



भारतीय सनदी लेखाकार संस्थान
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THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA
(Set up by an Act of Parliament)
[PR 25/2017-DD/27/17/DC/1344/2020]

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 25/2017-DD/27/17/DC/1344/2020]

In the matter of:

CA. Neelakanti Durga Prasad (M. No.215042)

H. No. 16-2145-5

Flat No. 203, Miryalkar Residency,

Palton X Roads, Makalpet,

Hyderabad-500036

.....Complainant

Versus

CA. P Jitendra Reddy,(M. No.200708)

Proprietor/Partner of P Jitendra Reddy & Co.

H. No. 3, Opp Sai baba Temple,

Bagh Lingampalli,

Narayangudda, Hyderabad,

Telengana-500027

.....Respondent

MEMBERS PRESENT:

Smt. Anita Kapur, Member (Govt. Nominee) & Presiding Officer

Shri Ajay Mittal, Member (Govt. Nominee)

CA. Chandrashekhar Vasant Chitale, Member

CA. P.K. Boob, Member

Date of Final Hearing: 09.09.2021 through Video Conferencing

Place of Hearing: New Delhi

Party Present:-

1) CA. P Jitendra Reddy – the Respondent (appeared from his personal location)

1. That vide report dated 3rd February 2021 (copy enclosed), the Disciplinary Committee was of the opinion that **CA. P Jitendra Reddy (M. No.200708)** was **GUILTY** of Professional Misconduct falling within the meaning of Item (8) and (9) of Part I of First Schedule and Item 1 of Part II of Second Schedule to the Chartered Accountants Act, 1949 for accepting the appointment of being statutory auditor of M/s Progressive Hotels Pvt. Ltd, M/s Swapna Hospitals Pvt. Ltd and M/s Rajdhani Polypack Pvt. Ltd (hereinafter referred to as the "**Companies**") for the financial year 2015-16 without (i) communicating with the previous auditor, (ii) without confirming compliance of the applicable provisions of the Companies Act, 2013 (iii) he also failed to ascertain whether pending fees of previous year had been paid to the previous auditor or not. It was noted that Item (8) and



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(9) of Part I of First Schedule and Item 1 of Part II of the Second Schedule to the Chartered Accountants Act, 1949 state as under:

First Schedule

Part I

"(8) accepts a position as auditor previously held by another chartered accountant or a certified auditor who has been issued certificate under the Restricted Certificate Rules, 1932 without first communicating with him in writing;

(9) accepts an appointment as auditor of a company without first ascertaining from it whether the requirements of Section 225 of the Companies Act, 1956 in respect of such appointment have been duly complied with;"*

Second Schedule

Part II

"(1) contravenes any of the provisions of this Act or the regulations made thereunder or any 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 25th August 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 9th September 2021 through video conferencing.

3. The Respondent appeared before the Committee on 9th September 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 vide letter dated nil received on 22nd March 2021 and 19th August 2021 by the Respondent. The Respondent, at the outset, submitted that he had not sent any written letter but had orally communicated with the previous auditor i.e. the Complainant who had verbally conveyed his no objection and that he had verified the Board resolutions to appoint him as the statutory auditor but there was no written resignation letter from the Complainant on the date of his appointment which he had promised to provide later. He also stated that he had ensured and ascertained that all the dues of the Complainant were cleared much before the date of his signing the audit reports.

4. The Committee considered the oral as well as the written submissions of the Respondent and noted that the Respondent had failed to comply with Code of Ethics when instead of obtaining no objection certificate from the previous auditor, the Respondent had sought his consent orally. Further there were certain cheques which were issued to the Complainant beyond the date when the audited Financial Statement were signed by the Respondent which made it evident that the



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Respondent went ahead with the audit assignment without ascertaining that the pending dues of the Complainant were cleared by the group Companies which was again in contravention to the guidelines issued by the Council of the Institute as per which a member should *accept the assignment* only after ascertaining the payment of undisputed dues to previous auditor. It was further noted that the Respondent had failed to produce on record any document to show that he had ascertained from the Company the compliance of the provisions of the Companies Act 2013 before acceptance of audit of the Companies more so even when the resignation letter of the Complainant was not on record on the day when the Respondent accepted the appointment as the statutory auditor of the Company.

5. The Committee thus viewed that the misconduct on the part of the Respondent has been held and established within the meaning of Item (8) and (9) of Part I of First Schedule and Item 1 of Part II of the Second Schedule to the Chartered Accountants Act, 1949 read with Chapter VII of the Council Guidelines 2008 and keeping in view the facts and circumstances of the case as aforesaid and ordered that the Respondent, **CA. P Jitendra Reddy,(M. No.200708)** be Reprimanded along with a fine of Rs. 25,000/- (Rupees Twenty Five Thousand Only) that shall be payable within a period of 3 months from the date of receipt of this Order and in case the Respondent failed to pay the same as stipulated, the name of the Respondent, **CA. P Jitendra Reddy,(M. No.200708)** be removed for a period of 1(one) month from the Register of members on the lines of Section 64 of the Indian Penal Code.

