

CONFIDENTIAL

DISCIPLINARY COMMITTEE [BENCH – II (2023-2024)]

[Constituted under Section 21B of the Chartered Accountants Act, 1949]

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

File No.: [PR/260/2018/DD/272/2018/DC/1519/2021]

In the matter of:

**Shri Aditya Ratanaparkhi,
8, Shivam, Amar Society,
Gulmohar Path, Law College Road,
Pune-411004**

.....Complainant

Versus

**CA. Neeta Mandar Palsule (Membership. No. 114882)
M/s HMA & Associates,
Chartered Accountants,
1, Runwal Pratistha,
1202/27, Shivaji Nagar, Apta Road,
Behind Santosh Bakery,
Pune-411004**

.....Respondent

MEMBERS PRESENT:

- 1. CA. Ranjeet Kumar Agarwal, Presiding Officer (In Person)**
- 2. Mrs. Rani Nair, I.R.S. (Retd.), Government Nominee (In Person)**
- 3. Shri Arun Kumar, I.A.S. (Retd.), Government Nominee (In Person)**
- 4. CA. Sanjay Kumar Agarwal, Member (In Person)**
- 5. CA. Sridhar Muppala, Member (Present through VC mode)**

DATE OF FINAL HEARING : 18.09.2023 (through physical/video conferencing mode)

PARTIES PRESENT

Complainant : Not Present
Respondent : CA. Neeta Mandar Palsule (Through VC)
Counsel for Respondent : CA. Sharad Vaze (Through VC)

BACKGROUND OF THE CASE:

1. The brief background of the case is that
 - a. The Complainant has filed a complaint in 'Form-I' dated 10th August 2018 against the Respondent being auditor of M/s Shirish Holding & Finance Pvt. Ltd. (hereinafter referred to as the "**Company**") for the Financial Year 2015-16.
 - b. The Complainant in his individual capacity as well as a being co-parcener of Prakash Ratnaparkhi HUF was holding 77.36% shares in the Company.
 - c. There was a family dispute among the family members wherein the head of the family Mr. Prakash K Ratnaparkhi (Father) and his daughter Ms. Shalaka Joshi are on one side, whereas his son Mr. Aditya Ratnaparkhi (i.e., Complainant) and second daughter Ms. Radhika Madgulkar are on the other side.
 - d. Ms. Shalakh Joshi, one of the directors of the said Company, is the wife of CA. Anand Joshi.
 - e. The Respondent and CA. Anand Joshi were the partners in M/s HMA & Associates (i.e., Respondent's firm).
 - f. The Respondent signed the audit report of the Company for the Financial Year 2015-16 on behalf of the Respondent's firm (i.e., M/s. HMA & Associates) as on 1st August 2016.
 - g. The Balance Sheet of the Company for the financial Year 2015-16 was signed by Ms. Shalakh Joshi in the capacity of director of the Company.

CHARGES IN BRIEF:-

2. The Committee noted that the allegation against the Respondent was that she had conducted the audit and signed the balance sheet of the Company despite being disqualified under Section 141 of the Companies Act, 2013.
3. The Committee noted that the Respondent in his reply at the stage of PFO had, inter-alia, mentioned as under:-
 - a) The Respondent had submitted the date wise fact of the case which is as under:-

Particulars	Relevant Date
Date of Commencement of Audit	01 st July, 2016
Date of Completion of Audit	25 th July, 2016
Date of issue of Audit Report	1 st August, 2016
Date of Board Meeting for Approval	1 st August, 2016
Date of appointment of Shalaka Joshi	1 st August, 2016
Date of Resignation of Respondent Firm as Statutory Auditor of the Company	1 st August, 2016

✓ From the above, it is stated that they commenced & completed the audit before Ms. Shalaka Joshi was appointed as a director of the Company.

- b) That engagement letter of the Respondent Firm was signed by Mr. Prakash Ratnaparkhi. The Management Representation Letter was also issued by Mr. Prakash Ratnaparkhi. Hence, there was no involvement of Ms. Shalaka Joshi during their audit.
- c) That signature of Ms. Shalaka Joshi on the Balance Sheet of the Company was just a matter of convenience as she had been appointed as the director of the Company in the same meeting in which the accounts were approved.

