

**CONFIDENTIAL**

**DISCIPLINARY COMMITTEE [BENCH – I (2023-2024)]**

**[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**

**Ref. No. – [PR/G/460/2022/DD/315/2022/DC/1721/2023]**

**In the matter of:**

**Shri Vineet Rai  
Indian Corporate Law Services  
Deputy Registrar of Companies  
O/o Registrar of Companies, West Bengal  
Ministry of Corporate Affairs  
Nizam Palace, 2<sup>nd</sup> MSO Building,  
2<sup>nd</sup> Floor, 234/4, A J C Bose Road,  
Kolkata (West Bengal) – 700020**

**.....Complainant**

**Versus**

**CA. Sandeep Goel, (M. No. 060104),  
37, Dr. Abani Dutta Road, Basement No. 16  
Gagananchal Complex, Howrah  
West Bengal- 711 106**

**.....Respondent**

**MEMBERS PRESENT (Through Online Mode): -**

- i) CA. Aniket Sunil Talati, Presiding Officer**
- ii) Sh. Jugal Kishore Mohapatra, IAS (Retd.) (Government Nominee)**
- iii) Shri Prabhask Shankar, IRS (Retd.), (Government Nominee)**
- iv) CA (Dr). Rajkumar Satyanarayan Adukia, Member**
- v) CA. Gyan Chandra Misra, Member**

**DATE OF FINAL HEARING : 07-11-2023**

**PLACE OF FINAL HEARING : New Delhi / Through Video Conferencing**

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Shri Vineet Rai, ICLS Dy. ROC -Vs - CA. Sandeep Goel, (M. No. 060104), Howrah

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**PARTIES PRESENT: -**

Complainant's Representative : Shri Afsar Ali  
Counsels of the Respondent : CA. A. P. Singh & CA. Utsav Hirani

**BRIEF OF THE DISCIPLINARY PROCEEDINGS: -**

1- On the day of hearing held on 27<sup>th</sup> April 2023, the Committee noted that the Complainant's representative and the Counsel of the Respondent were present through VC. Thereafter, the Counsel for the Respondent made his submissions on the charges. The Committee also posed questions to the Complainant's representative and the counsel of the Respondent. The Counsel for the Respondent requested to provide him with the report that has been submitted with the Ministry. The Committee noted the same and instructed the Complainant to provide Investigation Report of the Company based on which the instant Complaint was filed against the Respondent. With the above said direction, the hearing was part heard and adjourned.

The Complainant, in the meeting held on 7<sup>th</sup> November 2023, expressed his inability to furnish such investigation report as is called by the Committee.

2- On the day of the final hearing held on 07<sup>th</sup> Nov 2023, the Committee noted that the Complainant's representative was present through VC. The Respondent's counsels were also present through VC. Thereafter, the hearing in the matter continued from the stage where it was left in last hearing. The Counsels for the Respondent made their detailed submissions on the charges. The Committee also posed questions to both, the Complainant's representative, and the Counsel for the Respondent. After hearing the submissions of both the parties, the Committee decided to conclude the hearing in the matter.

**3- BRIEF BACKGROUND OF THE MATTER: -**

It had come to knowledge of the Central Government that certain directors with corresponding Companies have registered such Companies with Registrar of Companies, West Bengal using forged documents & omission of material facts. Further, certain information has been received by them regarding significant irregularities in ownership and financial reporting of VIVO Group of Companies and the subject Company namely, Yingjia Communication Private Limited [Old

*Shri Afsar Ali*

name Vivo Communication Device Private Limited (CIN U74900WB2014PTC203356)] which is one of the key Company in the group.

Upon perusal of the e-Forms filed with the Registrar of Companies, certain discrepancies have been observed. It is alleged that the Respondent has audited /certified e-form knowingly with false information/ documents/ declaration/omitting material facts/information and failed to discharge his duties and wilfully connived with directors / company / shareholders / in certifying e-forms knowingly with false information / documents / declaration / omitting material facts/information in said Company.

