



भारतीय सनदी लेखाकार संस्थान

(संसदीय अधिनियम द्वारा स्थापित)

THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA

(Set up by an Act of Parliament)

PR/41/18-DD/92/18] & [PR/41A/18-DD/93/18 (Clubbed)]-DC/1138/19

[DISCIPLINARY COMMITTEE [BENCH-II (2024-2025)]

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

ORDER UNDER SECTION 21B (3) OF THE CHARTERED ACCOUNTANTS ACT, 1949 READ WITH RULE 19(1) OF THE CHARTERED ACCOUNTANTS (PROCEDURE OF INVESTIGATIONS OF PROFESSIONAL AND OTHER MISCONDUCT AND CONDUCT OF CASES) RULES, 2007

[PR/41/18-DD/92/18] & [PR/41A/18-DD/93/18 (Clubbed)]-DC/1138/19]

In the matter of:

Shri Sandeep Tandon,
2601, Beau Monde, A.M. Road,
Prabhadevi,
MUMBAI – 400 025.

.... Complainant

Versus

CA. Hemanshu Mansukh Solanki (M. No. 132835)
M/s. S.K.H.D & Associates
602, Prestige
3, Baudi Cross Lane,
Orlem Kanchpada, Malad West,
Mumbai 400 064.

.... Respondent

Members Present:-

CA. Ranjeet Kumar Agarwal, Presiding Officer (in person)
Mrs. Rani S. Nair, IRS (Retd.), (Government Nominee) (through VC)
Shri Arun Kumar, IAS (Retd.), (Government Nominee) (in person)
CA. Sanjay Kumar Agarwal, Member (in person)
CA. Cotha S Srinivas, Member (in person)

Date of Hearing: 19th March, 2024

Date of Order: 9th May, 2024

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, the Disciplinary Committee was, inter-alia, of the opinion that **CA. Hemanshu Mansukh Solanki (M. No. 132835)** (hereinafter referred to as the '**Respondent**') is **GUILTY** of Professional and Other Misconduct falling within the meaning of Item (2) of Part IV of the First Schedule and Item (7) of Part I of the Second Schedule to the Chartered Accountants Act, 1949.

2. That pursuant to the said Findings, an action under Section 21B(3) of the Chartered Accountants (Amendment) Act, 2006 was contemplated against the Respondent and a communication was addressed to him thereby granting an opportunity of being heard in person / through video conferencing and to make representation before the Committee on 19th March 2024.

3. The Committee noted that on the date of the hearing held on 19th March 2024, the Respondent was present through video conferencing and made his verbal representation on the Findings of the Shri Sandeep Tandon -vs- CA. Hemanshu Mansukh Solanki (M. No. 132835)



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Disciplinary Committee. The Committee also noted that the Respondent in his written representation on the Findings of the Committee, inter-alia, stated as under:

- (a) The change in the composition of the Disciplinary Committee would necessitate de-novo hearing.
- (b) An original Mandate was issued by Quant Capital Private Limited which was later modified by Reliance Capital Ltd., with the Complainant being kept informed. He did not raise any objections to the modifications introduced. Consequently, the Complainant, in compliance with the terms of the revised mandate furnished the Definitive Agreement, which was a stipulated requirement under the altered conditions.
- (c) In the Mandate letter dated 11th November 2017, the Respondent's role was strictly limited to vetting and providing feedback, with no authority to mediate, impose, certify, or conclude on the transaction or settlement of any amount between the shareholders.
- (d) The report submitted by the Respondent was eventually rejected by the Complainant and the shareholders did not act upon the numbers given in his report.
- (e) The Respondent's Report does not constitute a Certificate of NAV.
- (f) Email dated 14th December 2017 and mandate letter dated 11th November 2017 have two different sets of calculations which were provided to the Respondent by Mr. Kaustubh Samant (CFO of Quant Capital Private Limited) for vetting. Calculation given in these two statements are neither comparable nor interchangeable.
- (g) The comparison of the Limited Review of the Consolidated Financial Statement and the Respondent's feedback is inappropriate, given the distinct nature of these exercises.
- (h) The Complainant's resignation was because of the majority shareholder's decision, for which there was no need for any report.