- d) That section 141 is not triggered since the section applies to a person and not to an entire firm. Also, all other partners, including the signing partner, were independent and the related partner (CA. Anand Joshi i.e. husband of Mrs. Shalakra Joshi) never took part in the audit.
- e) Further, section 141(4) nowhere contemplates resignation of an auditor in case any of disqualification is triggered after his appointment. The vacation from office is automatic the moment any of the disqualification is triggered.
4. The Director (Discipline) had, in his Prima Facie Opinion dated 6th August 2021 noticed as under:
- a. One of the objectives behind bringing section 141 (3) of the Companies Act 2013 is to ensure that the auditor should be independent of the entity which is subject to the audit.
- b. Mrs. Shalakra Joshi (wife of the partner of the Respondent) was holding 1400 shares of the Company having a face value of Rs. 10/- each, and she was also a director of the Company w.e.f. 1st August 2016. The audit report was signed on 1st August 2016 by the Respondent.
- c. Accordingly, violation of section 141(3)(d)(i) of the Companies Act 2013 and section 141(3)(f) of the Companies Act 2013 is attracted, making the Respondent disqualified for auditing and accordingly, the Respondent was held prima facie **Guilty** of Item (7) of Part I of the Second Schedule to the Chartered Accountants Act, 1949.
- d. Further, on perusal of certain emails on record, it was observed by the Director (Discipline) that the audit report was found to be signed on 30th August 2016. Looking into the backdating of the report, the possibility of the Respondent being in connivance with the management and director of the Company was also not ruled out by the Director (Discipline). Therefore, the Director (Discipline) held the Respondent

prima facie also **Guilty** of other misconduct under Item (2) of Part IV of the First Schedule to the Chartered Accountants Act, 1949.

- e. Further, considering the substance over form, it was observed by the Director (Discipline) that the independence of the audit firm was compromised because of non-compliance of the general guidelines. Accordingly, the Respondent was held prima facie **Guilty** of professional misconduct under item (4) of Part I & item (1) of part II of the Second schedule of the Chartered Accountant Act, 1949.
5. Accordingly, the 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, held the Respondent Prima-facie **Guilty** of Professional and Other Misconduct falling within the meaning of Item (2) of Part IV of the First Schedule, Item (1) of Part II, Item (4) and (7) of Part I of the Second Schedule to the Chartered Accountants Act, 1949. The said items in the Schedule to the Act states as under:

Item (2) of Part IV of First Schedule

"A member of the Institute, whether in practice or not, shall be deemed to be guilty of other misconduct, if he-

(2) in the opinion of the Council, brings disrepute to the profession or the Institute as a result of his action whether or not related to his professional work."

Item(s) (4) and (7) of Part I of the Second Schedule:

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

(4) expresses his opinion on financial statements of any business or enterprise in which, he, his firm or a partner in his firm has a substantial interest"

(7): does not exercise due diligence, or is grossly negligent in the conduct of his professional duties”

Item (1) of Part II of the Second Schedule:

“A member of the Institute, whether in practice or not, shall be deemed to be guilty of professional misconduct, if he—

(1): contravenes any of the provisions of this Act or the regulations made thereunder or any guidelines issued by the Council”

SUBMISSIONS OF THE PARTIES ON THE PRIMA FACIE OPINION:-

6. The Committee noted that the Respondent vide letter dated 13th December, 2021 had inter-alia submitted as under:-
- a) That the Electronica Group, to which the auditee-company belongs, was established by Mr. Prakash Ratnaparkhi, as the promoter of the Electronica Group. Further, for the financial year 2015-16, it was the first year when the financial statements were not signed by Shri Prakash Ratnaparkhi, the Chief Mentor/Promoter of the Electronica Group.
 - b) Therefore, Mr. Shrikant Kinjawadekar of the Electronica Group had raised query about the financial statements not being signed by Shri Prakash Ratnaparkhi. In response to this inquiry, Ms. Mukta Dixit, Manager of the office of the Respondent Firm, provided clarification via email dated 30th August 2016.
 - c) That Section 141(3) (d) (i) of the Companies Act 2013 requires auditor not to hold any shares in the auditee-company. The Auditor as well as other partners of the Respondent do not hold any shares in the auditee-company.

- d) That said Section also requires that the relatives of the auditor shall not hold shares of auditee- company more than Rs 1,00,000/- in face value. Mrs. Shalaka Joshi, spouse of CA. Anand Joshi holds 1400 shares of Rs 10 each i.e., Rs 14,000/-. CA. Anand Joshi is partner of HMA & Associates wherein the Respondent is also the partner.
- e) That Mrs. Shalaka Joshi was appointed as additional director w.e.f. 01st August, 2016. The necessary forms required to be filed with ROC, were digitally signed by Mrs. Shirish Ratnaparkhi, mother of the Complainant and Mrs Shalaka Joshi.

