



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

PR-320/16/DD/12/2017/BOD/448/2018

ORDER UNDER SECTION 21A(3) OF THE CHARTERED ACCOUNTANTS ACT, 1949 READ WITH RULE 25(1) OF THE CHARTERED ACCOUNTANTS (PROCEDURE OF INVESTIGATIONS OF PROFESSIONAL AND OTHER MISCONDUCT AND CONDUCT OF CASES) RULES, 2007.

In the matter of:-

Mrs. Mamta Pravinkumar Shetty

...Complainant

-Vs.-

CA. Dayanand Shetty (M. No. 037853)
M/S D. N. Shetty & Co. (FRN110090W)
Chartered Accountants, Mumbai

...Respondent

[PR-320/16/DD/12/2017/BOD/448/2018]

MEMBERS PRESENT:

CA. Prasanna Kumar D., Presiding Officer (Physically at ICAI Bhawan, IP Marg, New Delhi)
Mrs. Rani Nair, (IRS, Retd.), Government Nominee (Through video conferencing)
CA. Satish Kumar Gupta, Member (Through video conferencing)

Date of Final Hearing: 6th August, 2021

1. The Board of Discipline vide Report dated 11th February, 2021 held that CA. Dayanand Shetty (M. No. 037853) is guilty of "Other Misconduct" falling within the meaning of Item (2) of Part-IV of the First Schedule of the Chartered Accountants Act, 1949 read with section 22 of the said Act.
2. An action under Section 21A (3) of the Chartered Accountants Act, 1949 was contemplated against CA. Dayanand Shetty and communication dated 29th July, 2021 was addressed to him thereby granting him an opportunity of being heard in person and/or to make written representation before the Board on 6th August, 2021.
3. CA. Dayanand Shetty appeared before the Board through video conferencing and made his oral representation.
4. CA. Dayanand Shetty in his written representation dated 24th June 2021, inter-alia, submitted as under:-
 - a. Late Shri Kunjappa P. Shetty was the founder of M/s. Apoorva Restaurant & Bar and M/s. Apeksha Veg. Restaurant. All the partners of these restaurants belong to his family, including

CA. Dayanand Shetty



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the Complainant, who is the daughter-in-law of late Shri Kunjappa P. Shetty and the wife of his son late Shri Pravin Kumar Shetty. The two restaurants are the self-made properties of Late Shri Kunjappa P. Shetty with strenuous efforts, dedication and hard work over the decades.

- b. The Respondent sincerely performed his duty as the tax auditor of M/s Apoorva Restaurant & Bar and M/s Apeksha Veg. Restaurant in the normal course of his profession. Other than tax audit assignment, the Respondent did not had any vested interest in these two partnership firms, nor did he had any vested interest in any of the partners of these firms.
- c. The debit balance of late Shri Pravin Kumar Shetty in M/s Apoorva Restaurant & Bar was not adjusted in the capital account of his father Shri Kunjappa P. Shetty on the instructions of Shri Kunjappa P. Shetty. In para 11 of the 'Findings', the hon'ble Board of Discipline has mentioned that there is no evidence on record in this respect. The Respondent submitted that although there is no evidence in the form of written instruction from Shri Kunjappa Shetty, it should not be weighed against the Respondent because Shri Kunjappa P. Shetty had himself signed the Balance Sheets for both FY 2011-12 and 2012-13, where the debit balance of late Shri Pravin Kumar Shetty was appearing under the head "Retired Partner's Capital Account". If an objective view is taken, it would be logical to infer from this factual position that if adjustment of debit balance was not made and the said debit balance was shown under the head 'Retired Partner's Capital Account' in the Balance Sheet for FY 2011-12 and 2012-13, it must have been on instructions of Shri Kunjappa P. Shetty only. Under the circumstances, lack of evidence in this regard should not be viewed adversely against him.
- d. Although the partnership deed dated 1st June, 2011 mentioned that Shri Kunjappa Shetty agreed to take over the said debit balance of late Shri Pravin Kumar Shetty, there was no reference to it in the 'Terms and Conditions', stated in the partnership deed.
- e. The Respondent faithfully requested the partners of M/s. Apoorva Restaurant & Bar to hold a meeting to settle the grievance of Mrs. Mamatha P. Shetty, which was held on 25.10.2019, in which all the partners including the Complainant attended. Further, the Respondent's advice prevailed on the partners and they carried out the necessary adjustment of the debit balance of late Shri Pravin Kumar Shetty, thereby settling the grievance of the Complainant. It will not be out of place to reproduce the following part of the Minutes of the meeting to

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show the constructive steps taken by Respondent to settle the grievance of the Complainant:

"The Partners hereby want to put on record that this adjustment is now made as per the advice of our auditor, M/s D. N. Shetty & Co, Chartered Accountants, in spite of the fact that such adjustment was not mentioned in any of the "term and conditions" of the two partnership deeds dated 1.6.2011 and 1.1.2014. The other two partners, Mrs. Vijayalaxmi A. Shetty and Mrs. Chandra Prabha U. Shetty have now agreed to do this adjustment with retrospective effect keeping in view of the overall family interest and to honour the wishes expressed by late Shri Kunjappa P. Shetty in the 'prelude' to the Partnership Deed dated 1.6.2011 ."

