

CONFIDENTIAL

DISCIPLINARY COMMITTEE [BENCH – III (2022-23)]
[Constituted under Section 21B of the Chartered Accountants Act, 1949]

Findings under Rule 18(17) and 19(2) of the Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007

Ref. No. [PR 182/15/DD/206/2015/DC-1430/2021]

In the matter of:

Smt. Madhuri Prasad
H-405, Purva Fountain Square,
Marathalli,
Bengaluru – 560 037

Versus

.....Complainant

CA. H.S. Shiva Prakash (M.No. 219090)
M/s. Mukunda Shiva & Associates,
No. 267, 6th Cross,
1st Block, Jayanagar,
Bengaluru – 560 011

.....Respondent

Members Present:

Smt. Anita Kapur, Presiding Officer & Member (Govt. Nominee)
Dr. K Rajeswara Rao, Member (Govt. Nominee)
CA. Vishal Doshi, Member
CA. Sushil Kumar Goyal, Member

Date of Final Hearing: 3rd November, 2022 through Video Conferencing

Parties Present:

- (i) CA. H. S. Shiva Prakash – Respondent
(ii) CA. Mukunda – Counsel for Respondent



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 Clause (7) of Part I of Second Schedule to the Chartered Accountants Act, 1949. The Clause (7) to Part I of Second Schedule states as under: -

Part I of Second Schedule:

PART I: Professional misconduct in relation to chartered accountants in practice

A chartered accountant in practice shall be deemed to be guilty of professional misconduct, if he-

...
"(7) Does not exercise due diligence, or is grossly negligent in the conduct of his professional duties"

Brief background and the allegations against the Respondent:

2. The Complainant was resident of Bengaluru and had desired to sell her property in Patna by entering into an Agreement in the year 2011 with one Mohammed Shakil Akhtar (PAN No.AHAPA4454D) (hereinafter referred to as the "Client"), who as per the Complainant, defaulted in making the mutually agreed payment, thereby rendering the said Agreement as null & void. Based on the forgery in the said Agreement, the client filed an FIR against the Complainant and the same was pending for quashing before the Hon'ble Patna High Court, which made a query about the financial worth & Income Tax records of Mohammed Shakil Akhtar claiming to have spent cash of Rs.3.18 crores. As per the Complainant, the Respondent entered into a criminal conspiracy at this stage with his client, Shri Mohammed Shakil Akhtar for fabrication of false evidence in the form of financial statement as on 31/03/2015 which was submitted before the Hon'ble Patna High Court. Mohammed Shakil Akhtar stated on oath before Hon'ble Patna High Court that certain large sum of money has been paid in cash to the Complainant totalling Rs.2.03 crores apart from having incurred expenditure of Rs.75 lakhs towards



the boundary wall and Rs.35 Lakhs towards the sand filling and Rs.5 lakh towards travel expenses.

The allegations levelled by the Complainant against the Respondent for certifying the financials of his client are as under:-

- (i) That the expenses incurred on construction of Boundary wall, Sand filling and air travel expenses were in the nature of investment into the property by the Client and were of capital nature, the same should have been capitalized in the books of accounts of the Client. It was stated that such expenses were made outside the books of accounts and were not shown in the Balance Sheet as on 31/03/2015 submitted before the Hon'ble High Court. Thus, it was alleged that the Balance Sheet prepared by the Respondent did not depict the correct state of financial affairs of the Individual.
- (ii) That there was concealment of income by not accounting the profit received @ 25% profit sharing ratio from the partnership firm M/s. Spice House (C58-C77) and M/s.Cuisine Pride. Also there was no mention of Advance of Rs.1.25 lakh invested in the said firm which should have appeared on the Assets side of the Balance Sheet (C32).
- (iii) That there was concealment of assets by not accounting the Assets in the form of four storyed building in the prime market area at J.P. Nagar. Further, there was concealment of rental income Rs.3,07,500/- per month which was increasing @10% every year. Taking the average market rate of Monthly Rental Return @ 0.4%, the value of the assets was Rs.7,68,75,000/-.