7. The Committee noted that the Respondent vide letter dated 5th May 2022 had inter-alia submitted as under: -

a) That the sequence of agenda of the meeting as per the notice for the Board Meeting dated 26 July 2016 were as follows: -

- Approval of Accounts for the financial year 2015-16
- Acceptance of Unwillingness Letter of Statutory Auditors (Respondent Firm) by the Company.
- Appointment of Mrs. Shalaka Joshi as a director.

b) Thus, from the sequence of events as per notice for Board Meeting, it is clear that accounts are prepared and adopted before the appointment of Mrs. Shalaka Joshi as a director. Further, the Respondent had commenced & completed the audit well before Mrs. Shalaka Joshi was appointed as a director of the Company.

c) That Mrs. Shalaka Joshi was neither the director of the company during the financial year 2015-16 nor during the period of audit. Further, the audit queries of the Respondent Firm were attended by Mr. Prakash Ratnaparkhi who has acknowledged receipt of the Letter of Engagement and issued the Management Representation letter.

d) That Mrs. Shalaka Joshi who was appointed as director of the Company is not a relative of signing or reviewing partner of the Respondent Firm.

8. The Committee noted that the Complainant vide letter dated 14th February 2022 has submitted a withdrawal letter of complaint against the Respondent stating that the matter has been amicably settled between them and he does not wish to proceed further in the matter.

8.1 The Committee noted that the erstwhile Disciplinary Committee in its meeting held on 19th September 2022 considered the withdrawal request and decided not to accept the withdrawal and decided to continue with the proceedings of the case as it was of the view that there appeared to be certain lapses and the conduct of the Respondent needs to be examined at hearing stage.

BRIEF FACTS OF THE PROCEEDINGS:

9. The Committee noted that the instant case was fixed for hearing on following dates:

S.No.	Date	Status of Hearing
1.	07.11.2022	Part Heard & adjourned
2.	13.09.2023	Adjourned on the request of the Respondent
3.	18.09.2023	Concluded and Judgement Reserved
4.	04.10.2023	Final decision taken on the case

10. On the day of the first hearing held on 07th November 2022, the Committee noted that the Respondent was present alongwith her Counsel CA. Sharad Vaze at ICAI Tower, BKC Mumbai. The Committee noted that the Complainant was not present. The Respondent was administered on Oath. Thereafter, the Committee enquired from the Respondent as to whether she was aware of the charges. On the same, the Respondent replied in the affirmative and pleaded Not Guilty to the charges levelled against her.

Thereafter, looking into the fact that this was the first hearing, the Committee decided to adjourn the hearing to a future date.

11. On the day of the second hearing held on 13th September 2023 the Committee noted that the Respondent alongwith her counsel present through Video Conferencing Mode. The Committee noted that the Complainant was not present despite due delivery of notice. The Committee enquired from the Respondent that since, the composition of the Committee had changed further from the previous hearing, as to whether she wished to have a de-novo hearing. On the same, the Respondent's Counsel 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. Thereafter, when the Committee asked the Respondent's Counsel to represent his case, he submitted that due to his pre-scheduled travel he had requested for a short adjournment and requested to place this case in the meeting scheduled on 18th September 2023. The Committee on his request, with his concurrence, adjourned the current matter and fixed the next meeting on 18th September, 2023.

12. On the day of the third and final hearing held on 18th September 2023, the Committee noted that the Respondent along with her counsel was present through Video Conferencing Mode. The Committee noted that the Complainant was not present despite due communication of notice. The Committee further noted that the Respondent's Counsel presented his line of defense on the charge by, inter-alia, stating

- a) That the matter relates to a family dispute.
- b) That anyone on behalf of the Board can sign the financial statements.
- c) That the Respondent does not fall under the disqualifications specified under section 141(3) of the Companies Act, 2013.

12.1 On consideration of the same, the Committee decided to conclude the hearing by reserving its judgment.

13. Thereafter, this matter was placed for its final decision in the meeting held on 4th October 2023. Accordingly, keeping in view the facts and circumstances of the case, the material on record and the submissions of the parties, the Committee, after deliberations, passed its judgment.

