



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

[PR/319/14-DD/338/14-DC/740/2018]

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.

In the matter of:

Ms. Richa Kukreja
Jt. Director (CL), SFIO,
Ministry of Corporate Affairs
Govt. of India
2nd Floor, Paryavaran Bhawan
CGO Complex, Lodhi Road
New Delhi – 110 003

.... Complainant

Versus

CA. Lalit Kumar Marwah (M. No.503547)
274 SITE I,
Vikas Puri
New Delhi- 110018

.... Respondent

Date of Meeting: - 18th May 2023

Place of Meeting: - New Delhi

Party Present:

CA. Lalit Kumar Marwah : Respondent (in person)

MEMBERS PRESENT:

1. CA. Ranjeet Kumar Agarwal, Presiding Officer (in person)
2. Shri Jiweesh Nandan, Govt. Nominee (in person)
3. Smt. Dakshita Das, Govt. Nominee (in person)
4. CA. Mangesh Kinare, Member (in person)
5. CA. Cotha S Srinivas, Member (through Video conferencing mode)



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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 23rd September 2019, the Disciplinary Committee was of the opinion that **CA. Lalit Kumar Marwah (M. No.503547)** (hereinafter referred to as the “**Respondent**”) was **GUILTY** of Professional and Other Misconduct in terms of Section 22 of the Chartered Accountants Act, 1949 falling within meaning of Clause (2) of Part IV of the First Schedule and Clause (1) of Part II of the Second Schedule to the said Act.
2. That an action under Section 21B (3) of the Chartered Accountants (Amendment) Act, 2006 was contemplated against the Respondent and communication dated 10th May 2023 was addressed to him thereby granting an opportunity of being heard in person and/or to make a written representation before the Committee in its meetings fixed on 18th May 2023.
3. The Committee noted that the captioned case was earlier listed before it for the award of punishment on 22nd March 2023, 11th April 2023, and 19th April 2023 and the same is again listed for the award of punishment before it in the present meeting. The Committee further noted that when the matter was listed on 22nd March 2023, the Respondent vide his e-mail dated 15th March 2023 submitted his request for adjournment of the matter seeking additional time for preparation. Thereafter, when the matter was listed on 11th April 2023, the Respondent informed that he would not be able to attend the meeting of the Disciplinary Committee scheduled on 11th April 2023 as he was present in the proceedings before the Hon’ble Delhi High Court and therefore, sought adjournment in the matter. Subsequently, when the matter was again listed on 19.04.2023, the Respondent vide his e-mail dated 17.04.2023 informed that he was not keeping good health and was undergoing treatment in the hospital and sought an adjournment of two weeks. In this context, the Committee noted that while acceding to the request of the Respondent for grant of adjournment at its meeting held on 11th April 2023, the Committee specifically directed that no further adjournment request of the Respondent be entertained in future and in case the Respondent fails to appear before the Committee in the next meeting the matter be decided based on merits of the case, ex-parte, the Respondent.
4. The Committee at its meeting held on 19.04.2023, noted that the captioned case was listed the third time before it and on earlier two occasions, the Respondent failed to appear before it. The Committee



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further noted that the approach of the Respondent was evasive, and he was not willing to appear before it and thereby attempting to delay consideration/disposal of the matter; he has been seeking adjournment one after another, although the Committee has arrived at its findings thereby holding the Respondent Guilty and matter is presently before it only for the award of Punishment under Rule 19(1). The Committee was of the view that sufficient opportunities to the Respondent, as part of principles of natural justice, have already been granted to him to appear and/or to file written submissions, and accordingly the matter was considered ex-parte. The Committee, in its meeting, held on 19.04.2023, on an overall consideration and keeping in view the facts and circumstances of the case, the material on record before it concluded hearing in the matter and took the decision.

5. Meanwhile, the Respondent filed a Writ Petition before the Hon'ble Delhi High Court W.P. (C) 4461/2023 and CM APPL. 17135/2023 Lalit Marwah v. The Institute of Chartered Accountants of India and the Hon'ble Court disposed of the petition with the following directions vide order dated 04.05.2023. The relevant portion of the order is as under: -

"10. Considering that the medical ground has been raised by the Petitioner for his personal non-appearance on the said date, this Court deems it appropriate to give one final opportunity to the Petitioner to appear physically before the ICAI, which would hear the Petitioner and thereafter, pass the final orders.

