unless the possibility of any outflow in settlement is remote, an enterprise should disclose for each class of contingent liability at the balance sheet date a brief description of the nature of the contingent liability and, where practicable:
(a) an estimate of its financial effect, measured under paragraphs 35-45;
(b) an indication of the uncertainties relating to any outflow; and
(c) the possibility of any reimbursement."

18. Accordingly, the Committee was of the view that although the Respondent became aware of the conclusion of the arbitration somewhere in March 2018 but failed to ensure that the contingent liability in this regard was disclosed in the Financial Statements as he had the knowledge of the same due to the facts as enumerated in preceding paras. The Committee, in light of the same was of the considered opinion that the Respondent failed to exercise due diligence in conduct of his professional duties and was accordingly held guilty of professional misconduct falling within the meaning of Clause (7) of Part I of Second Schedule to the Chartered Accountant Act 1949.

Conclusion :



19 . Thus, in conclusion in the considered opinion of the Committee, the Respondent is held **GUILTY** of Professional Misconduct falling within the meaning of Clause (7) of Part I of Second Schedule and Clause (1) of Part II of the Second Schedule to the Chartered Accountants Act, 1949.

[Handwritten signature]

Sd/-
[Smt. Anita Kapur]
Presiding Officer & Member, (Govt. Nominee)

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

Sd/-
[CA. Chandrashekhar Vasant Chitale]
Member

Sd/-
[CA. Manu Agrawal]
Member

DATE: 11th February, 2021
PLACE: New Delhi

Certified to be True Copy
Mohita Khanna
(Mohita Khanna)
Assistant Secretary
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