FINDINGS OF THE COMMITTEE

14. The Committee noted that the charge against the Respondent is that she had audited and signed the financial statements of the Company on behalf of the Respondent Firm wherein Respondent's partner's wife was a shareholder and director of the said Company.
- 14.1 In this regard relevant Section of 141 (3) (d) of the Companies Act, 2013 and Rule 10 of the Companies (Audit and Auditors) Rules, 2014 reads as under:-

Section 141:-Eligibility, Qualification and disqualifications of auditors:-

"

(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-*

(i) 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:

(ii) is indebted to the Company, or its subsidiary , or its holding or associate company or a subsidiary of such holding company, in excess of such amount as may be prescribed; or

(iii) has given a guarantee or provided any security in connection with the indebtedness of any third person to the Company, or its subsidiary or its holding or associate company or subsidiary of such holding Company or associate company of such nature as may be prescribed;

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(f) a person who's relative is a director or is in employment of the company as director or key managerial personnel;"

RULE 10:- DISQUALIFICATIONS OF AUDITOR:-

" (1) For the purpose of proviso to sub- clause (1) of clause (d) of sub-section (3) of section 141, a relative of an auditor may hold securities in the company of face value not exceeding rupees one lakh:

Provided that the condition under this sub-rule shall, wherever relevant, be also applicable in the case of a company not having share capital or other securities:

Provided further that in the event of acquiring any security or interest by a relative, above the threshold prescribed, the corrective action to maintain the limits as specified above shall be taken by the auditor within sixty days of such acquisition or interest. (emphasis supplied)"

14.2 The Committee noted that Mrs. Shalaka Joshi, spouse of CA. Anand Joshi, a partner in the Respondent Firm, holds 1400 shares with a face value of Rs. 10 each, totaling Rs. 14,000, in the auditee Company. The Committee noted that this shareholding falls within the prescribed limit of Rs. 1,00,000 as stipulated by Section 141(3)(d)(i) of the Companies Act 2013 in conjunction with Rule 10 of the Companies (Audit and Auditors) Rules, 2014. Therefore, the Committee finds no breach of Section 143(3)(d)(i) of the Companies Act, 2013.

14.3 The Committee noted that the Respondent has brought on record a copy of the draft audit report for the financial year 2015-16 dated 25th July, 2016, which was received by Shri Prakash K Ratanparkhi and the same was mentioned on the said audit report. From which, it appears that the audit was completed before the appointment of Mrs. Shalaka i.e. 01st August, 2016. The Committee noted that during the proceeding, the Respondent submitted a

copy of the Agenda of the meeting dated 01st August, 2016. In this regard, relevant extracts of agenda dated 01st August, 2016 reads as under:-

"1. To appoint Chairman for the meeting.

2. To receive, consider and approve the Balance Sheet as of 31 March 2016 and Profit and Loss Account for the year ended as on that date and the report of the Board of Directors for further submission to the Auditors for their report thereon.

3. To Accept the resignation of Statutory Auditors of the company-HMA & Associates, Chartered Accountants.

4. To Appoint Mrs. Shalaka Anand Joshi (DIN-00183211) as an Additional director of the company to hold the office till the conclusion of the next Annual General Meeting of the company".

14.4 The Committee noted that second item of Agenda of the meeting was to receive, consider and approve the Balance Sheet and Profit & Loss Account as of 31st March, 2016 and thereafter, Respondent Firm has given their resignation for the audit of subsequent years. Thereafter, Mrs. Shalaka Joshi was appointed as an additional director on 1st August 2016 under the fourth item of the agenda of the meeting.

14.5 The Committee noted Para 290.135 of Code of Ethics which states as under:-

"When a relative of a member of the assurance team is a director, an officer or an employee of the assurance client in a position to exert direct and significant influence over the subject matter information of the assurance engagement, or was in such a position during any period covered by the engagement, the threats to independence can only be reduced to an acceptable level by removing the individual from the assurance team. The relationship is such that no other safeguard could reduce the threat to independence to an acceptable level. If application of this safeguard is not used, the

only course of action is to withdraw from the assurance engagement For example, in the case of an audit of financial statements, if the spouse of a member of the assurance team is an employee in a position to exert direct and significant influence over the preparation of the audit client's accounting records or financial statements, the threat to independence could only be reduced to an acceptable level by removing the individual from the assurance team."

14.6 The Committee noted that in the extant case, Mrs. Shalaka Joshi, spouse of CA. Anand Joshi, a partner in the Respondent Firm, is director of M/s Shirish Holding & Finance Pvt. Ltd. i.e. auditee company. The Committee noted that the audit report and the financial statements are signed by the Respondent (other than CA. Anand Joshi) and the Respondent also stated during the proceeding that CA. Anand Joshi did not perform any audit function related to the auditee company for the financial year 2015-16.

