



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

PR-72/2013/DD/263/2014/DC/565/2017

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.

PR-72/2013/DD/263/2014/DC/565/2017

In the matter of:

**Smt. Harshita Attaluri, I.P.S.,
The Head of Branch,**

Central Bureau of Investigation,
Bank Securities and Frauds Cell,
New Hind House, 2nd floor,
Narottam Morarjee Marg, Ballard Pier
MUMBAI – 400 001

.... **Complainant**

-Vs-

**CA. Divakara Shetty (M.No.100306)
Of Ms. N.S Shetty & Co. (FRN No. 110101W)**

Arjun plot no. 6A, Kalyan Gram Society,
V P Road Andheri (West)
MUMBAI– 224001

.... **Respondent**

MEMBERS PRESENT (Physically):

1. CA. (Dr.) Debashis Mitra, Presiding Officer
2. Mrs. Rani Nair, I.R.S. (Retd.), Government Nominee
3. Shri Arun Kumar, I.A.S. (Retd.), Government Nominee
4. CA. Rajendra Kumar P, Member
5. CA. Cotha S Srinivas, Member

DATE OF MEETING : 08.04.2022 (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. Divakara Shetty (M.No.100306)**, (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. He submitted that he had taken requisite confirmations regarding debtors. He further submitted that his name was not included in charge sheet filed by CBI.

3. The Committee noted that during the audit period of the Respondent i.e. Financial years 2006-07 to 2008-09, there was huge variation in the figures of Sundry Debtors disclosed in



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Balance Sheet when compared to actual debtors. As per Balance Sheet Sundry Debtors were Rs. 5494.9 Lacs (Financial Year 2006-07), Rs. 11835.80 lacs (Financial Year 2007-08) and Rs. 18292.84 lakhs (Financial Year 2008-09) whereas actual debtors for these periods were respectively Rs. 1796.44 lakhs, 1870.93 lakhs and Rs. 1646.47 lakhs only.

4. On the question of sizable increase in debtors in the years 2006-07 to 2008-09, the Respondent submitted that since his client M/s Prominent Tours and Travels Pvt. Ltd. was in the business of ticketing, arranging tours, the transactions were voluminous in nature and during the period of audit in question, it was not an established practice to take confirmation from each of debtors. The Committee also wanted to know whether CBI, i.e. the Complainant, have name of the Respondent as one of the accused in charge-sheet filed by them to which the Respondent said that he was not an accused and no charge-sheet filed by CBI contained his name as one of the accused party.

5. The Committee is of the view that such large increase in debtors should have raised reasonable suspicion while auditing books of accounts by the Respondent. The Respondent relied upon books of accounts, did not proceed to ascertain the facts, nor did he take any steps to obtain direct confirmation from the debtors and thus facilitating the management in obtaining facilities from the Financial Institutions.

6. Therefore, keeping in view the facts and circumstances of the case, material on record and submissions of the Respondent before it, the Committee ordered that the name of that name of the Respondent CA. Divakara Shetty (M.No.100306), Mumbai be removed from Register of members for a period of Six months along with fine of Rs 1,00,000/- (Rupees One Lakh).

Sd/-

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

Sd/-

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

Sd/-

(SHRI ARUN KUMAR, I.A.S. RETD.)
GOVERNMENT NOMINEE

Sd/-

(CA. RAJENDRA KUMAR P)
MEMBER

Sd/-

(CA. COTHA S SRINIVAS)
MEMBER

Jyotika
प्रमाणित सत्य प्रतिलिपि / Certified true copy

Date: 01.06.2022

Place: New Delhi

CA. Divakara Shetty (M.No.100306) Mumbai

सीए. ज्योतिका ग्रोवर / CA. Jyotika Grover
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

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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. : [PR-72/2013/DD/263/2014/DC/565/2017]

In the matter of:

Smt. Harshita Attaluri, IPS,
Head of Branch, CBI: BS&FC: Mumbai,
Central Bureau of Investigation, Govt. of India,
Bank Securities and Frauds Cell,
New Hind House, 2nd Floor,
Narottam Morarjee Marg, Ballard Pier,
Mumbai-400 001