4. The Committee considered the reasoning as contained in the Findings holding the Respondent Guilty of Professional and Other Misconduct vis-à-vis written and verbal representation of the Respondent. As regard the submission of the Respondent that since there has been a change in the composition of the Committee and thus, de-novo hearing is required in the case, the Committee keeping in view the following observations of the **Honorable Appellate Authority in para 8 of its Order dated 14th June 2021 passed in Appeal no. OS/ICAI/2020 in the matter of Devki Nandan Gupta –vs- ICAI and others** on the same issue was of the view that there is no merit in the contention of the Respondent:

“We find no substance in the appellant's plea that due to change in the composition of DC who had passed the order dated 08.02.2018 the new DC with changed members could not have passed the final order dated 07.11.2019.....”

We are of the view that no prejudice whatsoever was caused to the appellant due to change in the composition of the DC who had held him guilty of 'professional misconduct' under Clause 7 of Part – I of the Second Schedule and the one who had finally awarded punishment vide order dated 07.11.2019. In fact, the changed DC was not expected or required to hear arguments afresh on merits to find if the appellant was guilty of 'professional misconduct'. The said findings had already been recorded by the previous DC in its order dated 08.02.2019 and attained finality qua the changed DC. The changed DC was required only to hear the appellant on the quantum of punishment/penalty and for that, the appellant was afforded reasonable opportunity of being heard.”

As regard other submissions of the Respondent, the Committee held that due consideration to the submissions and documents on record had been given by the Committee before arriving at its Findings and that no fresh ground can be adduced at this stage.

5. Keeping in view the facts and circumstances of the case, material on record including verbal and written representations on the Findings, the Committee noted that the Respondent stated that he had Shri Sandeep Tandon -vs- CA. Hemanshu Mansukh Solanki (M. No. 132835)



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worked according to the Definitive Agreement. However, in the said agreement it is nowhere mentioned that the net worth of Quant Capital Private Limited as per books as on 31st March 2014 should be taken as the base for calculation of Net Assets Value. The Respondent in his report given for Net Assets Value had mentioned that Preference Share Capital of Quant Capital Private Limited amounting to Rs 50 crore for the year ended 31st March 2014 were redeemed. However, the authorized preference share capital of Quant Capital Private Limited for the said year was only Rs 10 crore. Accordingly, the Committee concluded that the Respondent failed to work in line with the requirement and deliberately adopted different methodology and his actions caused loss to the Complainant and thus, failed to exercise due diligence while performing his professional assignment. Hence the professional misconduct on the part of the Respondent is clearly established as spelt out in the Committee's Findings dated 7th February 2024 which is to be read in consonance with the instant Order being passed in the case.

6. Accordingly, the Committee was of the view that ends of justice will be met if punishment is given to him in commensurate with his professional and Other misconduct.

7. Thus, the Committee ordered that CA. Hemanshu Mansukh Solanki (M. No. 132835) be Reprimanded and also a Fine of Rs. 1,25,000/- (Rs. One Lakh Twenty Five Thousand only) be imposed upon him payable within a period of 60 days from the date of receipt of the Order.

sd/-

(CA. RANJEET KUMAR AGARWAL)
PRESIDING OFFICER

sd/-

(MRS. RANI S. NAIR, IRS RETD.)
GOVERNMENT NOMINEE

sd/-

(SHRI ARUN KUMAR, IAS RETD.)
GOVERNMENT NOMINEE

sd/-

(CA. SANJAY KUMAR AGARWAL)
MEMBER

sd/-

(CA. COTHA S. SRINIVAS)
MEMBER

CONFIDENTIAL

DISCIPLINARY COMMITTEE [BENCH – II (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.

File No.: [PR/41/18-DD/92/18] & [PR/41A/18-DD/93/18 (Clubbed)]-DC/1138/19]

In the matter of:

Shri Sandeep Tandon,
2601, Beau Monde, A.M. Road,
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Versus

CA Hemanshu Mansukh Solanki(M. No. 132835)
M/s. S.K.H.D & Associates
602, Prestige
3, Baudi Cross Lane,
Orlem Kanchpada, Malad West,
Mumbai 400 064

.... Respondent

MEMBERS PRESENT:

CA. Ranjeet Kumar Agarwal, Presiding Officer (In Person)
Mrs. Rani Nair, I.R.S. (Retd.), Government Nominee (In person)
Shri Arun Kumar, I.A.S. (Retd.), Government Nominee (In person)
CA. Sanjay Kumar Agarwal, Member (In person)
CA. Sridhar Muppala, Member (Present Through Video Conferencing)