(R)

Sd/-

[Smt. Anita Kapur]

Member (Govt. Nominee) & Presiding Officer

Sd/-

[Shri Ajay Mittal, IAS (Retd)]
Member (Govt. Nominee)

Sd/-

[CA. Chandrashekhar Vasant Chitale]
Member

Sd/-

[CA. P.K. Boob]
Member

प्रमाणित सत्य प्रतिलिपि / Certified true copy
Mohita Khanna
सी.ए. मोहिता खन्ना / CA. Mohita Khanna
सहायक सचिव / Assistant Secretary
अनुशासनात्मक निदेशालय / Disciplinary Directorate
इंस्टीट्यूट 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

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. : [PR25/2017-DD/27/17/DC/1344/2020]

In the matter of:

CA. Neelakanti Durga Prasad (M. No.215042)
H. No. 16-2145-5
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H. No. 3, Opp Sai baba Temple,
Bagh Lingampalli,
Narayangudda, Hyderabad,
Telengana-500027

.....Respondent

MEMBERS PRESENT:

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

Date of Final Hearing: 5th October, 2020 through Video Conferencing
Place of Hearing: New Delhi

PARTIES PRESENT:

i)CA. Neelakanti Durga Prasad – the Complainant
(ii)CA. P. Jitender Reddy – the Respondent
(iii)CA. A K Vasu and Shri T. Raghavendra – the Counsels 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 held prima facie guilty of Professional Misconduct falling within the meaning of Item (8) and (9) of Part I of First Schedule and Item 1 of Part II of the Second Schedule to the Chartered Accountants Act, 1949. The said Clauses to the Schedules state as under:-

First Schedule

Part I

"(8) accepts a position as auditor previously held by another chartered accountant or a certified auditor who has been issued certificate under the Restricted Certificate Rules, 1932 without first communicating with him in writing;

(9) accepts an appointment as auditor of a company without first ascertaining from it whether the requirements of Section 225 of the Companies Act, 1956 in respect of such appointment have been duly complied with;"*

Second Schedule

Part II

"(1) contravenes any of the provisions of this Act or the regulations made thereunder or any guidelines issued by the Council;"

Charges alleged against the Respondent:

2. The Complainant was the statutory auditor of M/s Progressive Hotels Pvt. Ltd, M/s Swapna Hospitals Pvt. Ltd, M/s Rajdhani Polypack Pvt. Ltd and other partnership firms, proprietary firms and societies belonging to the same group called Ashoka Hotel Group up to the financial year 2014-15. However, the Respondent was appointed as the statutory auditor of the aforesaid three Pvt. Ltd. Companies and tax auditors for the proprietary firms and partnership firms belonging to the same management for the Financial Year 2015-16. It was alleged against the Respondent that;
 - i) He had accepted the appointment as Statutory Auditor of the Companies for the FY 2015-16 without making any communication with the Complainant.

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- ii) That the Group had only paid 25% of the fees due to the Complainant and the rest of the fees for about more than Rs.2 lakhs rupees was pending with the Company which was not ascertained by the Respondent before taking up the audit assignment.
- iii) That the Respondent did not verify if any Board meeting or Shareholders' meeting was conducted by the group Companies for removal of the Complainant or if all the provisions of the Companies Act, 2013 were complied with for removal of the Complainant who was the outgoing statutory Auditor of the said Companies.

Proceedings:

3. On 5th October, during hearing, the Committee noted that the Complainant and the Respondent along with his Counsels were present through video conferencing from their respective place(s). The Committee noted that the Complainant and the Respondent along with his Counsels were present during the hearing. Thereafter, they all gave 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. Being the first hearing, both the Complainant and the Respondent were 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, his Counsel replied that the Respondent did not plead guilty and opted to defend his case.
4. Thereafter, the Complainant explained the charges alleged against the Respondent. Thereafter the Counsels for the Respondent made their submissions on the allegations. Both the Complainant and the Respondent's Counsel were examined by the Committee on the submissions made by them.

 
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5. Based on the documents and information available on record and after considering the oral and written submissions made by the Respondent, the Committee concluded hearing in the matter

Findings of the Committee

6. The Committee gave its findings in respect of charges as discussed in paragraph (3) above as under:
 - 6.1 The Committee noted that the first allegation against the Respondent was that he accepted the appointment of being Statutory Auditor for the Financial Years 2015-2016 without making any communication with the previous auditor i.e. the Complainant. It was noted that the Respondent, in his Written Statement, submitted that several times he had made oral requests to the Complainant to grant no objection certificate to him. He also placed on record his letter dated 14th October 2016 (W-12)/ NOC of the Complainant stating that he was resigning from the Companies and the Respondent could go ahead with the filing of the returns of the Companies. However, it was noted that the financial documents including the balance sheet, statement of computation of Income, statement of profit and loss of various group companies for the financial year 2016-17 were signed by the Respondent much before this letter i.e., on 1st September 2016 (W-15-16, W-52 to 53, W-67 to 72) which signifies that the Respondent had not only accepted the audit but even completed the said assignment much before the letter dated 14.10.2016 was obtained. Further, the Committee noted that the Respondent claimed to have filed the return of the Company after the said letter which had no relevance since, the Act mandates on the part of incoming auditor to communicate in writing with outgoing auditor before acceptance of audit and not before filing of return. It was noted that the Respondent had failed to place on record a single document to show that he had made any written communication with the Complainant before accepting the audit assignment. The Committee, in this regard, noted that as per the Code of Ethics, incoming Auditor should communicate with the retiring auditor in such a manner as to retain in his hands