.....Complainant

Versus

CA. Divakara Shetty (M. No.100306)
of M/s N. S. Shetty & Co.,(FRN No. 110101W)
Arjun Plot No. 6A, Kalyan Gram Society,
V P Road, Andheri (West),
Mumbai-400 058

.....Respondent

MEMBERS PRESENT (Through Video Conferencing):

1. Sh. Rajeev Kher, I.A.S. (Retd.), Presiding Officer & Government Nominee (Through VC)
2. CA. Amarjit Chopra, Government Nominee (Through VC)
3. CA. Babu Abraham Kallivayalil, Member (Through VC)

DATE OF FINAL HEARING : 12.11.2021 (Through Video Conferencing)

PARTIES PRESENT :

Complainant : Shri Vinod Kumar, Deputy Superintendent of Police, CBI (Authorized Representative)

Respondent : CA. Divakara Shetty,

Counsel of the Respondent : CA. A.P. Singh

CHARGES IN BRIEF:-

1. The Committee noted the the Respondent was the Statutory Auditor for the period 2006-07 to 2008-09 of M/s Prominent Tours & Travels Pvt. Ltd. (hereinafter referred to as "PTTPL"). The Committee noted the Respondent was held Prima Facie Guilty of Professional Misconduct falling within the meaning of Item (7) of Part I of the Second Schedule to the Chartered Accountants Act, 1949 by the Director Discipline on the charge that he verified the debtors as per the books of account produced by the M/s PTTPL before him and had not obtained any confirmation as he was auditor since long and hence relied upon the party.

BRIEF FACTS OF THE PROCEEDINGS:

2. On the day of final hearing on 12/11/2021, the Committee noted that on behalf of Complainant Department Shri Vinod Kumar, Deputy Superintendent of Police, CBI was present before it through Video Conferencing mode from his place. The Respondent was also present along with his Counsel CA. A.P Singh through Video conferencing mode from their respective places.
- 2.1 The Committee noted that in one of previous hearing the Counsel of the Respondent had raised issue relating to authorisation of the Complainant by mentioning that the complaint filed by the Complainant (Ms. Harshita Attluri) lacks compliance of Rule 3(2) of the Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007. The Committee on the same had taken legal opinion in the matter and noted that according to the legal opinion, Rule 3(2) enables an authorization by virtue of designation and it is well settled provision of law that where a statue/

rule confers powers on specified authorities/ officers, such a power has to be exercised in the manner as provided. Since Rule 3(2) provides authorization by virtue of designation, there would be no requirement of any other special authorization to enable the lodging of complaint. Said opinion further mentions that letter dated 04th September 2019 of the Complainant Department, which confirms and certifies compliance of Rule 3(2) by officials who signed the Form I, would remain valid. Accordingly, the Committee noted that the legal opinion validates the compliance of Rule 3(2) in the present complaint filed by CBI.

2.2 The Committee noted that the Counsel for the Respondent during the course of hearing scheduled on 12th November 2021 had raised the matter that all the members who have heard the case earlier are not present in the meeting. The Committee noted that before this bench practically two hearing had taken place in this Council year first on 14th June 2021 wherein all members of the present bench were present. In second hearing held on 30th September 2021 two members of present bench were present. The Committee noted that the members of the Bench are aware of facts of the case and opined that the Respondent's Counsel by such argument trying to linger on the issue and decided to proceed ahead. The Committee hence decided that plea of the Counsel of the Respondent cannot be accepted and directed him to proceed on merit. The Committee discussed various aspects of the case, heard all the parties. After considering arguments/ submissions of the parties and documents on record and after detailed deliberations, the Committee decided to conclude the matter.

FINDINGS OF THE COMMITTEE

3. The Committee noted that the Respondent in his submissions seems to have taken the defence of Rule 12 which empowers the Respondent to express his difficulties in explaining his acts which happened more than seven years ago. The Committee noted that the Respondent-firm has signed the Balance Sheet for the year ending 31st March 2007 on 27th July 2007 and the complaint based on investigation started on 26th November 2010. The Committee noted that the Complainant had brought

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on record statement of the Respondent taken on 24th August 2011. Thus, the Respondent was aware of the same and hence cannot take shed of Rule 12.