11. The contention of the Petitioner that there is a breach of Rule 18 of the ICAI Rules in the procedure adopted by the Disciplinary Committee. The said issue is left open and to be taken up in the Appeal, which may be availed of by the Petitioner against the final orders.

12. Once the final order is passed, the same shall not be given effect to for period of 30 days to enable the Petitioner to avail of his remedy against the finding of guilty as also against the sentencing order.

13. The petition, along with all pending applications, is disposed of in these terms."

6. In compliance with the direction of the Hon'ble Delhi High Court, the Committee listed the captioned case again for passing an order under Rule 19(1) on 18.05.2023 in order to give opportunity to Respondent and the Respondent appeared before it physically in the present meeting. The Respondent

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submitted written submissions dated 17.05.2023 sent vide email dated 18-05-2023 on the findings of the Disciplinary Committee dated 23.09.2019.

7. The charges levelled against the Respondent and decisions thereon are contained in the findings dated 23.09.2019 of the Committee arrived under Rule 18(17) of the Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007; and the present Order under Section 21B (3) of the Chartered Accountant Act, 1949 be read along with the said findings dated 23.09.2019.
8. The Respondent in his submissions dated 20th November 2019 and 17th May 2023 among others, submitted that he was initially held not guilty by the Director (Discipline) in Prima Facie opinion and after that, the Board of Discipline held him Guilty of professional and other misconduct in terms of Section 22 of the Chartered Accountants Act, 1949 read with Clause (2) of Part IV of the First Schedule and Clause (1) of Part II of the Second Schedule to the said Act without assigning detailed reasoning. The Respondent further submitted that the Disciplinary Committee without following Rule 18 of the Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007 had completed the inquiry and he was not provided with a fair opportunity to defend the charges.
9. The allegations against the Respondent was that he was expected to know all the statutory provisions and correct procedure relating to the treatment of Deposits as described under Section 58A of the Companies Act, 1956 and was aware that the Company was not allowed to take deposits, but deliberately connived with other officials of the local management and aided the local management in the falsification of the books of account of the company in a manner that the deposits as taken by the company be hid thereby also falsified the books of account which did not give the true and correct picture of the affairs of the company.
10. The Prima Facie Opinion dated 30.07.2017 of Disciplinary Discipline was considered by the Board of Discipline in its meeting on 13th September 2017, and the Board did not agree with the prima face opinion of the Director(Discipline) that the Respondent is Not Guilty of "Professional Misconduct" and decided to refer the matter to the Disciplinary Committee under Chapter V of the Chartered

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Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007.

11. Accordingly, the case was referred to the Disciplinary Committee and the Respondent was given adequate opportunity at the time of the hearing before it under Rule 18. The Respondent was aware of the charges and cannot take a plea that he was not aware of the charges against him as he had submitted his written submissions after the Prima Facie Opinion in respect of various charges levelled against him at the time of hearing under Rule 18 of the Chartered Accountant (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007. Accordingly, the issues raised by the Respondent were dealt with in the Findings dated 23.09.2019 of the Committee. The Committee observed that it has already arrived at a finding in the matter, thereby holding the Respondent 'Guilty' and the matter is now before it only for the award of punishment.
12. The Committee was of the view that, as part of principles of natural justice, adequate opportunities have already been granted to the Respondent under Rule 18 of the Chartered Accountants (Procedure of Investigation of Professional and Other Misconduct and Conduct Of Cases) Rules, 2007. Further, according to the facts and circumstances of the case and material available on record, it was noted that Respondent was working with the Company as Manager (Receivable) and was responsible for maintaining the true and correct affairs of the accounts of the Company, but he misused his position and played an active part in fudging and falsification of the accounts. Further, he was aware that Company was not allowed to take deposits, but deliberately connived with other officials of the management and aided the management in the falsification of the books of account of the company in a manner that the deposits as taken by the company be hid thereby also falsified the books of account which did not give the true and correct picture of the affairs of the Company.
13. Accordingly, the Committee was of the view that the ends of justice can be met if reasonable punishment is given to him in commensurate with his above professional and other misconduct.
14. Thus, keeping in view, the facts, and circumstances of the case as aforesaid, the material on record and submissions of the Respondent before it, the Committee ordered that the name of the Respondent i.e., CA. Lalit Kumar Marwah (M. No.503547), New Delhi, be removed from the register



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of members for a period of One (01) Year and a fine of Rs. 1,00,000/- (Rupees One Lakh only) be also imposed upon him to be paid within 30 days of receipt of this order.

