



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

[PPR/P/408/17-DD/353/INF/17 -DC/1369/2020]

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.

[PPR/P/408/17-DD/353/INF/17 -DC/1369/2020]

In the matter of:

CA. Narayan Balkrishan Toshniwal (M. No. 048334)
M/s N.B.T. & Associates
Chartered Accountants,
427, 4th Floor, The Summit Business Bay,
Opp. Cinemax Cinema, Near WEH Metro Station,
Andheri Kurla Road, Andheri East,
Mumbai – 400 093

.....Respondent

MEMBERS PRESENT:

1. Mrs. Rani Nair, I.R.S. (Retd.), Government Nominee and Presiding Officer (Present in person)
2. Shri Arun Kumar, I.A.S. (Retd.), Government Nominee (Present in person)
3. CA. Rajendra Kumar P, Member (Through Video-Conferencing Mode)
4. CA. Cotha S Srinivas, Member (Present in person)

DATE OF MEETING : 07.12.2022 (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 31st October 2022, the Disciplinary Committee was, inter-alia, of the opinion that **CA. Narayan Balkrishan Toshniwal (M. No. 048334), Mumbai** (hereinafter referred to as the **Respondent**) was **GUILTY** of Professional and/or Other Misconduct falling within the meaning of Item (7) of Part I of the Second Schedule, Item (1) of Part II of the Second Schedule and Item (2) of Part IV of First Schedule to the Chartered Accountant Act 1949.

2. The Committee noted that the Respondent was present through Video Conferencing Mode. The Committee noted that the Respondent had submitted his written submissions dated 25th November 2022. The Committee also noted that the Respondent, during his oral submission before it, had inter-alia submitted that his holding was merely 0.12% of the total shareholding of the Company, whereas he along with his family members holds total shares of Rs. 32,000/-, of the Company, which was 0.64% of the total shareholding of the Company. He further mentioned that he did auditing for one year only and thereafter he resigned from the auditing of the Company. He further prays to the Committee to deal with his case sympathetically and not to impose any punishment.



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

[PPR/P/408/17-DD/353/INF/17 -DC/1369/2020]

3. The Committee noted that the instant matter pertains to information received from SEBI. The Committee noted that the total paid up capital of the Company was Rs. 49,80,000 (comprising of 4,98,000 number of shares of Rs. 10/- each) whereas the holdings of the Respondent and his family members were only 3200 shares. The Committee also noted that neither the Respondent nor his family were director(s) or employee(s) of the Company.
4. The Committee also noted that the Respondent did auditing for one year only, and thereafter he resigned from auditing of the Company. The Committee, looking into meagre shareholding (i.e. not even 1%) opined that the Respondent could not be in a position to influence the management.
5. The Committee noted that the basic charge against the Respondent is that he despite holding shares of the Company, had audited and signed the Financial Statements of the Company for the Financial Year 2012-13 and hence was disqualified to act as the statutory auditor of the Company and had also failed to follow the mandatory requirement of independence laid down in SA-200. The Committee further noted that the allegation of SEBI merely pertains to the holding of shares by the Respondent and his family members despite being auditor of the Company, and there was no other allegation against the Respondent specifically regarding any flaws in or quality of the audit report.
6. The Committee noted that the Respondent, upon realising the mistake, had resigned from the auditorship of the Company. The Committee looking into the same, was of the view that ends of justice can be met if moderate punishment is given to the Respondent.
7. Therefore, keeping in view the facts and circumstances of the case, the material on record and the submissions of the Respondent before it, the Committee ordered that CA. Narayan Balkrishan Toshniwal (M. No. 048334), Mumbai, be Reprimanded along with a fine of Rs.25,000/- (Rupees Twenty Five Thousand only).

