

BOARD OF DISCIPLINE

(Constituted under Section 21A of the Chartered Accountants Act, 1949)

Findings under Rule 14(9) of the Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007

Mr. Simon Tipet, M/s Renault Nissan Automotive India Private Limited, ("RNAIPL"), Kancheepuram District

-vs-

CA. Ashok A Jain (M.No. 030389), M/s Ambalal M. Shah & Co. (FRN. 100304W), Chartered Accountants, Vadodara

PR-110/2015-DD/139/2015/BOD/270/2017

CORAM:

**CA. G. Sekar, Presiding Officer
Shri R.K. Tewari (Government Nominee)**

In the matter of:

**Mr. Simon Tipet
M/s. Renault Nissan Automotive India
Private Limited, ("RNAIPL")
Plot No.SIPCOT Industrial Park,
Oragadam, Mattur (Post),
Sriperumbudur Taluk,
Kancheepuram District - 602105**

.....Complainant

Versus

**CA. Ashok A. Jain, (M.No.030389)
M/s. Ambalal M. Shah & Co., (FRN No. 100304W)
1st Floor, Bell-E-Vista,
Race Course, Chakli Circle,
Vadodara – 390 007**

.....Respondent

DATE OF HEARING: 22.05.2018

PLACE OF HEARING: MUMBAI

PARTIES PRESENT:

**Counsel for Complainant : Ms. Shivani Singhal, Advocate
Respondent : CA. Ashok A Jain
Counsel for Respondent : CA. Deepak R. Shah**

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Findings:

1. The Board noted that the charge on which the Respondent has been held prima facie guilty is that despite there had been no reduction /refund of wharfage charges and the Complainant-Company has paid the full sum of INR 61 million as wharfage charges to Enmore Port Limited, the Respondent in contrary to the terms of agreement sought and obtained his full payment of service charges as well as service tax thereon on 25th April, 2014.
2. The Board heard the submissions made by the representative from the Complainant Department and Counsel of the Respondent and duly considered the submissions/documents available on record.
3. The Board during the hearing directed the Respondent to submit his further submissions in the matter. The Respondent accordingly, submitted his further submissions vide his letter dated 30th May, 2018.
4. The Board noted that the crux of the allegations in the instant complaint is regarding claiming of fee by the Respondent despite his failure in negotiating with the Enmore Port Limited in respect of reduction of wharfage charge. The Board also noted that the Complainant Company has paid him an amount of Rs. 11.24 million. The Board also noted that the Respondent firm had not even been able to provide details like with who from Enmore Port Limited had negotiated with them or what was the outcome of such negotiations.
5. The Board also perused the agreement and noted that as per Para 2 of the agreement the Service provider shall provide services as per the scope of work and tenure as listed in Annexure A attached to the agreement. The scope of work as per Annexure A provides for
 - a. Reduction in wharfage rates for parking of vehicles of the Company at Enmore Port.
 - b. Assistance in recovering the outstanding due of Rs. 61 million paid to Enmore port authorities by the Company.

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6. Further as per agreement service charges are mentioned in para 5 of the agreement which as per Annexure A which provides as under:

“Company will pay 20% (plus service tax as applicable) of the outstanding dues of Rs.61 million as service charges to the Service on getting refund/outstanding dues claim. Service provider will assist in getting the maximum recovery from EPL, subject to proper justification of claim and support of the company. Service charge will be adjusted on a monthly basis against the recovery of the outstanding dues by the Company from Ennore Port Ltd.”

7. The Board accordingly noted that the payment services charges can be made only if there is refund/recover of outstanding dues. The Board noted the basis of argument of the Respondent is reduction in wharfage charge for future. The Board in this regard noted that there was no provision for payment for services in respect of reduction in wharfage charges.

8. The payment of fees of the Respondent was linked only to amount of refund. The Complainant Counsel submitted that an amount of Rs. 61 million has been paid and no amount has been refunded. The Board noted that since, there was no refund, the claim of the Respondent in getting services charges was not justified and indicates dishonesty on his part which is not expected from a professional. Accordingly, the Respondent is held guilty for not honoring an agreement and thereby placing the Complainant Firm in a situation of financial losses and reputation.

CONCLUSION:

9. Thus, the Board concluded that the Respondent is held **GUILTY** of “Other Misconduct” falling within the meaning of Clause (2) of Part IV of First Schedule to the Chartered Accountants Act, 1949 read with Section 22 of the said Act.