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Sd/-
(CA. RANJEET KUMAR AGARWAL)
Presiding Officer

Sd/-
(SHRI. JIWESH NANDAN)
Member (Govt. Nominee)

Sd/-
(SMT. DAKSHITA DAS)
Member (Govt. Nominee)

Sd/-
(CA. MANGESH KINARE)
Member

Sd/-
(CA. COTHA S SRINIVAS)
Member

Date: 18.12.2023
Place: New Delhi

सही प्रतिलिपि होने के लिए प्रमाणित

Certified to be true copy



अरुण कुमार / Arun Kumar

वरिष्ठ कार्यकारी अधिकारी / Sr. Executive Officer

अनुशासनात्मक निदेशालय / Disciplinary Directorate

इन्स्टिट्यूट 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

DISCIPLINARY COMMITTEE [BENCH-III (2019-20)]

[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. : PR/319/14-DD/338/14-DC/740/2018

In the matter of:

**Ms. Richa Kukreja
Jt. Director (CL), SFIO,
Ministry of Corporate Affairs
Govt. of India
2nd Floor, Paryavaran Bhawan
CGO Complex, Lodhi Road
New Delhi – 110 003**

.... Complainant

Versus

**CA. Lalit Kumar Marwah (M. No.503547)
B-307, Sadbhawna Apartment
Sector 11, Plot 11, Dwarka
New Delhi – 110 075**

.... Respondent

Members Present :

**CA. Prafulla Premsukh Chhajed, Presiding Officer
Smt. Anita Kapur, Member (Govt. Nominee)
Shri Ajay Mittal, IAS (Retd.), Member (Govt. Nominee)
CA. Debashis Mitra, Member
CA. Manu Agrawal, Member**

Date of Hearing : 25.07.2019

Place of Hearing : New Delhi

Parties Present :

- (i) Smt. Deepmala Bagri, Assistant Director (Law) - Complainant's representative**
- (ii) Smt. Smriti Chaturvedi, Advocate – Counsel for Complainant**
- (iii) CA. Lalit Kumar Marwah – Respondent**
- (iv) CA. C V Sajan – Counsel for Respondent**



Allegations of the Complainant:

1. **Ms. Richa Kukreja**, Joint Director (CL), Serious Fraud Investigation Office, Ministry of Corporate Affairs, New Delhi (hereinafter referred to as the "**Complainant**") has filed complaint in Form 'I' dated 20th April, 2014 (**C-1 to C-20**) against **CA. Lalit Kumar Marwah (M. No.503547), New Delhi** (hereinafter referred to as the "**Respondent**"). The background of the instant complaint as alleged by the Complainant is as under:-

1.1 The Government of India, Ministry of Corporate Affairs ordered an investigation into the affairs of **M/s Reebok India Company** (hereinafter referred to as the "**RIC**") and the affairs of the RIC were investigated by the Serious Fraud Investigation Office (SFIO). In its investigation report, it recommended disciplinary proceedings against the Complainant for his professional misconduct. Accordingly, the complaint was filed under the Chartered Accountants Act, 1949.

1.2 That the Respondent was a registered Chartered Accountant and was working with RIC as Manager (Receivables).

1.3 As per the investigation concluded by the SFIO, the Respondent being the Manager-(Receivables) misused his position and played an active part in fudging and falsification of the Accounts of the Company and even used forged documents as genuine, which caused wrongful loss to the Company.

1.4 It is stated that that the focus of the local Management of **RIC** was on achieving the Primary Sales Targets set by the global head office and

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local Management in order to deceive the Management, indulged in fudging and fabrication of the accounts of the Company so as to give a rosy picture of the performance. In order to succeed in their evil design, key employees of the Company including the Respondent played an active part in commission of the fraud.

Against the aforesaid back ground, it has been alleged against the Respondent as under:

1.5 The Respondent was expected to know all the statutory provisions and correct procedure relating to treatment of Deposits as described under Section 58A of the Companies Act, 1956 and was aware that Company was not allowed to take deposits, but deliberately connived with other officials of the local management and aided the local management in the falsification of the books of account of the company in a manner that the deposits as taken by the company be hid thereby also falsified the books of account which did not give the true and correct picture of the affairs of the company.