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

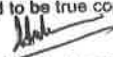
Sd/-
(SHRI ARUN KUMAR, I.A.S. RETD.)
GOVERNMENT NOMINEE

Sd/-
(CA. RAJENDRA KUMAR P)
MEMBER

Sd/-
(CA. COTHA S SRINIVAS)
MEMBER

DATE: 16.01.2023
PLACE: NEW DELHI

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


नीलम पुंडीर / Neelam Pundir
कार्यकारी अधिकारी / Executive Officer
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, Shahdara, Delhi-110032

CONFIDENTIAL

DISCIPLINARY COMMITTEE [BENCH – II (2022-2023)]

[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/P/408/17-DD/353/INF/17-DC/1369/2020]]

In the matter of:

CA. Narayan Balkrishan Toshniwal (M. No. 048334)

M/s. N.B.T. & Associates,

Chartered Accountants,

427, 4th Floor, The Summit Business Bay,

Opp. PVR Cinema

Near WEH Metro station,

Andheri Kurla Road, Andheri East,

Mumbai – 400 093

..... Respondent

MEMBERS PRESENT:

1. **CA. (Dr.) Debashis Mitra, Presiding Officer** (Present in person)
2. **Mrs. Rani S. Nair, I.R.S. (Retd.), Government Nominee** (Present in person)
3. **Shri Arun Kumar, I.A.S. (Retd.), Government Nominee** (Present in person)
4. **CA. Cotha S Srinivas, Member** (Through Video Conferencing mode)

DATE OF FINAL HEARING : 05.08.2022 (Through Physical/ Video Conferencing mode)

PARTIES PRESENT

Respondent :

CA. Narayan Balkrishan Toshniwal

Counsel for the Respondent:

CA. A.P. Singh

CHARGES IN BRIEF:-

1. The Committee noted that in the present information case, filed by SEBI, the Director (Discipline) had held the Respondent Prima-facie Guilty of Professional and Other Misconduct falling within the meaning of Items (4) and (7) of Part I of the Second Schedule, Item (1) of Part II of the Second Schedule and Item (2) of Part IV of First Schedule to the Chartered Accountant Act 1949 on the charge that the Respondent acted as the statutory auditor of the M/s Mishka Finance and Trading Limited (Formerly known as M/s. Pyramid Trading and Finance Limited) (hereinafter referred to as the "**Company**") and signed the balance sheet and audit report of the Company for 2012-13 on 29th May 2013 despite the fact that he along with his family members was holding shares of the Company.

BRIEF FACTS OF THE PROCEEDINGS:

2. On the day of the final hearing held on 5th August 2022, the Committee noted that the Respondent alongwith his Counsel, CA. A.P Singh was present through Video Conferencing Mode. The Respondent was administered on Oath. Thereafter, the Committee enquired from the Respondent as to whether he was aware of the charges. On the same, the Respondent replied in the affirmative and pleaded Not Guilty to the charges levelled against him. Thereafter, the Respondent's Counsel presented his line of defense by presenting the arguments. the Committee posed certain questions to him to understand the issue involved and the role of the Respondent in the case.
 - 2.1 Thereafter, the Committee gave directions to the Respondent to submit his summary of arguments within a week for the consideration of the Committee. The Committee decided to conclude the hearing by reserving the judgment in the instant matter.
 - 2.3 Thereafter, this matter was placed in the hearing held on 23rd August 2022 wherein same members were present. The Committee noted that the Respondent vide his e-mail dated 17th August 2022 had submitted the desired information/ documents. Keeping in view the facts and circumstances of the case, material on record and submissions of the party, the Committee passed its judgement.

FINDINGS OF THE COMMITTEE

3. The Committee noted that the Respondent's Counsel presented his line of defense by presenting the arguments relying upon Rule 3 stating that any matter initiated through a compliant file by any government authority (including SEBI that has been specifically named in Rules), should be authorized by an officer not below the rank of a Joint Secretary and should be authenticated by an officer not

below the rank of an Under Secretary in the Government of India. The documents provided to Respondent do not even contain a whisper of any authorization from an officer of the rank of a Joint Secretary for initiating this information case.