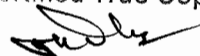
Sd/-
(G. SEKAR)
PRESIDING OFFICER

Sd/-
(R K TEWARI)
GOVERNMENT NOMINEE

DATE: 15th November, 2018

PLACE: New Delhi

Certified True Copy



Mukesh Kumar Mittal
Assistant Secretary
Disciplinary Directorate

The Institute of Chartered Accountants of India
ICAI Bhawan, I.P. Marg, New Delhi-110 002



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ORDER UNDER SECTION 21 A (3) OF THE CHARTERED ACCOUNTANTS ACT, 1949 [AS AMENDED BY THE CHARTERED ACCOUNTANTS (AMENDMENT) ACT, 2006] READ WITH RULE 15(1) OF THE CHARTERED ACCOUNTANTS (PROCEDURE OF INVESTIGATION OF PROFESSIONAL AND OTHER MISCONDUCT AND CONDUCT OF CASES) RULES, 2007.

In the matter of:-

Mr. Simon Tipet,

M/s. Renault Nissan Automotive India Private Limited, ("RNAIPL"),

Kancheepuram District

..... Complainant

-Vs-

CA. Ashok A. Jain, (M.No.030389),

M/s. Ambalal M. Shah & Co., (FRN No. 100304W),

Chartered Accountants, Vadodara

..... Respondent

[PR-110/2015/DD/139/15/BOD/270/2017]

MEMBERS PRESENT:

CA. G. Sekar, Presiding Officer

Shri R.K. Tewari (Government Nominee)

1. That vide Report dated **15th November, 2018**, the Board of Discipline was of the opinion that **CA. Ashok A. Jain** is guilty of "Other Misconduct" falling within the meaning of Clause (2) of Part IV of First Schedule of the Chartered Accountants Act, 1949 read with Section 22 of the said Act.

2. That an action under Section 21A (3) of the Chartered Accountants Act, 1949 was contemplated against **CA. Ashok A. Jain** and communication dated 30th November, 2018 was addressed to him thereby granting him an opportunity of being heard in person and/or to make written representation before the Board on 20th December, 2018.

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3. That Board of Discipline noted that **CA. Ashok A. Jain** appeared personally before it on 20th December, 2018 and made his oral submissions thereat. The Board was also apprised by the Respondent that he had filed a writ petition (W.P.L. No.4204/2018) before Bombay High Court and the date of hearing of the same was on 20th December, 2018.

4. The Board has carefully gone through the facts of the case and considered the written submissions of the Respondent that there was no opportunity provided to him to cross-examine the witnesses presented by the 'RNAIPL' since the finding based on which he is held guilty is based upon the said witnesses and evidences. The Board also noted the Respondent's submission that the next hearing of the writ petition is due on 10th January, 2019 and its outcome is likely to be received, thus, he requested the Board to take a lenient view and not to levy any harsh punishment.

5. The Board noted that there was no stay from the Court on its proceedings and also there is no communication from the Respondent regarding stay of its proceedings.

5. As per the findings of the Board as contained in its report, it has already been conclusively proved that **CA. Ashok A. Jain** is guilty of Professional Misconduct falling within the meaning of Clause (2) of Part IV of First Schedule of the Chartered Accountants Act, 1949 read with Section 22 of the said Act.

6. Upon consideration of the facts of the case, the consequent misconduct of the Respondent, and keeping in view his submissions, the Board was of the view that the ends of justice shall be met if maximum punishment is awarded to the Respondent.

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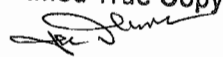
7. Accordingly, the Board decided to remove the name of CA. Ashok A. Jain (M.No. 030389) from the Register of Members for a period of 3 (three) months and further imposed a fine of Rs.1,00,000/- (Rupees One Lakh (inclusive of GST)) upon him, which shall be payable by him within a period of 60 days from the receipt of the Order.

Sd/-
(CA. G. SEKAR)
PRESIDING OFFICER

Sd/-
(SHRI R. K. TEWARI)
GOVERNMENT NOMINEE

DATED: 12TH JANUARY, 2019

PLACE: MUMBAI

Certified True Copy

Mukesh Kumar Mittal
Assistant Secretary
Disciplinary Directorate
The Institute of Chartered Accountants of India
ICAI Bhawan, I.P. Marg, New Delhi-110 002