DATE OF FINAL HEARING : 17th November 2023
DATE OF DECISION TAKEN : 14th December 2023

PARTIES PRESENT

Complainant: Shri Sandeep Tandon (Through Video Conferencing Mode)
Representative for Complainant: Mr. Harshal Patel (Through Video Conferencing Mode)
Counsel for Complainant: Mr. Darshan Gandhi, Advocate (Through Video Conferencing Mode)
Respondent : CA. Hemanshu Mansukh Solanki (Through Video Conferencing Mode)
Counsel for Respondent: CA. Utsav Hirani (Through Video Conferencing Mode)

BACKGROUND OF THE CASE:

1. The brief background of the case is that the Complainant had stated that on 11th November 2017, majority shareholders, Reliance Capital Ltd. (RCL) (74% holding) and minority shareholder, Shri Sandeep Tandon (12.74% holding) requested the group CFO of **M/s Quant Capital Private Limited** (hereinafter referred to as 'QCPL') to appoint the Respondent, Partner, SKHD & Associates to calculate the Net Asset Value (NAV) of the QCPL as on 30th September, 2017 to facilitate the RCL exit plan.

CHARGES IN BRIEF: -

2. The Committee noted that the charge against the Respondent is that the Respondent along with his senior partner CA. Shyam Malpani inflated the NAV of the QCPL and further certified two different NAV & Net worth (NW) for the same date/ period and failed to work as per the given mandate.
3. The Committee noted that the Respondent in his reply at the stage of PFO had, inter-alia, mentioned as under:
 - i. That after detailed interaction with RCL and QCPL, the original mandate as given by QCPL was modified by RCL keeping the Complainant informed.
 - ii. Thereafter, the Respondent has reviewed relevant books of accounts, secretarial records of the Quant Group, Restructure Plan, Definitive agreements and other relevant documents and records as and to the extent provided/ produced before the Respondent and considered necessary.
 - iii. As per the letter dated 11th November 2017, the scope of work assigned was to only vet the statement of Net assets with adjustments and give the Respondent's feedback on amount to be retained in consolidated financial statement of QCPL after necessary adjustments and understanding between the parties.

- iv. He further stated that the Complainant had compared the consolidated Balance Sheet subject to limited review as on 30th September 2017 but failed to understand that consolidated balance sheet was prepared as per the relevant accounting standards whereas the feedback in the report was given after considering the necessary adjustments.
 - v. He further stated that he was never associated with CA. Shyam Malpani at any time and he has acted independently in preparing the report and hence, there was no question which could be raised on his integrity.
 - vi. Further, as regard the claim of the Complainant that the Respondent has given two different NAV for the same period, he stated that neither audit nor the abovementioned report can be considered as certification of Net Asset Value of the Company.
 - vii. He further submitted that adjustments desired by the Complainant were not considered due to lack of supporting documents.
4. The Director (Discipline) had, in his Prima Facie Opinion dated 24th June 2019, noted that the original mandate required the Respondent to vet the consolidate Net Assets of QCPL as on September 30, 2017 after adjusting certain amounts showcased in the attached excel sheet given along with the mandate letter whereas the Respondent provided the statement for the amount to be retained in QCPL Group which was not mentioned in the mandate letter. Thus, it proves beyond doubt that the Respondent had deviated from the scope of assignment as mentioned in original mandate and adopted another unapproved/ unsuggested methodology to carry out the assignment. It was pertinent to note that he had not provided a copy of the revised approved mandate or any e-mail (as contended by him in his Written Statement) as exchanged by Shri Hari Nair with him. In the absence of any written document, it was viewed that the Respondent had instead relied on the instructions received telephonically from RCL team and carried out the assignment in violation to the requirement of original mandate.
- 4.1 It was further noted that in the email dated 5th December, 2017 the CFO of QCPL, Shri Kaustubh Samant had also expressly stated his concern, that the

amount showcased by the Respondent as the retained capital was never requested. Thus, it was amply clear that Respondent had failed to work in line with the requirement and had adopted different methodology to perhaps suit some other hidden mandate which appears to be a deliberate and thought out act of causing loss to the Complainant.

