

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/114/2016-DD/355/INF/2017-DC/1256/2019]

In the matter of:

CA. Rakeshkumar Shantilal Patni (M.No.043947)

M/s R.K. Patni & Co.

505, Ambience Court

Plot NO. 2, Sector 19-D

Opp! Vashi R.T.O. Office, Vashi

Naví Mumbai – 400 705

..... Respondent

MEMBERS PRESENT:

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

DATE OF FINAL HEARING : 28.06.2022 (Through Video Conferencing)

PARTIES PRESENT

Respondent : CA. Rakeshkumar Shantilal Patni
Counsel for the Respondent : CA. Bhupendra Shah

CHARGES IN BRIEF:-

1. The Committee noted that in the present case the Director (Discipline) had held the Respondent 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 on the charge that the Respondent has not submitted the exception report for M/s. Deep Investrade (Bombay) Pvt. Ltd (hereinafter referred to the "**Company**") for the year 2014-15 despite the fact that was carrying on NBF1 activities without obtaining Certificate of Registration from RBI in violation of provisions of Section 45IA of the RBI Act, 1934.

BRIEF FACTS OF THE PROCEEDINGS:

2. On the day of Final hearing held on 28th June 2022, the Committee noted that the Respondent was present with his counsel, CA. Bhupendra Shah through Video Conferencing Mode. The Committee noted that this case was part heard and adjourned on 30th September 2021.
 - 2.1 The Committee, at the outset, enquired from the Respondent that since, the composition of the Committee had changed further from the previous hearing, as to whether he wished to have a de-novo hearing. On the same, the Respondent submitted that the Committee may continue its proceedings in this matter from the stage it was left at the last hearing. The Committee acceded to his request and continued the hearing.
 - 2.2 Thereafter, the Committee asked the Respondent/ Counsel to present their case. The Respondent/his counsel presented his line of defense by presenting the arguments and the Committee posed certain questions to him to understand the issue involved and the role of the Respondent in the case.
 - 2.3 After hearing the Respondent, after considering all papers available on record and after detailed deliberations and submissions, the Committee decided to conclude the hearing by reserving the judgment in the instant matter.
 - 2.4 Thereafter, this matter was placed in the hearing held on 23rd August 2022 wherein same members were present. 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 with regards to case against his client, inter-alia, submitted as under:
 - a. That the Respondent was statutory audit of the Company since last more than 10 years.
 - b. That the auditee Company was a small Private Limited Company having share capital of hardly rupees One lakh and was not carrying on any financial/ NBFC activities/business.
 - c. That an amalgamation scheme were going on with one of the sister concerns and because of the amalgamation some funds were received by the Company on account of sale of Office premises.
 - d. These funds were temporarily lying idle with the auditee company and hence the Company gave part of these funds as short-term loan and advances to the sister concern and part of the amount was invested in the Equity /preference share of sister concern instead of investing the same into FDR or mutual funds. On that investment the Company earned interest and capital gain on sale of shares.
 - e. The Respondent in this regard due to genuine transactions between sister concerns was of bonafide belief that provisions of NBFC were not applicable.
 - f. On receipt of NCLT order the company was amalgamated with the sister concern. Hence from next year onwards, automatically, the Company was converted into NBFC by operation of law.

4. The Counsel while replying to specific query about communication from RBI during that period submits that the Respondent signed balance sheet for F.Y. 2014-15 on 25th August 2015 whereas RBI circular mentioned in the information letter was dated 29th September 2016. The Counsel pleaded that this RBI circular was not available to them at that time of signing of the balance sheet. He further submitted that when the Respondent came to know of this circular, even after signing of the balance sheet, he enquired about the format, but no format is

prescribed. Then, the Respondent suo-moto sent a reply on 15th November 2016 and corrected the mistake.

5. The Committee noted that as per charges the Company was carrying on NBF activities without obtaining Certificate of Registration in violation of provisions of Section 45IA of the RBI Act, 1934 and the Respondent failed to submit exception report for the year 2014-15 as required to comply with paragraph 5 of Non-Banking Financial Companies Auditor's Report (Reserve Bank) Directions, 2008 (now para 5 of NBFC Auditor's Report (Reserve Bank) Directions, 2016).
6. The Committee noted that as per Financial Statement of the Company, the income was from interest on loan and profit on sale of Investment only. The Committee noted that the Counsel of the Respondent accepted that these incomes were received from interest on loan given to sister concern and capital gain from investments made. The Committee further noted that the financial assets of company are more than 50% of its total assets.
7. The Committee also noted that the RBI has vide Notification No.DNBS(PD)CCNo.81/03.05.002/2006-07 dated October 19, 2006 to identify NBFC 's had described principal business as follows **(C-1)**:-

"The company will be treated as a non-banking financial company (NBFC) if its financial assets are more than 50 per cent of its total assets (netted off by intangible assets) and income from financial assets is more than 50 per cent of the gross income. Both these tests are required to be satisfied as the determinant factor for principal business of a company".