#### **4- CHARGES IN BRIEF: -**

The Committee noted that based on the irregularities observed in the financial statements of Company for the financial year 2014-15, 2015-16, 2016-17, 2017-18 & 2018-19, the Complainant has levelled following charges on which the Respondent has been held prima facie guilty:

i)- Deferred Expenditure amounting to Rs. 73,86,362/-, Rs. 5,52,53,116/- Rs. 2,57,79.967/- Rs. 42,85,38,310/- and Rs. 21,42,69,155/- during the financial years 2014-15, 2015-16, 2016-17, 2017-18 and 2018-19 has been wrongly classified under the heading "Long Term Loan & Advances" in contravention to the provisions of Schedule III of the Companies Act, 2013 requiring such classification to be under the heading "Other Non-Current Assets" under the sub-heading "Others".

ii)- Short Term Loan & Advances during the financial years 2014-15, 2015-16, 2016-17, 2017-18, 2018-19, 2019-20 & 2020-21 has not been properly classified and disclosed as per the requirement of relevant schedule of the Companies Act 2013.

iii) Balance with government authorities, advance tax, advance to employees, security deposits and other prepaid expenses etc. have not been properly classified and disclosed as per the requirement of relevant schedule of the Companies Act 2013.

(iv) Financial Costs amounting to Rs. 41,945,144/- and Rs. 23,31,65,171/- during the financial years 2018-19 and 2019-20 has not been classified and disclosed as per the requirement of relevant schedule of the Companies Act 2013.

*Am*

*Sandeep*

**SUBMISSION OF THE RESPONDENT AND FINDINGS OF THE COMMITTEES**

5- The Committee noted that the Respondent has inter alia made following written and verbal submissions in his defense:

(i) That as per the Standards on Auditing (SAs) issued by ICAI, the auditor's responsibility is to express an opinion on the financial statements of the company based on the audit evidence obtained. The auditor is required to obtain a sufficient understanding of the entity and its environment, including its internal control, in order to assess the risks of material misstatement and design appropriate audit procedures. In the given scenario, the company does not have any loans or borrowings, and the third-party risk is very limited. The directors are also shareholders, which indicates that they have a vested interest in the company's financial well-being. These factors suggest that the audit risk in this case is relatively low. As per SA 200, the auditor is required to assess the risks of material misstatement at both the financial statement and assertion level. The auditor is also required to consider the risk of management override of controls and the possibility of fraud. In the given scenario, since the directors are shareholders and have a vested interest in the company's financial well-being, it is less likely that they would intentionally mislead anyone. This would suggest that the risk of management override controls and the possibility of fraud is also relatively low. Therefore, based on the above factors and in accordance with the Standards on Auditing issued by ICAI, the auditor's responsibility to express an opinion on the financial statements is likely to be fulfilled with a lower risk of material misstatement. The lack of loans or borrowings, the limited third-party risk, and the fact that the directors are shareholders all suggest that the question of misleading anyone does not arise, which provides further support for the auditor's opinion on the financial statements.

(ii) That the determination of the operating cycle of a business is a matter that lies within the purview of the management. As per the relevant accounting standards, if the management believes that the items in question are recoverable within a period of 12 months, then such items may be classified as "Short Term". It is important to note that the auditor's role is to exercise professional judgement in evaluating the management's assertions and determining whether the financial statements present a true and fair view. Therefore, if the auditor agrees with the management's contention that the items in question are recoverable within a period of 12 months, and accordingly classifies them as "Short Term", it cannot be construed as professional misconduct on the part of the auditor. The auditor has exercised professional judgement and has not deviated from the relevant accounting standards.

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(iii) That the category of "Other non-current assets" is a residual category that includes items that do not fit into other specified categories. Dues with regards to statutory authorities are required to be classified in loans and advances as per the accounting standards, and deferred expenditure is essentially prepaid expenditure.