- 3.1 The Committee, in this regard, noted that the defence was taken by the counsel as regard to Rule 3 of the Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007 is not tenable as the present case is treated as "Information" not Complaint and is governed by Rule 7 of the Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007.
4. The Counsel for the Respondent, on the merits of the case, with regards to the charge levied upon the Respondent regarding Item (4) of Part I of the Second Schedule submitted that this item is applicable only in case where substantial interest exists. He submitted that the instant case in concern there is no such substantial interest exist and hence this clause is not applicable.
 - 4.1 The Committee in this regard noted that total paid up capital of the Company was Rs. 49,80,000/- (comprising of 4,98,000 number of shares of Rs. 10/- each) whereas the holdings of the Respondent alongwith his family members were only 3200 shares. The Committee also noted neither the Respondent nor his family were not a director or employee of the Company. The Committee looking into meager shareholding (i.e. not even 1%) opined that the Respondent could not be in a position to influence the management. Further the Committee noted that it has been explicitly specified in the Code of ethics published by ICAI that substantial interest would be deemed to exist only if member has a stake in the equity in business entity exceeding 20%. The Committee looking into same, exonerate the Respondent from this charge and hold him NOT GUILTY of professional misconduct falling within the meaning of Item (4) of Part I of the Second Schedule to the Chartered Accounts Act 1949.
5. The Counsel for the Respondent with regards to charge levied upon the Respondent regarding Item (7) of Part I of the Second Schedule submitted that this item is applicable only in case when there is lack of due diligence in the discharge of his professional duties. He further mentioned that though the entire documents of the case not even a single mention with respect of the quality of work of the Respondent and therefore, the applicability of Item (7) of Part I of the Second Schedule does not arise.

Further, the Counsel for the Respondent as far as charge levied upon the Respondent regarding Item (1) of Part II of the Second Schedule is concerned submitted that there is no contravention of Chartered Accountants Act or the Council Guidelines in the instant case and hence this item is also not applicable.

- 5.1 The Committee in this regard noted that it is fact on records that the Respondent despite being shareholder of the Company had audited and signed the Financial Statements of the Company for the Financial Year 2012-13. The Committee noted that the Respondent was appointed as auditor of the Company on 3rd September 2012 (B-5 and B-6) and as per records, one Mr. Ankit Jain had transferred shares to the Respondent and his family members on 30th April 2012 and 15th June 2012. Hence, the Respondent along with his family members have purchased the shares about 3 months prior to the date of appointment. The Committee further noted that the Respondent in the extant case has acted as the statutory auditor of the Company for the F.Y. 2012-13 and signed the balance sheet and audit report of the Company for 2012-13 on 29th May 2013 (A-49 to A-92).
- 5.2 In this regard, the provisions relating to disqualification as an auditor are noted which are given as under:

Section 226: Qualifications and Disqualifications of Auditors: Companies Act 1956

"(3) None of the following persons shall be qualified for appointment as auditor of a company –

.....
(e) a person holding any security of that company after a period of one year from the date of commencement of the Companies (Amendment) Act, 2000.

Explanation. - For the purposes of this section, "security" means an instrument which carries voting rights."

Corresponding section under Companies Act, 2013

Section 141: Eligibility, qualifications and disqualifications of auditors: Companies Act 2013

"—(3) The following persons shall not be eligible for appointment as an auditor of a company, namely:—

....
*(d) a person who, or his relative or partner—
is holding any security of or interest in the company or its subsidiary, or of its holding or associate company or a subsidiary of such holding company:
Provided that the relative may hold security or interest in the company of face value not exceeding one thousand rupees or such sum as may be prescribed"*

- 5.3 The Committee noted that the intent of provisions of Companies Act in clear terms provides that a person who ceases to be independent on account of holding security of the Company also becomes disqualified from holding the position of auditor of the Company.

- 5.4 The Committee further noted that Section 143(2) of the Companies Act, 2013 makes it obligatory for the auditor to make the audit report by taking into account all the provisions of Companies Act along with the applicable accounting and auditing standards. In this context, Standard on Auditing (SA) 200, "Overall Objectives of the Independent Auditor and the Conduct of an Audit in Accordance with Standards on Auditing is perused and the same provides as under-

"The auditor is subject to relevant ethical requirements, including those pertaining to independence, relating to financial statement audit engagements. Relevant ethical requirements ordinarily comprise the Code of Ethics issued by the Institute of Chartered Accountants of India.