4. The Committee noted that the Counsel of the Respondent submitted that the Respondent had sufficient appropriate audit evidence based upon which he was satisfied with the verification of the debtors.
5. The Committee noted following chart which illustrates the inflation of the figures in Balance Sheets of PTTPL during 2004-05 and the audit period of the Respondent.

B/S items	2005-06	2006-07	2007-08	2008-09
Actual Sundry Debtors	811.43	1796.44	1870.93	1646.47
Increase in Sundry Debtors	1494.02	3698.46	9964.87	16646.37
Sundry Debtors as per Balance Sheet	2305.45	5494.90	11835.80	18292.84
Increase in Profit	272.74	733.98	2083.50	2612.12
Original (loss)	(190.70)	(483.91)	(1328.82)	2033.22)
Profit/(loss) as per balance sheet	82.04	250.07	754.68	578.90

On perusal of fact it is revealed that there were major variations in above figures which Respondent failed to point out.

6. The Committee further observed that as per Para 3 of AAS 5 (Audit Evidence), the auditor should evaluate whether he has obtained sufficient appropriate audit evidence before he draws his conclusions therefrom. The audit evidence should, in total, enable the auditor to form an opinion on the financial information. In forming such an opinion, the auditor may obtain audit evidence on a selective basis by way of judgmental or statistical sampling procedures. The Committee noted that no such procedure had been followed by the Respondent rather he merely relied on the client.

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7. In the opinion of the Committee, while AAS 5 (Audit Evidence) lays down several methods of inquiry and confirmations. In the opinion of the Committee, the Respondent has not been able to bring out any reasoning as to why no confirmations have been obtained in respect of Debtors.
8. In addition to this, the Committee also noted that as per AAS 5, an external confirmation represents audit evidences secured from the third party is more reliable than internal evidence. External confirmation needs to be secured to reduce the audit risk to an acceptable level. Noting, no such external confirmation of balances had been secured by the Company and the Respondent as an auditor in the case of debtors.
9. The Committee on considering the arguments of the Respondent's side, formed the opinion that it was the responsibility of the auditor to design and perform audit procedures in such a way to enable to obtain sufficient audit evidence so that a reasonable opinion could have been formed for forming an audit opinion. These evidences were to be obtained by substantive procedures as per AAS 5 (Audit Evidence). These substantive procedures among others covered external confirmations. The Committee was convinced with the fact that the Respondent failed to collect evidences obtained from independent sources to reduce the audit risk.
10. The Respondent had stated that they had verified the debtors as per the books of account produced by the M/s PTPL before him and had not obtained any confirmation as he believed the party. The Committee noted that similar acceptance was also given by the Respondent before CBI on 2nd September 2011 in his recorded statement. In other words, the Respondent confirmed not having done any audit on test basis, collecting evidence supporting the transactions with the debtors, etc which is in contradiction of statement provided by them in the Auditor Report. This is a grave irregularity on the part of the Statutory Auditor(s) amounting to a professional misconduct. Such certification of financial statements and furnishing of auditor's report induced the Bank to part with its funds in favour of Shri Kanakia and subsequently suffered huge losses.

11. Therefore, the Committee concluded that the Respondent did not exercise due diligence in the audit of the auditee company and did not plan the audit in such a way to apply additional substantive audit procedures where internal control of the auditee company in the case of a large number of party balances were not confirmed by the auditee company and hence hold him guilty of professional misconduct.

CONCLUSION

12. In view of the above findings stated, the Committee in its considered opinion hold the Respondent **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/-

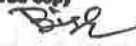
(SHRI RAJEEV KHER, IAS RETD.)
PRESIDING OFFICER AND GOVERNMENT NOMINEE

approved & confirmed through email
(CA. AMARJIT CHOPRA)
GOVERNMENT NOMINEE

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

DATE: 11TH FEBRUARY, 2022

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


बिष्व नथ तिवारी / Bishwa Nath Tiwari
कार्यकारी अधिकारी / Executive Officer
अनुशासनालयक निदेशालय / Disciplinary Directorate
इंस्टिट्यूट ऑफ चार्टर्ड एकाउंटेंट्स ऑफ इंडिया
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