- f. In the circumstances of the present case, the benefit of doubt existing in the "interpretation of the Partnership Deeds" may be allowed to the Respondent. Further, the Respondent advised the other two partners to give effect to certain accounting treatments, even when late Shri Kunjappa P. Shetty, who was the founder of M/s Apoorva Restaurant-Bar did not do it and signed the Balance Sheets for F Y 2011-12 and F Y 2012-13, which is an obvious confirmation of his intent.
- g. The Respondent also persuaded the other two partners for the accounting changes with retrospective effect by giving credit of Rs.24.98 Lakh to the Complainant, which resulted in the 'desired benefit' that Complainant sought from the Institute.

4. The Board has carefully gone through the facts of the case and also the oral and written representation of **CA. Dayanand Shetty**.

5. As per the Findings of the Board as contained in its report, the Board of Discipline noted that even after death of Mr. Kunjappa P. Shetty, the adjustment of the debit balance of Mr. Pravin Kumar in the capital account of the Complainant was wrong as taking over of debit balance of Mr. Pravinkumar by the Complainant was never made part of and mentioned in any Partnership Deed. Further, this debit balance kept on increasing due to charging of interest on the same. The Board further noted that though other partners in their meeting held on 25th October, 2019 decided to adjust the debit balance of Mr. Pravin Kumar retrospectively yet it is an admitted fact that there was an error in the Balance Sheets which were audited by the Respondent and which were signed by him either under influence or negligently. **CA. Dayanand Shetty** intentionally avoided to disclose correct picture and due to influence deprived the Complainant from her legitimate share of capital for 6 years. The said act of the Respondent is clearly unbecoming of a Chartered Accountant and has brought disrepute to the profession and thus, it has already been held that **CA. Dayanand Shetty** is

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Guilty of Other Misconduct falling within the meaning of Item (2) of Part IV of the First Schedule of the Chartered Accountants Act, 1949 read with Section 22 of the said Act.

6. Upon consideration of the facts of the case, the consequent misconduct of **CA. Dayanand Shetty** and keeping in view his oral and written representation before it, the **Board decided to Reprimand CA. Dayanand Shetty (M. No. 037853)** and also imposed a fine of **Rs.10,000/- (Rs. Ten thousand only)** upon him payable within a period of 60 days from the date of receipt of the Order.

Sd/-

CA. PRASANNA KUMAR D.
(PRESIDING OFFICER)

Date: 10th January, 2022

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सही प्रतिलिपि होने के लिए प्रमाणित /
Certified to be true copy

[Signature]
बिना नथ तिवारी / **Bhawna Nath Tiwari**
कार्यकारी अधिकारी / **Executive Officer**
अनुरासनारक्षक निदेशालय / **Disciplinary Directorate**
इंस्टिट्यूट ऑफ चार्टर्ड एकाउंटेंट्स ऑफ इंडिया
The Institute of Chartered Accountants of India
आईसीएआई भवन, विश्वास नगर, शाहदरा, दिल्ली-110032
ICAI Bhawan, Vishwas Nagar, Shahdra Delhi-110032

CONFIDENTIAL

BOARD OF DISCIPLINE

Constituted under Section 21A of the Chartered Accountants Act 1949

Findings under Rule 14(9) of the Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007

File no: PR/320/16/DD/12/2017/BOD/448/2018

CORAM:

CA. Prasanna Kumar D., Presiding Officer

(Physically at ICAI Bhawan, Vishwas Nagar, New Delhi)

Mrs. Rani Nair (IRS, Retd.), Government Nominee

(attended through VC)

CA. Durgesh Kumar Kabra, Member

(attended physically at ICAI Bhawan, Vishwas Nagar, New Delhi)

In the matter of:

Mrs. Mamatha Pravinkumar Shetty,

9, Ararat, 3rd Floor,

89, Nagindas Master Road,

Fort

Mumbai-400 023

....Complainant

-vs-

CA. Dayanand Shetty... (M. No. 037853)