14.7 The Committee further noted that the disqualification mentioned u/s 143 of the Companies Act 2013 is applicable to a person and not to an entire firm. The Committee further noted that there were 7 partners in the Respondent firm and that out of 7 partners of the audit firm only one partner i.e., CA. Anand Joshi is related to Mrs. Shalaka Joshi (being a director of the auditee company) whereas all remaining partners, including the Respondent were independent.

14.8 The Committee further noted that there is no evidence on record that CA. Anand Joshi was involved/ participated in the audit proceedings. In absence of the same, it appears that the possibility of a threat to independence is reduced to an acceptable level.

14.9 Accordingly, the Committee held the Respondent **Not Guilty** of Item (7) of Part I of Second Schedule to the Chartered Accountants Act, 1949 on the findings of the Director (Discipline) mentioned in para 4 (c) above.

15. With regard to the observation of the Director (Discipline) that financial statements are signed backdated, the Committee noted that the Director

(Discipline) in the prima-facie opinion held the Respondent guilty on the basis of certain e-mails submitted by the Complainant at rejoinder stage.

- 15.1 The Committee noted on perusal of the said email, dated 30th August 2016, noted that the same was sent by Mrs. Mukta Dixit to Mr. Shrikant Kinjawadekar of the Electronica Group. The Committee noted that Electronica Group, to which the auditee – company belongs, was set up by Mr. Prakash Ratnapakhi (father of the Complainant) and he was the promoter of the Electronica Group.
- 15.2 Mr. Shrikant Kinjawadekar had raised query about the financial statements not being signed by Shri Prakash Ratnaparkhi. In response to this inquiry, Ms. Mukta Dixit, Manager of the office of the Respondent Firm, provided clarification via email dated 30th August 2016.
- 15.3 The Committee further observed that Mr. Shrikant Kinjawadekar was neither shareholder nor director of the auditee Company and his email id was smk@electronicapmd.com. Hence, it cannot be construed as the aforesaid mail belongs to the auditee Company.
- ✓ 15.4 The Committee, looking into the above facts vis-à-vis that this allegation was neither made by the Complainant in Form-I nor in details of the complaint as mentioned on second page of the complaint, decided to drop this instant charge levelled against the Respondent. Accordingly, the Respondent was held not guilty of Other Misconduct under Item (2) of Part IV of the First Schedule to the Chartered Accountants Act, 1949.
16. As regards the observation of the Director (Discipline) that considering the substance over form, the independence of the audit firm is compromised, the Committee noted that there is no evidence on record that the Respondent had compromised with her independence.
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- 16.1 The Committee noted that as per the findings mentioned in paras 14.6, 14.7 and 14.8 above, it is clear that CA. Anand Joshi had no role in the audit of the Company.
- 16.2 Apart from the above, the Complainant has also not raised any issues/errors in the figures appearing in the financial statements.
- 16.3 The Committee also noted that the Complainant has submitted a withdrawal letter of complaint against the Respondent stating that he does not wish to proceed further in the matter.
- 16.4 Additionally, it is noteworthy that the Complainant did not attend any hearings to substantiate the allegation made against the Respondent at any of the hearings.
- 16.5 Accordingly, the Committee, in the absence of sufficient evidence, decided to hold the Respondent **Not Guilty** of Professional Misconduct falling within the meaning of Item (4) of Part I & Item (1) of part II of the Second schedule of the Chartered Accountant Act, 1949 on the findings of the Director (Discipline) mentioned in para 4 (e) above.

CONCLUSION:

17. In view of the above observation, considering the arguments, submissions of the parties and documents on record, the Committee held that the Respondent is **Not Guilty** of Professional and Other Misconduct falling within the meaning of Item (2) of Part IV of the First Schedule, Item (1) of Part II and Item (4) and (7) of Part I the of Second Schedule to the Chartered Accountants Act, 1949.

ORDER:

18. 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.

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SD/-

**(CA. RANJEET KUMAR AGARWAL)
PRESIDING OFFICER**

SD/-

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

SD/-

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

SD/-

**(CA. SANJAY KUMAR AGARWAL)
MEMBER**

SD/-

**(CA. SRIDHAR MUPPALA)
MEMBER**

DATE: 07.02.2024

PLACE: New Delhi

सही प्रतिलिपि होने के लिए प्रमाणित
Certified to be true copy

M Gupta
मीनू गुप्ता / Meenu Gupta
वरिष्ठ कार्यकारी अधिकारी / Sr. Executive Officer
अनुशासनात्मक निदेशालय / Disciplinary Directorate
इंस्टिट्यूट ऑफ चार्टर्ड एकाउंटेंट्स ऑफ इंडिया
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