In the case of an audit engagement it is in the public interest and, therefore, required by the Code of Ethics, that the auditor be independent of the entity subject to the audit. The Code describes independence as comprising both independence of mind and independence in appearance. The auditor's independence from the entity safeguards the auditor's ability to form an audit opinion without being affected by influences that might compromise that opinion. Independence enhances the auditor's ability to act with integrity, to be objective and to maintain an attitude of professional skepticism."

- 5.5 The Committee in view of the above noted that it is evidently clear that the auditor should act independently while forming an opinion on the financial statements of the company without being affected by the influences which might compromise his independence. In respect to the Independence of Auditor, ICAI has issued the Guidance Note on Independence of Auditors which further provides that:

"Independence of the auditor has not only to exist in fact, but also appear to so exist to all reasonable persons. The relationship between the auditor and his client should be such that firstly, he is himself satisfied about his independence and secondly, no unbiased person would be forced to the conclusion that, on an objective assessment of the circumstances, there is likely to be an abridgement of the auditors' independence. In all phases of a Chartered Accountant's work, he is expected to be independent, but in particular in his work as auditor, independence has a special meaning and significance. Not only the client but also the stakeholders, prospective investors, bankers and government agencies rely upon the accounts of an enterprise when they are audited by a Chartered Accountant."

- 5.6 Thus, in light of the facts and reasoning given in above stated paras, it is evidently clear that the Respondent was disqualified to act as the statutory auditor of the Company and thus has failed to not only comply with the provisions of Companies Act relating to disqualification in force during relevant year but also failed to follow the mandatory requirement of independence laid down in SA-200. Accordingly the Committee Holds the Respondent **GUILTY** of professional misconduct falling within the meaning of Item (7) of Part I of the Second Schedule and Item (1) of Part II of the Second Schedule to the Chartered Accountants Act 1949.

- 6 The Counsel further challenges the applicability of Item (2) of Part IV of the First Schedule is concerned Item (2) of Part IV can be made applicable if a prior opinion of Council exists. Further Director (Discipline) has not even discussed through his prima facie opinion where and how the Respondent had brought disrepute to the profession.
- 6.1 The Committee further viewed that accepting the statutory audit of the Company by the Respondent while compromising his independence on account of the fact that he held financial interest in the Company along with his family members and despite knowing fully that he was disqualified to be statutory auditor of the Company in terms of the provisions of the Companies Act as explained in earlier paras, is not expected of a Chartered Accountant who is expected to maintain high standards of conduct in his profession and whom society look upon with integrity and trust. Accordingly, the Committee in considered opinion holds the Respondent **GUILTY** of Other misconduct falling within the meaning of Item (2) of Part IV of First Schedule to the Chartered Accountants Act, 1949 also.

CONCLUSION

7. In view of the above findings the Committee in its considered opinion hold the Respondent is **GUILTY** of Professional Misconduct falling within the meaning of Items (7) of Part I of the Second Schedule, Item (1) of Part II of the Second Schedule and Item (2) of Part IV of First Schedule to the Chartered Accountants Act 1949 and held **NOT GUILTY** of Professional Misconduct falling within the meaning of Item (4) of Part I of the Second Schedule to the Chartered Accountants Act 1949.

sd/-

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

sd/-

(SMT RANI NAIR,IRS (RETD.)
GOVERNMENT NOMINEE

sd/-

(SHRI ARUN KUMAR, IAS (RETD.)
GOVERNMENT NOMINEE


sd/-

(CA. COTHA S. SRINIVAS)
MEMBER

DATE : 31.10.2022

PLACE : NEW DELHI

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


नीलम पुंडीर / Neelam Pundir
कार्यकारी अधिकारी / Executive Officer
अनुशासनमय विभाग / Disciplinary Directorate
The Instt.
अहमदाबाद
ICAI