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 Misconduct falling within the meaning of Item (2) of Part IV of First Schedule and Item (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 (7) of Part I of Second Schedule:

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

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

SUBMISSION OF THE RESPONDENT ON PRIMA FACIE OPINION:-

6. The Respondent in his written submissions dated 14th August, 2020 had, inter-alia submitted as under:
 - a. He stated that CA. Shyam Malpani is not a partner of the firm where the Respondent is engaged in professional capacity. The FRN number of the

- firm is 105929W and it can be verified from the records of ICAI that CA. Shyam Malpani is not a partner of this firm.
- b. He further stated that the Complainant has not produced any proof or evidence of the Respondent having acted on conjunction with CA. Shyam Malpani.
- c. He further stated that the Complainant had failed to produce any proof/ evidence that the Respondent is not having acted independently. There are various publications of ICAI relating to independence of professional accountants, and the Complainant had not even remotely dealt with the requirement of independence and how the Respondent could even be deemed to have sacrificed his independence.
- d. He further stated that Complainant has not specified which accounting standard has been contravened by the Respondent with respect to which his complaint has been filed with ICAI.
- e. He further stated that the Complainant had failed to understand and comprehend that the Respondent is not a registered valuer and that he had only expressed his view and provided his calculations based on certain details and documents comprehensively explained in his report.
- f. He further stated that there is no opinion of the Council with respect to conduct of the Respondent.

BRIEF FACTS OF THE PROCEEDINGS:-

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

S.No.	Date	Status of Hearing
1.	30.03.2020	Cancelled due to unavoidable circumstances.
2.	01.02.2021	Cancelled due to unavoidable circumstances.
3.	27.04.2021	Cancelled due to unavoidable circumstances.
4.	25.06.2021	Adjourned at the request of Complainant.
5.	27.12.2021	Part- Heard and Adjourned.
6.	07.11.2022	Part- Heard and Adjourned.

7.	06.04.2023	Part-Heard and Adjourned.
8.	20.06.2023	Fixed and adjourned due to paucity of time.
9.	10.07.2023	Fixed and Adjourned at the request of the Respondent and in absence of the Complainant.
10.	28.07.2023	Fixed and Adjourned in absence of the Complainant and request of Respondent Counsel at the time the case was considered for hearing.
11.	10.08.2023	Part-Heard and Adjourned.
12.	25.08.2023	Fixed and Adjourned at the request of the Complainant.
13.	04.10.2023	Part- Heard and Adjourned.
14.	17.11.2023	Concluded and Judgment Reserved.
15.	14.12.2023	Final decision taken on the case.

8. The Committee noted that the first three hearings scheduled for 30th March, 2020, 1st February, 2021 and 27th April, 2021 were cancelled due to some unavoidable circumstances.
9. On the day of the Fourth hearing held on 25th June, 2021, the Committee adjourned the matter on the request of the Complainant.
10. On the day of fifth hearing held on 27th December 2021, the Committee noted that the Complainant was not present despite due delivery of notice upon him. The Respondent along with his Counsel Mr. Shovik Bhadra, Advocate was present from their place through Video Conferencing Mode. The Respondent was administered on Oath. Thereafter, the Committee enquired from the Respondent as to whether he was aware of the charges. On the same, the Respondent replied in the affirmative and pleaded Not Guilty to the charges levelled against him. The Committee, looking into the absence of Complainant and the fact that this was the first hearing before the present bench, decided

to adjourn the hearing to a future date. With this, the hearing in the matter was partly heard and adjourned.

11. On the day of sixth hearing held on 7th November, 2022, the Committee noted that the Respondent along with his Counsel CA. A. P. Singh were present from ICAI Tower, BKC Mumbai of the ICAI. The Committee noted that the Complainant was not present despite due delivery of notice upon him. At the outset, the Committee 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 opted for a de-novo hearing. The Committee acceded to his request and started a fresh hearing in the matter.

The Respondent was administered on Oath. Thereafter, the Committee enquired from the Respondent as to whether he was aware of the charges. On the same, the Respondent replied in the affirmative and pleaded Not Guilty to the charges levelled against him. Thereafter, looking into the absence of the Complainant vis-a-vis facts of case, the Committee decided to adjourn the hearing to a future date. With this, the hearing in the matter was partly heard & adjourned.

12. On the day of seventh hearing held on 6th April, 2023, the Committee noted that the Complainant was not present. The Committee further noted that the Respondent alongwith his Counsel CA. A P Singh and CA. Utsav Hirani were present from their respective places through Video Conferencing mode. At the outset, the Committee 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 opted for a de-novo hearing. The Committee acceded to his request and started a fresh hearing in the matter.

The Respondent was administered on Oath. Thereafter, the Committee enquired from the Respondent as to whether he was aware of the charges.