PROCEEDINGS :

2. At the time of hearing fixed and held on 27th May 2019, the Committee noted that the representatives of the Complainant Department along with its Counsel were present in person before it. The Committee further noted that neither the Respondent was present in person or through his authorized representative, nor any communication was received from him. It was noted that notice was duly delivered at his address available with the Institute. While following the principles of natural justice, the Committee decided to grant one final opportunity to the Respondent to appear before the Committee and defend his position. The Committee directed the office to e-mail as well as write a

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letter to the Respondent communicating to him the directions of the Committee that final opportunity had been granted to him to defend his case before it. The Committee also directed that in case he did not appear before the Committee, the Committee would proceed in terms of the Chartered Accountants (Procedure of Investigation of Professional and Other Misconduct and Conduct of Cases) Rules, 2007 on merits of the case. Accordingly, hearing in the matter was adjourned to a later date.

3. At the time of next hearing that took place on 25th July 2019, the Committee noted that the Representatives on behalf of the Complainant-Department along with its authorized Counsel and the Respondent in person along with his authorized Counsel were present before it. Since it was the first hearing in the matter, the Respondent was put on oath. Thereafter, the Respondent was asked if he wished the charges to be read out or these could be taken as read. The Respondent stated that he was aware of the charges against him. The Committee asked the Respondent as to whether he pleaded guilty or not. The Respondent pleaded not guilty and opted to defend his case.

The Committee, thereafter, asked the Counsel for Respondent to proceed further and to give submissions in the matter. The Counsel for the Respondent made his submissions. The Committee examined the Respondent on the submissions made by his Counsel. On being asked, the representative of the Complainant-Department stated that she had nothing further to submit except what was already placed on record. After considering the oral as well as written submissions made by the Complainant and/or Respondent as well as the documents available on record, the Committee decided to conclude the matter. While concluding

the matter, the Committee directed the Respondent to submit brief description of his job profile while he was employed with the Company, within a period of 7 days from the date of the hearing. Accordingly, the hearing in the matter was concluded.

Finding of the Committee :

4. The Committee noted that the allegation against the Respondent was that the Respondent was working with RIC as Manager (Receivables) and was responsible for maintaining the true and correct affairs of the accounts of the Reebok India Company but (i) the Respondent misused his position and played an active part in fudging and falsification of the Accounts of the Company whereby accounts receivable were managed by:

- a. Parallel sets of books: Regional Outstanding Reports (ROR)
- b. Subsequent reversal of sales by issuance of credit notes
- c. Adjusting aging debtors by using fund flows from the collection of deposits through Franchise Referral Programme (FRP).

(ii) The Respondent was instrumental in accepting deposits from public in the Company;

5. The Committee noted that the Respondent in his Written Statement has submitted that being Manager (Receivables) in the Accounts Department of RIC, he was reporting to General Manager of the Company. He was in back office accounting and his duty primarily was to ensure accounting of all transactions timely and correctly, being part of the middle management, as according to the organizational hierarchy there were two layers of reporting between him and the top management which consisted of Shri Vishnu Bhagat (VB) the then Chief Operating Officer (COO), Shri Subhinder Singh Prem (SSP) the

then Managing Director (MD) of the Company and Shri Shahin Padath (SP) the then Chief Financial officer (CFO) of the Company and next level consisting of General Managers. It was only the MD, COO & the CFO who were the key decision makers in the Company. They were the ones who enjoyed all financial and executives' powers in RIC, by virtue of being Directors on the board of the company or through the general power of attorney (GPA) executed by board of directors of RIC in favour of them. Further, the Company was using ERP system which was duly controlled by global head office of the Company and hence there was no way in which the transaction could be hidden. As per him, there was no scope for an employee of his position to contradict orders of his Supervisors/Controllers. Moreover, he was not holding a position which could fall within the ambit of 'Officer' as defined in the Companies Act, 1956.

5.1 As regard ROR, he submitted that it was mere reconciliation sheets of outstanding receivable i.e. difference between balance as per ERP and Balance as per party accounts. Further according to the Respondent as per the authority matrix, the unverified and wrong claims could not be booked without approval of head of Sales, COO and MD. In view of the same, it was opined that without the approval of senior at top level positions, deviation / change in the accounts was not possible. It was further argued by him that he was not named as a beneficiary or perpetuator of any violation of law in any of the forensic audits conducted by KPMG or EY.

