



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

[PR/35/18-DD/89/18-DC/1456/21]

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/35/18-DD/89/18-DC/1456/21]

In the matter of:

**Smt. Nayna Solanki, Authorised Representative
of Shri Sunil Kewalramani, Mumbai,
2005/6, Steller Tower,
2nd Cross Lane, Opposite Rajput Dairy,
Lokhandwala, Andheri (West)
MUMBAI -400 053**

.... **Complainant**

-Vs-

**CA. Deepak Kumar Mantri (M.No.040348),
Partner, M/s. Mantri Ranjan & Associates,
Chartered Accountants,
405-406 Manas Bhawan Extension,
11, RTN Marg
INDORE -452001**

.... **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

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. Deepak Kumar Mantri (M.No.040348)**, (hereinafter referred to as the **Respondent**) was **GUILTY** of professional misconduct falling within the meaning of Item (5) and (7) of Part I of the Second Schedule to the Chartered Accountant Act, 1949.



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2. The Committee noted that the Respondent was present through video conferencing mode. He reiterated his earlier submission that it is a matter of interpretation regarding applicability of Section 185 of Companies Act, 2013. The Committee noted that the Respondent admitted his mistake that non-compliance is mere technical and was of interpretational issue.

3. The Committee while looking into the matter is of the opinion that it is clearly coming out from the findings that the issue involved in the present matter was regarding applicability of Section 185 of Companies Act, 2013. The said section 185 according to the Respondent is a matter of interpretation. The Respondent further submitted that it is a technical mistake which has been committed by him by relying on the language used in Section 185 and 186 of Companies Act, 2013. The Committee after hearing the Respondent is convinced that the issue in hand is one of interpretation and the act of the Respondent does not bring out any mala-fide intention on his part.

4. 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 Respondent CA. Deepak Kumar Mantri (M.No.040348), be reprimanded.

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

Date: 01.06.2022

Place: New Delhi


प्रमाणित सत्य प्रतिलिपि / Certified true copy

सीए. ज्योतिका ग्रोवर / CA. Jyotika Grover
सहायक सचिव / Assistant Secretary
अनुशासनात्मक 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, Shadra, 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. : [PR/35/2018-DD/89/18-DC/1456/2021]

In the matter of:

Smt. Nayana Solanki,

Authorised Representative of Shri Sunil Kewalramani,

2005/6, Stellar Tower

2nd Cross Lane, Opposite Rajput dairy

Lokhandhwala, Andheri (West)

Mumbai – 400053

.....Complainant

Versus

CA. Deepak Kumar Mantri (M.No.040348),

Partner, M/s. Mantri Ranjan & Associates,

Chartered Accountants,

405,406 Manas Bhawan Extension,

11, RNT Marg,

Indore – 452001

.....Respondent

MEMBERS PRESENT:

CA. (Dr.) Debashis Mitra, Presiding Officer, through Video Conferencing

Shri. Rajeev Kher, I.A.S. (Retd.), Government Nominee, through Video Conferencing

CA. Babu Abraham Kallivayalil, Member, through Video Conferencing

DATE OF FINAL HEARING : 02.09.2021 (through Video Conferencing)

PARTIES PRESENT :

Counsel for the Complainant : Mr. Dushyant Manocha, Advocate

Respondent : CA. Deepak Kumar Mantri,

Counsel for the Respondent : Mr. S.G. Gokhale, Advocate

CHARGES IN BRIEF:-

1. The Committee noted that in the present case, Medilux Laboratories Pvt. Ltd. (hereinafter referred to as "**Lending Company**") had advanced loans to Kaizen Global (India) Services Pvt. Ltd (hereinafter referred to as a "**Borrower Company**"). The Complainant along with one more person were common Directors in both lending and borrower Companies. The Respondent was a Statutory Auditor of lending Company for the financial year 2016-17.
2. The Committee noted that the Respondent was held Prima-facie Guilty of Professional Misconduct falling within the meaning of Item (5) & (7) of Part I of the Second Schedule to the Chartered Accountants Act, 1949 on the charge that the Respondent being an auditor of lending Company had wrongly reported that the Company had not violated the provisions of Section 185 of Companies Act, 2013 while the Company had granted loans to Borrower Company in whom directors are interested.