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positive evidence of the delivery of the communication to the addressee. In the opinion of the Council of ICAI, communication by a letter send "Registered Acknowledgement due" or by hand against a written acknowledgement would in normal course provide such evidence but in the extant case, the Respondent had clearly failed to produce any positive evidence to establish that he had communicated with the Complainant before accepting the assignment and had submitted to have sought his consent orally. Thus, in light of the provisions as envisaged in Code of Ethics, the Committee was of the opinion that the Respondent was guilty of professional misconduct for this charge falling within the meaning of clause (8) of Part- I of First schedule to the Chartered Accountants Acts, 1949.

6.2 Further, it was alleged that Respondent had accepted the audit assignment without ascertaining whether pending fees of previous year had been paid to the previous auditor or not. The Respondent submitted that since nowhere in the NOC/letter submitted by the Complainant on 14th October 2016 (W-12) any pending/outstanding fee was mentioned, the Respondent went ahead with the audit assignment of the Companies. The Committee noted that as per financial documents placed on record by the Complainant, as per the Notes forming Part of the Balance sheet of M/s Progressive Hotels Pvt. Ltd, an amount of Rs 60,000/- was due as audit fees payable as on 31st March 2015 (D-18) and as per balance sheet of M/s Swapna Hotels Pvt. Ltd, Rs 30,000/- was payable as audit fees as on 31st March 2015 (D-44). Further, as per balance sheet of M/s Rajdhani Polypack Pvt. Ltd, Rs 15,000/-was outstanding as audit fees as on 31st March 2015 (D-60). Also as per the Balance sheet of M. Swapana Kumari (D-79) Rs 1,50,000/-was payable as audit fees as on 31st March 2015. The Committee further noted that there were certain cheques and cash receipts which were made available by the Respondent, but the said cheques were issued to the Complainant beyond the date when the audited Financial Statement were signed by the Respondent. The Committee further noted that in view of these facts it


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may not be wrong to infer that the Respondent went ahead with the audit assignment without ascertaining that the pending dues of the Complainant were cleared by the group Companies which was clearly in contravention to the guidelines issued by the Council of the Institute. It was noted that as per Council Guidelines ICAI NO.1-CA(7)/02/2008 "A member of the Institute in practice shall not accept the appointment as auditor of an entity in case the undisputed audit fee of another Chartered Accountant for carrying the statutory Audit under the Companies Act or various other statutes has not been paid." Accordingly, the Committee was of the opinion that the Respondent is guilty of professional misconduct falling within the meaning of Clause (1) of Part II of Second Schedule read with Chapter VII of Council General Guidelines 2008 1-CA(7)/02/2008 dated 08th August, 2008 as he not only accepted the audit but conducted it as well while the undisputed audit fees of the Complainant had not been paid.

- 6.3 The third charge against the Respondent was that he accepted the appointment of being Statutory Auditor without confirming compliance of the prescribed procedure under the Companies Act, 1956 particularly the provisions of Section 139, 140 and other applicable provisions of the Companies Act, 2013. The Committee noted that Section 140 of the Companies Act, 2013, lays down the procedure which must be followed whenever a Company desires to change its auditors. In order that the validity of the appointment of an auditor is not challenged or objected to by shareholders or the retiring auditors at a later date, under the Code of Ethics, it has been made obligatory on the incoming auditor to ascertain from the Company about the compliance of the same. In the extant case, it was noted that the Respondent had failed to produce on record any document to show that he had ascertained from the Company the compliance of the provisions of the Companies Act 2013 before acceptance of audit of the Companies. Thus, in light of the provisions as envisaged in Code of Ethics, the Committee was of the opinion that the Respondent was guilty of professional misconduct for this charge

falling within the meaning of clause (9) of Part- I of First schedule to the Chartered Accountants Acts, 1949.

Conclusion

7. Thus, in the considered opinion of the Committee, the Respondent is **GUILTY** of professional and/or other misconduct falling within the meaning of Clause (8) and (9) of Part I of First Schedule and Item 1 of Part II of the Second Schedule to the Chartered Accountants Act, 1949.

Sd/-
CA. Atul Kumar Gupta
Presiding Officer

Sd/-
Smt. Anita Kapur
Member (Government Nominee)

Sd/-
CA. Chandrashekhar Vasant Chitale
Member
(approved & confirmed through e-mail)

Sd/-
CA. Manu Agrawal
Member
(approved & confirmed through e-mail)

DATE: 3rd February, 2021

PLACE: New Delhi

Certified to be True Copy
Mehita Khanna
(Mehita Khanna)
Assistant Secretary
Disciplinary Directorate
The Institute of Chartered Accountants of India