5.2 As regard non-booking of sales returns, non-despatching of invoiced goods, etc., he stated that these were the functions of Sales

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Departments and Warehousing Departments and therefore, were not required to be responded by the Respondent.

5.3 As regard FRP program, the Respondent stated that it was a business model formulated by the sales team and the top management of RIC to identify prospective franchise for network expansion. He was a part of the accounting team and had no role to play in formulation of sales strategies and franchisee development plans which were approved by three persons. As per the Respondent, other than Vishnu Bhagat and SSP the third person behind the scheme was Shri Nikhil Upadhyay (NU), the then National Sales Manager of RIC. In other words, it was a well-considered top management decision and the Respondent being a middle management employee was not a party to the formulation of FRP Scheme.

5.4 For an unsuspecting Respondent, nothing could be seen in FRP scheme as foul or inappropriate. He brought on record copy of the said scheme and explained that as per the Schedule, it was proposed to allot stores to prospective franchise within a period of 6-12 months. Pending allotment, interest would be paid on amount received or refunded on non-allotment.

6. The Committee noted that vide letter dated 23rd August 2019 the Respondent had given brief of his job profile during 2010 which, *inter alia*, included (a) ensuring compliance to Indian as well as US GAAP requirements in reporting; (b) handling requirement from tax team for assessment (c) preparing financials; (d) verification of claims from customers; (e) highlighting to sales team about receivable status along with ageing.

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7. On perusal of the Investigation Report of SFIO, the Committee noted the following facts (D-129):

With respect to FRP Programme:

7.1 RIC was a thinly capitalized company and with the spectacular growth over a number of years in its primary sales to the franchisees, it was in dire need of funds as it had allotted franchisee stores in the past mainly on MG model, which was a highly cash intensive model. In December, 2010, its employees Shri Nikhil Upadhye (then National Sales Manager), Shri Subhinder Singh Prem (then Managing Director) and Shri Vishnu Bhagat (then Chief Operating Officer) formulated a novel scheme known as 'Franchisee Referral Program' (FRP) and collected funds (approx. Rs. 100 crore) from the market purportedly by inviting prospective franchisees to open franchisee stores the amounts collected had a lock in period of six months high rate of return on such funds was offered and termed as incentive varying from 16% to 24% and 32% per annum in some of the cases. The amount was supposed to be kept till a Reebok store was allotted to such deposition (D-129).

7.2 Investigation further revealed that RIC took large amounts from parties under FRP which were received initially for six months but rolled over after six months by returning the deposited amount with interest, followed by re-investment by them for another six months period (D-134).

7.3 There was no connection between the money collected under FRP and the franchisee stores opened. Out of 58 investors, 15 investors were inquired by the Complainant-Department and it was

concluded that transaction with RIC were in nature of investments by way of fixed deposits for return of capital and the interest amount. Neither intention to take over retail store of RIC was expressed by investors nor any store under FRP was allotted **(D-135)**.

7.4 On account of the following facts as brought out in SFIO Report, it was amply clear that the money advanced by various parties under FRP scheme to RIC was nothing but deposits made by them for earning interest only and there was no time for opening up of retail store of RIC **(D-141 & 142)**.

- *The treatment of amounts received under FRP as deposit by the tax auditors in the tax audit report for FY 2010-11;*
- *The fact that the franchisees do not make any deposits/advances (and that too at such high interest rates) for store allotment as deposed by Preet Pal Singh.*
- *The fact that RIC issued post-dated cheques to the depositors for monthly payment of interest as well as for return of capital investment;*
- *The fact that RIC deducted tax at source on account of incentive (interest) paid to so called prospective franchisee under Section 194A of the Income Tax Act, 1961 relating to interest other than interest on securities.*
- *The decision of the Hon'ble Supreme Court in the case of Ram Janaki Devi and another vs. M/s Juggilal Kamlapat.*

RIC had declared itself to be a private company. Therefore, as per the provisions of Section 3(1)(iii) of the Companies Act, 1956, it was not entitled to accept any deposit from the public. In order to bypass these provisions of the corporate law, FRP Scheme was devised by RIC to camouflage the transaction of accepting deposits under the garb of FRP”.

7.5 FRP scheme was launched to raise funds as RIC was in dire need of finances and camouflaging of the money so received under debtors revealed the intent of concealing such deposits **(D-143)**.