15 Latif Mansion,

Ground Floor,

Teli Cross Lane, Andheri (East),

Mumbai-400 069

....Respondent

DATE OF FINAL HEARING

: **19th January, 2021**

PLACE OF HEARING

: **Physically/Through video conferencing**

PARTIES PRESENT

Complainant

: **Ms. Mamatha Pravinkumar Shetty
(through video conferencing)**

**Authorised Representative of
the Complainant**

: **Mr. Suresh Shetty
(through video conferencing)**

Respondent

: **CA. Dayanand Shetty (M.No. 037583)
(through video conferencing at ICAI
Mumbai Office)**

Counsel for the Respondent

: **Mr. Jayaraj G Shetty (through video
conferencing at ICAI Mumbai Office)**

Findings:**Charge alleged:**

1. The Respondent in collusion and in conspiracy with CA. UdayKumar D.Shetty concocted, prepared and certified false and incorrect Balance Sheet, statement of Profit & Loss account of M/s Apoorva Restaurant & Bar and M/s Apeksha Veg. Restaurant under his signature for his personal benefit and the benefit of CA. UdayKumar D.Shetty .

The Board also noted that in the Prima facie opinion formed by the Director (Discipline), the Respondent had been held prima facie not guilty. However, the Board on consideration of the same was of the view that the Respondent failed to send written statement even after sufficient reminder and in absence of any rebuttal from the Respondent by way of filing written statement, he cannot be absolved from the allegation. Accordingly, the Board did not agree with the Prima facie opinion of the Director (Discipline) and referred the case for enquiry under Chapter IV of the Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007.

Proceedings held:

2. The Board noted that during the Course of final hearing held on 19th January, 2021 both the parties were present along with their authorised representative/ Counsel. The Board heard their submissions and duly considered the documents available on record. Accordingly, the Board concluded the hearing in the case with the direction to the Respondent to provide clarification as to why the accounts of the entities were re-stated with a copy to the Complainant to submit her comments thereon, if any. Accordingly, the decision on the misconduct of the Respondent was kept reserved by the Board.
3. Thereafter, the case was placed before the Board at its meeting held on 11th February, 2021 together with the further submissions received and the Board on consideration of the facts together with the documents on record arrived at its findings.
4. The Board noted that it is coming out of records that as per partnership deed dated 5th February, 2003 Mr. Parvin Kumar Shetty (husband of the Complainant) was partner in two partnership firms viz., M/s Apeksha Veg. Restaurant, and M/s Apoorva Restaurant - Bar along his father Mr. Kunjappa P. Shetty and his sisters Smt. Vijaylaxmi A. Shetty and Smt. Chandraprabha U, Shetty.
5. It is an admitted fact by both the parties that Late Mr. Pravin Kumar Shetty (husband of the Complainant) was having debit balance of Rs.24.98 Lakhs (approx.) in his capital Account in M/s Apoorva Restaurant - Bar on the date of his death on 24th May, 2011.
6. The Board noted that later on partnership deed was executed between remaining 3 partners on 1st June, 2011. As per the said partnership deed Mr. Kunjappa P. Shetty agreed to take over the said liability (debit balance) and share of his late son Mr. Parvin Kumar Shetty in the M/s Apoorva Restaurant - Bar.

The Board noted that despite the same, in the Balance Sheets of M/s Apoorva Restaurant – Bar for F.Y. 2011-12 and 2012-13, outstanding balance of Late Mr. Pravin Kumar was shown as 'Retired Partners Capital Account' and was not adjusted in the capital Account of his father Mr. Kunjappa P. Shetty.

7. The Respondent in this regard submitted that the deed of partnership dated 01-06-2011 contained clause 1 to clause 20, being "Terms and Conditions" of the Deed and signed by late Kunjappa Shetty, Mrs. Vijayalaxmi Shetty and Mrs. Chandraprabha Shetty. In clause 1 to clause 20, nowhere it is mentioned that the debit balance of late Praveenkumar Shetty shall be absorbed or adjusted in the accounts. The intention of Kunjappa Shetty to put in the prelude to the partnership deed of 01-06-2011 did not find a place in the "Terms and Conditions" of the said deed, and hence it was not given effect to in the audited accounts. Moreover, late Kunjappa Shetty himself intended to keep the debit balance of late Praveenkumar Shetty separately in the accounts and accordingly signed the Balance Sheet. As tax auditor, the Respondent could not decide otherwise at that time. Further, even in the partnership deed dated 01-01-2014, there was no mention that liability of late Pravinkumar Shetty shall be adjusted against the capital balance of late Kunjappa Shetty. He further argued that Balance sheets of both the years were signed by Mr. Kunjappa P. Shetty. The Board was of the view that the Respondent as an auditor should do his duties impartially and is not expected to work under an influence.
8. After the death of main and founding partner, Mr Kunjappa P. Shetty on 29-12-2013 as per instructions in the will of Mr Kunjappa P. Shetty, the remaining partners, Mrs Vijaylaxmi A. Shetty and Mrs Chandraprabha U Shetty had decided to continue the Partnership business by admitting Mrs. Mamatha P Shetty, wife of their brother Pravin K Shetty ("Complainant"), as a new partner into both partnership firms viz., M/s Apeksha Veg. Restaurant, and M/s Apoorva Restaurant – Bar with share of 25%. Accordingly, a deed of partnership was executed on 1st January 2014.
9. The Board on perusal of Balance Sheet noted that the Respondent certified the balance of the Complainant during various years is as under:

M/s Apoorva Restaurant- Bar

Period	Opening	Transferred	Interest	Salary	Profit	Drawings	Balance
30.12.13-31.03.14	0	-1261102*	-39123	37500	7845	120000	-1374880
2014-15	-1374880		-198140	143224	5335	488957	-1913418
2015-16	-1913418		-261535	227050	81540	542588	-2408951

- The Board noted that balance of 1261102* was arrived after adjusting loss standing in her husband's name i.e. 2498986 with 25% share capital of his father-in-law Mr. Kunjappa P. Shetty i.e. -2498986+ (25% of 4951538) = Rs. – 12,61,102.

M/s Apeksha Veg. Resturant

- The Board noted that balance of 393342* was arrived after adjusting loss standing in her

Period	Opening	Transferred	Interest	Salary	Profit	Drawings	Balance
30.12.13-31.03.14	0	393342	11236	3000	-7923	15000	384655
2014-15	384655		46089	25047	801	0	456592
2015-16	456592		0	0	-56396	0	400196

husband's name i.e. 64823 with 25% share capital of his father-in-law Mr. Kunjappa P. Shetty i.e. -64823+ (25% of 1832659) = Rs. 393342.

- The Board noted that as mentioned in para 4 and 5 above it is coming out that the Respondent failed to mention the effect of adjustment of taking-over of liability and share of Mr. Parvin Kumar Shetty by his father in the concerned Balance Sheets. The Respondent despite clearly avoiding to disclose true facts had taken plea that the same was due to instructions of Mr. Kunjappa P. Shetty. The Board opined that the same cannot be accepted as a professional accountant should not allow bias, conflict of interest or undue influence of others to override professional judgments.
- The Respondent further pleaded that Mr. Kunjappa P. Shetty had signed Balance Sheets of F.Y. 2011-12 and 2012-13 which lacks such adjustments and hence pleaded that all the work was on instructions of Mr. Kunjappa P. Shetty. In this regard it was observed by the Board that there was no evidence on record that Mr. Kunjappa P. Shetty instructed the Respondent to not to adjust liability of his son from his share. Further, the document on record i.e. partnership deed of 1st June, 2011 portrays different picture. The Respondent was expected to perform his duties diligently by advising the partners about the fundamental omission rather than being involved in collude with one partner.
- The Board also noted that even after death of Mr. Kunjappa P. Shetty, the adjustment of the debit balance of Mr. Pravin Kumar in capital account of the Complainant was wrong as taking over of debit balance of Mr. Pravinkumar by the Complainant was never made part of and mentioned in any partnership deed. Further this debit balance kept on increasing due to charging of interest on the same.
- The Board also noted that though other partners in their meeting held on 25th October, 2019 decided to adjust the debit balance of Mr. Pravin Kumar retrospectively yet it is admitted fact that there was an error in the Balance Sheets which were audited by the Respondent and which were signed by him either under influence or negligently. The Respondent intentionally avoided to disclose correct picture and due to influence deprived the Complainant from her legitimate share of capital for 6 years. The Board accordingly opined that the act of the Respondent not only caused damage to the Complainant but also damaged the reputation of the Profession in the public.
- The Board opined that such misdeeds are not expected from a Chartered Accountant and the act of the Respondent had brought disrepute to the profession and accordingly, the Board holds him guilty in respect of the charge alleged.

CONCLUSION

15. Thus, in view of the above, in the considered opinion of the Board, the Respondent is **GUILTY** of "Other Misconduct" falling within the meaning of Clause (2) of Part IV of the First Schedule to the Chartered Accountants Act, 1949 read with section 22 of the said Act.

Sd/-
(PRASANNA KUMAR D.)
PRESIDING OFFICER

Certified to be true copy
Jyotika Grover
Jyotika Grover
Assistant Secretary,
Disciplinary Directorate
The Institute of Chartered Accountants of India,
ICAI Bhawan, Vishwas Nagar, Shahdra, Delhi-110032