The Committee looking into financial statement was satisfied that both the conditions were satisfied by the Company and accordingly the Company required to get itself registered as NBFC with RBI.

8. The Committee also noted that since Company had not applied for registration and accordingly the Respondent was required to submit Exception Report to RBI. The Committee further noted that Respondent in his Audit Report of the Company

for the financial year 2014-15 had failed to report that the Company was carrying as NBFC without certificate of registration.

9. Further, the Committee on perusal of letter dated 15th November 2016 (**Page B-3 of Prima-facie opinion**) noted that the Respondent himself has accepted that Company was carrying on the business of NBFC and was required to obtain Certificate of Registration as NBFC. The Respondent in the said letter apologized to RBI for not submitted exceptional report.
10. The Committee noted that the Respondent submissions that he corrected the mistake suo-moto by submitting Exception Report and apology letter is clearly an afterthought because the exception report and apology letter was submitted by the Respondent on 15th November 2016 (**Page B-2 and B-3 of Prima-facie opinion**) and the same was at the instance of RBI and was in response to letter of RBI dated 21st October, 2016 (**Page A-2 of Prima-facie opinion**).
11. Accordingly, the Committee found no merits in defence of the Respondent and hold the Respondent guilty for not exercising due diligence.

CONCLUSION

12. 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 Item (7) of Part I of the Second Schedule to the Chartered Accountants Act, 1949.

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

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

sd/-
(CA. RAJENDRA KUMAR P)
MEMBER

sd/-
(CA. COTHA S SRINIVAS)
MEMBER

DATE: 29.12.2022
PLACE: NEW DELHI

प्रमाणित सत्य प्रतिलिपि / Certified true copy

मुकेश कुमार मिश्रा / Mukesh Kumar Mittal
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THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA
(Set up by an Act of Parliament)

[PPR/P/114/2016-DD/355/INF/2017-DC/1256/2019]

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/114/2016-DD/355/INF/2017-DC/1256/2019]

In the matter of:

CA. Rakesh Patni (M.No.043947) of M/s. R. K. Patni & Company, Navi Mumbai in Re:
M/s R.K. Patni & Co.
505, Ambience Court
Plot No. 2, Sector 19-D
Opp. Vashi R.T.O. Office, Vashi
Navi Mumbai – 400 705

..... Respondent

MEMBERS PRESENT:

1. CA. Ranjeet Kumar Agarwal, Presiding Officer (Present in person)
2. Mrs. Rani 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. Sanjay Kumar Agarwal, Member (Present in person)
5. CA. Sridhar Muppala, Member (Present in person)

DATE OF MEETING : 16.03.2023 (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 29th December 2022, the Disciplinary Committee was inter-alia of the opinion that **CA. Rakesh Patni (M. No. 043947)** (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 of the Chartered Accountant Act, 1949.

2. The Committee noted that the charge against the Respondent is that he did not submit the exception report to RBI for M/s. Deep Investrade (Bombay) Pvt. Ltd. (hereinafter referred to the "Company") for the year 2014-15 despite the Company was carrying on NBFI activities without obtaining a Certificate of Registration from the RBI in violation of the provisions of Section 45IA of the RBI Act, 1934.

3. The Committee noted that the Respondent was present through video conferencing mode from his place. The Respondent relied on his written submissions dated 28th January 2023 and



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submitted his detailed submissions mentioning that the Company invested money received from the sale of assets in shares of sister concern/ subsidiary Company. Due to effect of NCLT's amalgamation order the Company had to sell such shares and such sale is the only source of income of the Company. He further submitted that the Company parked those funds in fixed assets and the Company got registered as NBFC in the subsequent year. The Respondent also requested that his submissions be given favourable consideration.

4. The Committee noted the oral and written submissions of the Respondent available on record that he corrected the mistake suo-moto by submitting an Exception Report and also by submitting apology letter on 15th November 2016. Further, the management of the company had taken corrective actions. The Committee also noted that the Company in subsequent year got itself registered for NBFC.

5. Accordingly, the Committee, looking into the gravity of the charge *vis-a-vis* the submissions of the Respondent before it, observed that the nature of the default was unintentional and that the Respondent took the necessary steps for rectification of such a default. The Committee looking into the nature of default and the fact that no-stake holder was affected as a result of such lapse/ default decided to give minimum punishment to the Respondent.

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 Respondent CA. Rakesh Patni (M.No.043947), be reprimanded.

sd/-

(CA. RANJEET KUMAR AGARWAL)
PRESIDING OFFICER

sd/-

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

sd/-

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

sd/-

(CA. SANJAY KUMAR AGARWAL)
MEMBER

sd/-

(CA. SRIDHAR MUPPALA)
MEMBER

DATE: 13th MAY, 2023

PLACE: NEW DELHI

प्रमाणित सत्य प्रतिलिपि / Certified true copy
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अनुशासन शाखा / Discipline Directorate
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