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7.6 Franchisees of RIC were not normally required to give any security deposits to open a store but required only to invest in inventory and retail store but opening of only one store under FRP Schemes and that too after returning major portion of their investment, shows that RIC had no intention of creating nexus between the deposits and the store allotment (D-143).

7.7 From the material available on record, it was noted that the deposits were accepted by RIC during 2010 and 2011 from both non-corporate and corporate entities.

7.8 As the deposits received under FRP were wrongly credited to various sundry debtors to show improvement in aging profile of these debtors, it amounted to the falsification of account of RIC. Further, the interest payments on these deposits were also wrongly credited to a fictitious account, leading to falsification of books of account of RIC.

With respect to involvement of the Respondent in the matter :

7.9 Shri Soumyabrata Mukherjee, Manger Finance-Receivables in his statement recorded on oath by SFIO, stated that a) FRP scheme of RIC was launched to collect money from existing and prospective channel partners; b) the details of collection was maintained in an excel spreadsheet in definite format and Post-Dated Cheques towards principal and interest amount was issued; c) Regarding posting of FRP money, he raised concern with his seniors Shri Lalit Marwah and Shri Manish Marwah as money was also coming from the non-existing customers as well. d) as to whether they should open new customer masters, who directed him on this account. In most of the cases there were no customer masters opened in the system.



7.10 Regarding FRP related communication, on 5th January 2011, Shri Lalit Marwah wrote an e-mail to him marking copy to Shri Manish Marwah, directing him as to in which all accounts, the money that came from Ashaha Enterprises was to be posted **(clearly mentioning name of the customers like Jain, Uttam Ara, Ahuja & A-One) (D-343)**.

It is noted that the Complainant-Department has produced Statement on Oath as well as copy of e-mails wherein the said communication took place.

8. The Committee further noted that the investigation report has stated that :

"7.3.6 Investigations further revealed that forever-greening the worsening position of accounts receivable, the top functionaries resorted to 'In and Out' transactions, to show fictitious collection against debtors of the Company. The main accomplice in this process was Ashana Group, owned by one Lamba family, who helped the top functionaries of the Company by providing accommodation entries, in booking fictitious collections from sundry debtors. Funds were transferred out of the Company multiple times and re-infused as receipts/realisations against outstanding receivables from sundry debtors. During 2010, the books of account and financial statements have been falsified by this practice to the extent of at least Rs 98.40 crore." (C-39).

"7.3.7 Investigations further established that the Company had also raised finance from public through short term deposits with pre-assured return, in the garb of Franchisee Referral Program (FRP) in violation of Section 58A of the Companies Act, 1956. Holding a declared status of 'private Company with unlimited liability', the Company was not permitted to raise funds from the general public. The top functionaries of the Company however, resorted to camouflaging device of FRP, by not recording the deposits collected in its books of account as 'deposits' but showing the same as collections from sundry

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debtors. The interest charged on these deposits was also booked in a fictitious customer account 'M/s River Pentland Pvt Ltd.' to avoid detection. During 2010 and 2011, the books of account and financial statements have been falsified by an amount of at least Rs 60.85 crore and Rs 24.76 crore, respectively on account of FRP." (C-40).

9. The Committee further noted following extracts of statement on oath of Soumyabrata Mukherjee dated 28th September, 2012 who was sub-ordinate of the Respondent.

"I was approached by Mr. Lalit Marwah & Mr. Manish Marwah saying that RIC is launching an incentive based programme, named as Franchisee Referral Programme (FRP) to collect money from existing & prospective channel partners. They further added that the detail of this collection needs to be maintained in an excel spread-sheet in definite format and we also need to issue Post Dated Cheques towards the principal and interest amount. They further added that detail needs to be maintained by me only".

"Wherever, I was asked by Mr. Lalit Marwah or Mr. Manish Marwah or by the sales Head Mr. Nikhil Upadhyay to issue the PDCs, me and my team used to prepare the requisition and forward it to the Payable Department for issuance of cheque. Regarding posting of the FRP money, I was always directed by Mr. Lalit Marwah & Manish Marwah as where the same needs to be posted in company books. In most of the cases there were no customer masters opened in the system. I was directed by Mr. Lalit and Mr. Manish verbally in almost all the cases in which all incorrect accounts the entries needs to be posted and in other cases, it was posted in a miscellaneous account named Hundi Retirement account".