Proceedings:

3. During the hearing held on **3rd November 2022**, the Committee noted that neither the Complainant appeared before it nor any communication was received from her in respect of the hearing although notice of the extant hearing was delivered by hand through Bengaluru Office of the Institute. The Committee further noted that the Respondent alongwith his Counsel was present through videoconferencing before it for hearing. Accordingly, the Committee decided to proceed in the matter. Thereafter,

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they gave declaration that there was nobody present 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.

The Committee noted that the matter was substantially heard during the last hearing and that matter could not be concluded due to change in constitution of the Bench. The Committee, thereafter, asked the Respondent if he want to make any further submissions in the matter other than that already available on record. The Counsel for the Respondent requested the Committee to consider the submissions already made before it to conclude on the matter.

Based on the documents available on record and after considering the oral and/or written submissions of the parties, the Committee concluded hearing in the matter.

Findings of the Committee:

4. At the outset, the Committee noted that the Respondent had been alleged to have fabricated/ falsified the financial statement of Shri Mohammed Shakil Akhtar as on 31/03/2015 for the purpose of submission before the Hon'ble Patna High Court. It was noted that the Respondent submitted that he was not a party to the litigation between the Complainant and his Client and that no document was prepared by him for the query of the Court. It was noted that the alleged financials were dated May 2015 and the figures thereof were included as 'Income from Profts and Gains from Business or Profession' for filing income tax return on 7th Sept 2015 (W-35 to W-66). Further, similar returns were filed for previous two financial years too. Hence, in the absence of any corroborating evidence, it was viewed that the allegation against the Respondent to have fabricated the financial statement of Shri Mohammed Shakil Akhtar for the purpose of submission before the Hon'ble Patna High Court is not acceptable.

5. It was noted that the next allegation was in relation to expenses incurred by the Client on land being purchased from the Complainant for construction of Boundary wall, Sand

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filling and air travel expenses and it was alleged that the said expenses were of capital nature but were not capitalized in the books of accounts of the Client and thus, the alleged financials certified by the Respondent did not depict correct state of financial affairs of his Client. The Respondent submitted that the said expenses were either paid by third party or were included under the head 'Loans and Advances'. As regard third party payment, it was submitted that firstly it was not brought to his notice and in any case amount paid/ borne by third party would not appear in his client's account. Further, with respect to expenses borne by his client, the Respondent argued that once the expenses were paid they were not required to be shown as liabilities. It was viewed that once the expenses were incurred on assets to be acquired in future they should be considered as advance. Hence, such expenses being included as 'loans and advances' is correct depiction of the then transactions. It was, accordingly, viewed that said transactions were brought before the Respondent for certification of financial statements of Client, however, the issues raised by the Complainant came into picture on filing of court cases between the Client and the Complainant wherein the Respondent was neither the party nor the Respondent had any direct or indirect interest and the said issues were duly clarified and explained by the Respondent. Accordingly, the Respondent was held **Not Guilty** within the meaning of Item (7) of Part I of Second Schedule to the Chartered Accountants Act, 1949.

6. With regard to the second charge regarding concealment of income by not accounting the profit received @25% profit sharing ratio from the partnership firm M/s. Spice House and M/s. Cuisine Pride as well as that of advance of Rs.1.25 lakh invested in the said firm. It was noted that the Respondent submitted that the said allegation had been drawn from the Capital Contribution and Profit and Loss sharing clauses of Partnership Deed of 'Spice House' wherein it was mentioned that Client shall make a contribution of Rs. 1,25,000/- towards capital and that he was entitled to 25% share of profits. The Respondent controverted the said stand of the Complainant and stated that Complainant had not furnished any material evidences to prove that the transaction of capital contribution or that of receipt of share of profits was actually executed/ accrued to the Client. The Respondent further stated that the Client had duly received the salary



from M/s. Spice House partnership firm of Client's brother Mr. Shahid Aqubal. The receipt of the same was duly recognised and incorporated in the financial statement and was disclosed as 'Salary'. With respect to capital contribution of Rs.1.25 lakh, it was submitted that it was neither paid in cash nor vide cheque as confirmed by the Client at the time of finalising the alleged financials, hence, the same was not recorded in the said financials.