BRIEF FACTS OF THE PROCEEDINGS:

3. On the day of the final hearing on 02/09/2021, the Committee noted that the Complainant Counsel Mr. Dushyant Manocha, Advocate was present through Video Conferencing mode from his place. The Respondent along with his Counsel Mr. S.G. Gokhale, Advocate were present before it through the BKC office of ICAI, Mumbai. The Respondent was administered Oath. Accordingly, the Committee asked the Complainant's Counsel to present the charges. The Counsel for the Complainant read the charges before it. The Respondent pleaded not guilty to the charges and his Counsel presented arguments in

defense on charges alleged. After considering all papers available on record and after detailed deliberations and recording the submissions, the Committee decided to conclude the matter and decided to reserve its judgment with direction to both parties to submit their further submission, if any, in next 10 days with a copy to each other.

- 3.1 Thereafter this matter was placed in meeting dated 15th September 2021 for consideration of the facts and arriving at a decision by the Committee. The case was considered by same members who earlier heard this case. The Committee noted that the Complainant had made certain submissions in the matter; however the Respondent failed to submit any further submission. Keeping in view the facts and circumstances of the case, material on record and submissions of the parties at the time of hearing held on 2nd September, 2021 the Committee passed its judgement.

FINDINGS OF THE COMMITTEE

4. The Committee noted that the Respondent's Counsel submitted that there was ambiguity in understanding newly introduced section 185 of the Companies Act, 2013 and hence disclosure under CARO was result of difference of Opinion. The Respondent's Counsel further submitted that there is the cardinal principle of interpretation of the statute that says that no part of the statute can be rendered redundant along with constructive interpretation so that this section, as well as other section, exist (Section 185 and section 186 in the present case). He further mentioned that the Respondent in Annexure 'A' of his report under clause (iii) had given complete disclosure (page C-11 of prima-facie opinion).
5. The Committee noted that under clause (iii) of Annexure 'A' of audit report, disclosure made by the Respondent was related to separate section viz. section 189 of the Companies Act, 2013 whereas the alleged default is in respect of section 185 of the Companies Act, 2013. Hence the plea of disclosure by the Respondent under separate Clause is not tenable.

6. The Committee observed that it is an admitted fact that loan was given by the lender Company to borrower company and these companies were having Common directors. As per clause (c) to the Explanation to section 185 (1) which states that "*For the purposes of this section, the expression "to any other person in whom director is interested" means— (c) "any private company of which any such director is a director or member"* and borrower Company being a Private Limited Company has two of its Directors which are also Directors of lending Company. Therefore, there is an obligation on the part of auditor as per the requirement of clause 3(iv) of Companies Audit Report Order, 2016 (CARO 2016) to report as to whether the provisions of Section 185 and 186 were complied with or not.
7. Looking into transaction between the Companies, the Committee was of view that loan given by M/s. Medilux Laboratories Pvt. Ltd. to M/s. Kaizen Global Services Pvt Ltd was attracting provisions of Section 185 of the Companies Act, 2013 since both the Companies had common Directors **(W-97 & W-97A)**.
8. The Committee observed that Section 185 introduced in the Companies Act, 2013 was intended for absolute prohibition for Companies from advancing any loan etc. to Directors of such Company or any other person in whom the Director(s) is/are interested. Accordingly, it is observed that the intent of the legislature by incorporating a rigid Section 185 of the Companies Act, 2013 or Section 295 of the earlier Companies Act, 1956 was to ensure that Directors do not surpass their fiduciary duty towards the Company for their personal benefit.
9. The Committee noted that the Respondent was required to give qualified opinion whereas he has given incorrect statement by mentioning that "*In respect of loans, investments, guarantees and security, the provision of section 185 & 186 has been complied with.*" (W-12).
10. The Committee noted that the Respondent was not only negligent in his professional duties but also failed to disclose a material fact known to him in financial statement. Accordingly the Committee hold him Guilty of Professional

Misconduct falling under Items (5) and (7) of Part – I of Second Schedule of the Chartered Accountant Act, 1949.

CONCLUSION

9. In view of the above findings stated in above paras vis a vis material on record, in the considered opinion of the Committee, the Respondent is **GUILTY** of Professional Misconduct falling within the meaning of Item (5) and (7) of Part I of Second Schedule to the Chartered Accountants Act, 1949.

sd/-

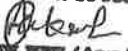
(CA. (Dr.) DEBASHIS MITRA)
PRESIDING OFFICER

approved & confirmed through email
(SHRI RAJEEV KHER, IAS RETD.)
GOVERNMENT NOMINEE

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

DATE: 11TH FEBRUARY, 2022
PLACE: NEW DELHI

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


अरुण कुमार / Arun Kumar
कार्यकारी अधिकारी / Executive Officer
अनुशासनात्मक निदेशालय / Disciplinary Directorate
इंस्टिट्यूट ऑफ चार्टर्ड एकाउंटेंट्स ऑफ इंडिया
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