"Regarding FRP related communication, on 5th January, 2011, Mr. Lalit Marwah wrote one mail to me marking copy to Mr. Manish Marwah, directing me as in which all accounts, the money that came from Ashna Enterprises needs to be posted (clearly mentioning name of the customers like Jain, Uttam Ara, Ahuja & A One".

"During early January, 2011, I was again advised by Mr. Anand Agarwal, Mr. Manish Marwah & Mr. Lalit Marwah that we need to

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do another type of transactions, which was later nominated as "In & Out". As per transaction, the requisition slips for remitting the funds through RTGS was duly signed and approved by Mr. Vishnu Bhagat & Mr. Subhinder Singh Prem and instruction to the bank was given by the Accounts payable department. The confirmation having remitted the funds through RTGS was confirmed by Ms. Snigdha Roy. Some mails were exchanged between me and Ms. Snigdha Roy about those transactions marking copies to Mr. Anand Agarwal, Mr. Sandeep Mathur, Mr. Lalit Marwah and others, who were instrumental in these transactions".

"In April, 2011, I was promoted as Manager (Receivables), reporting to Sr. Manager, Mr. Lalit Marwah. My job profile continued to be the collection planning and discussion with the sales team and follow up on the same, hold the customers for not meeting the collection targets. My reporting remained with Mr. Lalit Marwah (Sr. Manager Finance)".

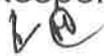
From, the above, it was noted that the Respondent had played an active role in respect of keeping the deposits received under FRP under wraps as well as arranging alleged 'in out transactions'. It is noted that being Manager (Receivable), the Respondent was under duty to keep true and fair view of amounts received. In extant case, amounts received under FRP were not correctly reflected in the accounts of individuals who provided those nor the accounts of other debtors were correct when such amounts were being wrongly adjusted against such other debts. It was also noted that shortly thereafter both his subordinate and the Respondent were promoted to the next level.

10. The Committee thus was of the opinion that the Respondent cannot escape from his liability by merely stating that he was not a part of the decision making process, because he was an active participant in execution of the scheme formulated for wrongful intention. On being asked by the Committee, he accepted that he never pinpointed or raised his concern as regard the inappropriate ways adopted by the top

management in booking fictitious collections from sundry debtors from various unrelated sourced especially from FRP Program, which as per the investigation report, was nothing but a scheme launched to raise funds as RIC was in dire need of finances and thereafter camouflaging the money so received under debtors revealed the intent of concealing such deposits. Thus, undoubtedly he was a part of execution team for such a fraud. It further noted that the Respondent had submitted that RIC had adequately provided for incentive/interest cost in profit and loss account and TDS was adequately deducted and deposited to govt account (para no 4 of Respondent submissions dated 23rd August 2019). This defence in no way detracts from the primary fraud of recording deposits as collection from ageing interlocked debtors and camouflaging funds raised in contravention of Section 58A of the Companies Act, 1956. The way such entries were posted in books is sufficient evidence to find the Respondent guilty of the alleged misconduct as it formed part of the modus operandi being adopted by the Company to manipulate the accounts for 2010. Thus in the opinion of the Committee, the Respondent has clearly brought disrepute to the profession and is guilty of "Other Misconduct" falling within the meaning of Clause (2) of Part IV of the First Schedule to the Chartered Accountants Act, 1949. Further since the alleged misconduct is in relation to his duties as an employee of the organisation, he is also held guilty of professional misconduct falling within the meaning of Clause (1) of Part II of the Second Schedule read with Chapter II of Council General Guidelines 2008 1-CA(7)/02/2008 dated 08th August, 2008.

Conclusion :

11. Thus, in conclusion, in the opinion of the Committee, the Respondent is guilty of professional and other misconduct in terms of



Section 22 of the Chartered Accountants Act, 1949 read with Clause (2) of Part IV of the First Schedule and Clause (1) of Part II of the Second Schedule to the said Act.

Sd/-
(CA. Prafulla Premsukh Chhajed)
Presiding Officer

Sd/-
(Anita Kapur)
Member (Govt. Nominee)

Sd/-
(Ajay Mittal)
IAS (Retd.)
Member, (Govt. Nominee)

Sd/-
(CA. Debashis Mitra)
Member

Sd/-
(CA. Manu Agrawal)
Member

Date: 23rd September, 2019

Place: New Delhi

Certified to be True Copy
Mohita Khanna
(Mohita Khanna)
Assistant Secretary
Disciplinary Directorate
The Institute of Chartered Accountants of India