6.1 The Committee perused the partnership deed dated 11/11/2011 of M/s. Spice House (C-58 to C-66) and partnership deed dated 24/03/2014 of M/s. Cuisine Pride (C-67 to C-77) wherein the clause for interest on capital @ 10%, Profit Sharing Ratio of 25% and that of remuneration was mentioned. The Committee further considered the submissions of the Respondent and viewed that Respondent being the certifying professional could not go beyond the documents and evidences brought before it at the time of said certification work. Further, the Complainant had not brought on record evidences with respect to transaction of capital contribution/ receipt of share of profits and other material to support her claim. Thus, keeping in view, the facts and circumstances of the case, the Committee was of the view that in the absence of any evidence to corroborate the allegations made against the Respondent, he was **Not Guilty** within the meaning of Item (7) of Part I of Second Schedule to the Chartered Accountants Act, 1949.

7. With respect to the third charge about concealment of asset - four storeyed building in the prime market area at J.P. Nagar as well as its rental income of Rs. 3,07,500/- per month subject to increase @ 10 % every year from the accounts of Shri Mohammed Shakil Akhtar (Client), it was noted that the Respondent had submitted to have not considered any figures/ transactions in the absence of related documents. As per him, there was no transaction involving rental income that could be identified through bank statements of the Client during the financial year 2014-15 and that the Client had confirmed that no rental income was received in cash. The rental agreements were not submitted with Respondent at the time of certification of financial statements. Further,



the Respondent sought clarification from the Client afterwards and it was stated that the said agreements were later on cancelled and no such rental income was received.

7.1 The Committee, perused the said copy of four rent agreements executed between Client on one part and other parties on other part on 08/05/2012 (C-80 to C-83), on 05/08/2012 (C-84 to C-87), on 16/11/2011 (C-88 to C-91) and on 16/11/2011 (C-92 to C-95), viewed that although copy of agreements dated 20/11/2012 were there on record but there is no evidence about receipt of rental income in the hands of the Client. Further, the possibility of cancellation of said agreements could not be ruled out. Thus, the Committee viewed that the said charge could not sustain against the Respondent. Accordingly, the Respondent was held Not Guilty within the meaning of Item (7) of Part I of Second Schedule to the Chartered Accountants Act, 1949.

8. The Committee further noted that Complainant was not present before it even after delivery of notice of meetings listed before it and further failed to support/ substantiate the charges raised by her against the conduct of the Respondent. The Committee noted that the evidences brought before it were duly explained by the Respondent at the time of hearing and no contrary material was brought on record which may point out at misconduct on the part of Respondent while certifying the financial statement of Shri Mohammed Shakil Akhtar (Client) as on 31/03/2015.

9. It is viewed that when the alleged attestation function was performed by the Respondent, it would have been better if the scope of his assignment be also clarified to bring clarity of his role in the capacity of being professional. Accordingly, the Respondent has been advised to be more cautious in future assignments.

Conclusion

8. Keeping in view, the facts and circumstances as discussed hereinabove, the Committee is of the considered view that the Respondent was held NOT GUILTY under Item (7) of Part I of the Second Schedule to the Chartered Accountants Act, 1949.

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9. Accordingly, in terms of Rule 19(2) of the Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007, the Committee passed order for closure of this case.

Sd/-
[Smt. Anita Kapur]
Presiding Officer and Member (Govt. Nominee)


Sd/-
[Dr. K. Rajeswara Rao]
Member (Govt. Nominee)

Sd/-
[CA. Vishal Doshi]
Member

Sd/-
[CA. Sushil Kumar Goyal]
Member

Date: 7th December, 2022
Place: New Delhi

सही प्रतिलिपि होने के लिए प्रमाणित
Certified to be true copy


बिशा नाथ तिवारी / Bishwa Nath Tiwari
कार्यकारी अधिकारी / Executive Officer
अनुशासनात्मक निदेशालय / Disciplinary Directorate
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