



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

[PPR/170/16-DD/09/INF/18-DC/1199/19]

**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.**

[PPR/170/16-DD/09/INF/18-DC/1199/19]

**In the matter of:**

**CA. AASHISH NANDKISHOR KABRA (M.No.141321),**  
"Narayani", 151, Mohan Nagar,  
Mahabal Area,  
JALGAON – 425 001

.....Respondent

**MEMBERS PRESENT:**

1. CA. (Dr.) Debashis Mitra, Presiding Officer (Present in person)
2. Mrs. Rani Nair, I.R.S. (Retd.), Government Nominee (Present in person)
3. CA. Rajendra Kumar P, Member (Present through Video Conferencing)
4. CA. Cotha S Srinivas, Member (Present in person)

**DATE OF MEETING : 25.04.2022 (Through Physical/ Video Conferencing Mode)**

1. That vide findings under Rule 18 (17) of the Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007 dated 11.02.2022, the Disciplinary Committee was inter-alia of the opinion that **CA. Aashish Nandkishor Kabra, Jalgaon** (hereinafter referred to as the **Respondent**) was **GUILTY** of professional misconduct falling within the meaning of Item (7) of Part I of the Second Schedule to the Chartered Accountant Act, 1949.

2. The Committee noted that the Respondent was present through video conferencing mode. The Respondent submitted that he uploaded the necessary financial statements from the data scanned by the client available in the pen-drive given to him. The Respondent further pleaded that the error in the certificate was human error, and no financial loss was caused to anyone by relying on said certificate. He further added in his submission that his mental condition was not well at that point of time due to some family issue. He accordingly requested to take lenient decision against him.

BSS



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3. The Committee noted that in the present matter, the Respondent certified and uploaded wrong Forms/ documents on the MCA portal, by relying on the data given in a pen drive provided to him by the client and did not exercise due diligence. The Respondent was required to check the requisite documents properly before submitting the same on the MCA portal.
4. The Committee also noted that there were issues between the directors of the Company and no financial loss was caused to anyone by relying on said certificate. Accordingly, the Committee viewed that ends of justice can be met if reasonable punishment is given to the Respondent to commensurate with his above professional misconduct.
5. Therefore, keeping in view the facts and circumstances of the case, material on record and submissions of the Respondent before it, the Committee ordered the Respondent - CA. Aashish Nandkishor Kabra, be reprimanded along with the fine of Rs.25000/- (Twenty-Five Thousand Rupees).

Sd/-  
(CA. (DR.) DEBASHIS MITRA)  
PRESIDING OFFICER

Sd/-  
(MRS. RANI NAIR, I.R.S. RETD.)  
GOVERNMENT NOMINEE


Sd/-  
(CA. RAJENDRA KUMAR P)  
MEMBER

Sd/-  
(CA. COTHA S SRINIVAS)  
MEMBER

Date: 01.06.2022

Place: New Delhi

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

  
विभागाध्यक्ष / Bishwa Nath Twarri  
कार्यकारी अधिकारी / Executive Officer  
अनुशासनात्मक निदेशालय / Disciplinary Directorate  
इंस्टीट्यूट ऑफ चार्टर्ड एकाउंटेंट्स ऑफ इंडिया  
The Institute of Chartered Accountants of India  
आइसीएआई भवन, विश्वास नगर, शाहदरा, दिल्ली-110032  
ICAI Bhawan, Vishwas Nagar, Shahdara, Delhi-110032

**CONFIDENTIAL**

**DISCIPLINARY COMMITTEE [BENCH – II (2021-2022)]**

**[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/170/16-DD/09/INF/18-DC/1199/19]**

**In the matter of:**

**CA. AASHISH NANDKISHOR KABRA (M.No.141321),  
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Mahabal Area,  
JALGAON – 425 001**

**.....Respondent**

**MEMBERS PRESENT:**

**CA. (Dr.) Debashis Mitra, Presiding Officer  
Shri Rajeev Kher, Govt. Nominee (Through VC)  
CA. Babu Abraham Kallivayalil, Member**

**DATE OF FINAL HEARING : 02.09.2021 (Through Video Conferencing)**

**PARTIES PRESENT**

**Respondent : CA. Aashish Nandkishor Kabra  
Counsel for Respondent : CA. Shashikant V Barve**

**CHARGES IN BRIEF:-**

1. The Committee noted that the Respondent in the present case had certified and filed Form AOC-4 (A-19 to A-21) of Nashik Diocesan Trust Association Ltd. (hereinafter referred as to the "Company") containing auditor report and financial statements in the name of the Informant which according to informant were not signed by him. The Committee noted that the Respondent was held Prima-facie Guilty by Director (Discipline) of Professional Misconduct falling within meaning of Clause (7) of Part I of the Second Schedule to the Chartered

Accountants Act, 1949 on the charge that audit report enclosed alongwith Form AOC-4 was of 02.11.2015 (Page A-9 of prima-facie Opinion) whereas the date of AGM wherein the said report has been adopted is dated 30.09.2015 (Page A-6 of prima-facie Opinion).