(iv) That Schedule III provides minimum disclosure requirements for financial statements and Companies have the flexibility to provide additional information if it is relevant and consistent with the accounting standards. The key objective is to ensure that the financial statements provide a true and fair view of the Company's financial position and performance and hence, the question of professional misconduct does not arise.

(v) That the instant Complaint does not relate for any failure relating to performance of audit procedures or reporting in respect of the disclosures required under the law. The instant complaint evidently is a result of an action in haste to initiate disciplinary proceedings against hundreds of professionals engaged with companies, without even attempting to identify and understand the scope of work and the obligations cast upon the professional concerned. Considering above, the question of there being any lack of diligence or gross negligence does not arise.

(vi) The respondent draws your attention to the Supreme Court decision in Chander Kanta Bansal vs Rajinder Singh Anand (refer Pages 14 to 20) has held "According to Oxford Dictionary (Edition 2006), the word "diligence" means careful and persistent application or effort. "Diligent" means careful and steady in application to one's work and duties, showing care and effort. As per Black's Law Dictionary (Eighth Edition), "diligence" means a continual effort to accomplish something, care; caution; the attention and care required from a person in a given situation. "Due diligence" means the diligence reasonably expected from, and ordinarily exercised by, a person who seeks to satisfy a legal requirement or to discharge an obligation. According to Words and Phrases by Drain-Dyspnea (Permanent Edition 13A) "due diligence", in law, means doing everything reasonable, not everything possible. "Due diligence" means reasonable diligence; it means such diligence as a prudent man would exercise in the conduct of his own affairs."

- 6- The Committee noted that with respect to the allegations of wrong classification of "Deferred Expenditure" the Respondent persuade to convinced the Committee that the subjected company is engaged in the trading of the mobile handsets and has incurrent expenditures in respect to advertisement & marketing (Radio advertisement/Hoardings/Social Media advertisement/ Branding ambassador expenditure etc.) of the mobiles under VIVO Brand and these amount shown under deferred expenditure have been paid in advance and the benefit would be yield over coming periods and therefore above said expenditure would not come under other non-current expenditure and hence the company has treated this as deferred expenditure and this classification has not impaired true and fair view in any case.

Committee noted that similar explanations have been given by the Respondents in respect of other alleged misclassifications.

- 7- With respect to allegations pertaining to finance cost, the Committee noted that the Respondent in his submission has informed that the said finance costs are not incurred in respect of borrowings but were incurred in the course of promotions of its product.

After perusal of all the verbal and written submissions of the Respondent and based on material available on record, the Committee observed that though there are certain classifications errors in the reporting of various assets/ expenses, but the intention of the Respondent does not seem to mislead the user of financial statements and also does not affect the overall true and fair view on financial statement of the Company and hence the Respondent cannot be said to be gross negligent while performing his professional duties.

**Conclusion: -**

- 8- Thus, in the considered opinion of the Committee, the Respondent is **NOT GUILTY** of Professional Misconduct falling within the meaning of Item (6) & (7) of Part I of the Second Schedule to the Chartered Accountants Act, 1949.

Sd/-  
(CA. Aniket Sunil Talati)  
Presiding Officer

Sd/-  
Sh. Jugal Kishore Mohapatra, IAS (Retd.)  
Government Nominee

Sd/-  
(SHRI PRABHASH SHANKAR, I.R.S. (Retd.)  
Government Nominee

Sd/-  
CA (Dr). Rajkumar Satyanarayan Adukia  
Member

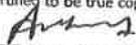
Sd/-  
(CA. Gyan Chandra Misra)  
Member

Date:09.01.2024

Place: NEW DELHI

सही प्रतिलिपि होने का लिए प्रमाणित

Certified to be true copy



अरुण कुमार / Arun Kumar

वरिष्ठ कार्यकारी अधिकारी / Sr. Executive Officer

अनुशासनात्मक निदेशालय / Disciplinary Directorate

इंस्टिट्यूट ऑफ चार्टर्ड एकाउंटेंट्स ऑफ इंडिया

The Institute of Chartered Accountants of India

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