#### **BRIEF FACTS OF THE PROCEEDINGS:**

2. On the day of the final hearing on 02/09/2021, the Committee noted that the Respondent along with his counsel CA. Shashikant V Barve was present before it through Video Conferencing mode from ICAI BKC Office Mumbai. The Respondent was put on oath. On being asked by the Committee whether he accepts the charges leveled against him, the Respondent pleaded not guilty and wished to defend the charges. Thereafter the Respondent made detailed submissions in his defence. After considering all papers available on record and after detailed deliberations and recording the submissions, the Committee decided to conclude the matter.

#### **FINDINGS OF THE COMMITTEE**

3. The Committee noted that Counsel while drawing the attention of the Committee raised two grounds in respect of technical error in dealing with the complaint. The Counsel submitted that the complaint was filed on 21/05/2016 and it was sent to the Respondent as information on 5th March 2018 which was 22 months from the date of the complaint against the Respondent whereas as per the Rule 8(1) of The Chartered Accountants (Procedure of Investigation of Professional and Other Misconduct and Conduct of Cases) Rules, 2007 the Disciplinary Director has to send the information letter within 60 days to the Respondent while here it is 22 months. Accordingly, he submits that there is a clear violation of Rule 8(1) of above Rules.
- 3.1 The Committee in this regard was of the view that present case is being treated as "Information" and not Complaint and therefore is governed by Rule 7 of the Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007. Hence, in view of the

Committee, plea taken by the Respondent's Counsel as regard to Rule 8(1) of the Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007 is not tenable.

4. The Committee noted the submission of the Counsel that under Rule 18(6) of the Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007, the Disciplinary Committee has to hold the hearing within 45 days from the date of formation of prima-facie opinion, the prima-facie opinion is dated 29/05/2019 while the PFO has been sent to the Respondent on the 09/03/2020. So, it was sent to the Respondent after almost 09 months which is a clear-cut violation of Rule 8(1) and 18(6) of the Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007.

4.1 The Committee as regards to Rule 18(6) is of view that the said provision is a directory and not mandatory. This is also obvious from the fact that it cannot be the mandate of law that merely because the hearing was not held within 45 days, the Chartered Accountant in question would stand absolved. The provisions of Rule 18(6) cannot be considered as mandatory for two reasons- firstly use of the word "shall not ordinarily be later than " implies that in exceptional circumstances it can be fixed even beyond 45 days; and secondly the intention to provide a time frame to fix the hearing is to expedite the hearing of such matters and avoid unnecessary delays and no penal consequences had been prescribed if the hearing is not fixed in the prescribed time. Accordingly, the Committee was of view that the provision must be construed as a directory and not mandatory.

5. With regards to the merit of the case the Counsel of the Respondent submitted that he was approached by the client's representative in October,2015 for filing Form AOC 4. The said representative also showed him financial statements and audit report dated 30<sup>th</sup> September 2015, but since said representative was not having adequate documents like copy of minutes etc, hence the form was not filed during October, 2015. The Counsel further submitted that during the month of November 2015, the client representative approached him again

along with copies of necessary minutes, financial statement and audit report etc. in the pen-drive. The Respondent uploaded the necessary financial statements from the data available in the said pen-drive given by the client. He further mentioned that there was no difference in both the sets of balance sheets and the Respondent inadvertently uploaded the wrong file on the MCA portal. He further mentioned that there has been no impact on the true and fair view. The Respondent also submitted affidavit of the client in his defence.

6. The Committee noted that the Respondent solely relied on the data given in pen drive provided to him by the client and did not exercise due diligence before certifying and uploading Forms/ documents on the MCA portal. The Respondent was required to check the requisite documents properly before submitting the same on MCA portal. The lack of exercising due diligence by the Respondent, resulted in uploading wrong documents on MCA portal by the Respondent. Accordingly, the Committee holds the Respondent **GUILTY** of this charge.

### CONCLUSION

7. In view of the above findings stated in above paras vis a vis material on record, Accordingly, in the considered opinion of the Committee, the Respondent is **GUILTY** of professional misconduct falling within the meaning of Item (7) of Part I of the Second Schedule to the Chartered Accountants Act, 1949.

sd/-

(CA. (Dr.) DEBASHIS MITRA)  
PRESIDING OFFICER

approved & confirmed through email  
(SH. RAJEEV KHER, I.A.S. (Retd.))  
GOVERNMENT NOMINEE

approved & confirmed through email  
(CA. BABU ABRAHAM KALLIVAYALIL)  
MEMBER

DATE: 11<sup>TH</sup> FEBRUARY, 2022  
PLACE: NEW DELHI

सही प्रतिलिपि होने के लिए प्रमाणित  
Certified to be true copy

मेनु गुप्ता / Menu Gupta  
कार्यकारी अधिकारी / Executive Officer  
अनुशासनमय विभाग / Disciplinary Directorate  
इंस्टिट्यूट ऑफ चार्टर्ड एकाउंटेंट्स ऑफ इंडिया  
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