On the same, the Respondent replied in the affirmative and pleaded Not Guilty to the charges levelled against him. Thereafter, looking into the fact that this was the first hearing, the Committee decided to adjourn the hearing to a future date to provide one more opportunity to the Complainant. With this, the hearing in the matter was partly heard & adjourned.

13. On the day of eighth hearing held on 20th June, 2023, the Committee noted that the Complainant was not present. The Committee further noted that the Respondent, alongwith his Counsel CA. A P Singh were present from their respective places through Video Conferencing mode. The Committee could not take up this case due to the paucity of time, and the same was informed to the parties present.
14. On the day of ninth hearing held on 10th July, 2023, the Committee noted that the Respondent vide email dated 29th June, 2023 had sought adjournment on the ground that his Counsel was travelling abroad. The Committee noted that the Complainant was not present despite due delivery of notice. The Committee looking into the grounds of natural justice acceded to the adjournment request made by the Respondent, and accordingly, the case was adjourned. The Committee also directed the Office to inform the parties that no more extensions would be granted.
15. On the day of tenth hearing held on 28th July, 2023, the Committee noted that the Complainant vide email dated 28th July, 2023 has sought an adjournment on the grounds that he had to attend the inauguration of LPCC and CDMDF along with the Chairman of SBI and accordingly, requested to place the hearing in next week. Further, CA. Utsav Hirani stated that since chief Counsel, CA. A.P. Singh is busy in hearing before Board of Discipline, the matter may be adjourned for some time. On the same, the Committee informed CA. Ustav Hirani that the hearing in the matter has been adjourned for some time and CA. A.P. Singh can attend the hearing after the BOD hearing is over. When the hearing in the above matter was resumed, the Committee noted that CA. A. P. Singh was present and he requested for

adjournment of hearing. On the same, the Committee decided to adjourn the hearing. With this, the hearing in the above matter was adjourned at the request of the Respondent.

16. On the day of eleventh hearing held on 10th August, 2023, the Committee noted that the Complainant along with his CFO Mr. Harshal Patel were present through Video Conferencing Mode. The Committee further noted that the Respondent, alongwith his Counsel CA. A P Singh and CA. Utsav Hirani were present from their respective places through Video Conferencing mode. Since, the Respondent was already administered on oath in previous hearing hence, the Complainant was administered on Oath.
- 16.1 Thereafter, the Complainant was asked to explain his charges. The Complainant in his submissions had, inter-alia, mentioned as under:
- a. That quant capital was started by him and his people.
 - b. That quant capital is the subsidiary of Reliance Capital and he is the shareholder of the Company.
 - c. That he was in discussion to exit from the Reliance Capital. The agreement was signed in November 2014 and was under implementation and only last 2-3 Companies were left when this was undertaken.
 - d. That all those Companies were sold to him at their book value.
 - e. That mandate was given to Respondent firm only to assess the prevailing net-worth with more detail on behalf of Reliance Capital as a shareholder and not on the Quant Capital Board.
 - f. The Respondent firm instead of submitting the report to the shareholders of the Reliance Capital submitted the report to the CFO of Reliance Capital, the Nominee Director on the Board and the Board has not given the mandate to him.
 - g. The Respondent firm had calculated two NAVs and inflated the NAVs because they were getting some extra fees from Reliance Capital. This was all recorded in 2014 board minutes. They deliberately tried to showcase the CPES as recoverable loan. So, the Complainant rejected the proposal.

- h. That CA. Shyam Malpani was writing emails to the Respondent however later on he was saying that he was not the partner of the Respondent.
- i. That Mr. Malpani should also be penalized along with the Respondent.

16.2 When the Respondent was asked to make his submissions, he had, inter-alia, submitted as under:

- a. That the Complainant had not submitted any documents and evidence in support of his allegations at earlier stage. However, at the time of Rejoinder which the Respondent had received after Prima Facie Opinion, the Complainant tried to increase the scope of this case.
- b. The Complainant had given in writing that 70-80% of the income of the firm is from the Reliance Group. That the documents relating to financial statements of the firm are not on the public domain then how the Complainant got the information.
- c. Even if the Complainant had got this information illegally, he was required to produce the document which shows that the firm had the income of 70-80% from the Reliance Group.

16.3 The Committee posed certain questions to both parties to understand the issue involved and the role of the Respondent in the case. On consideration of the same, the Committee gave directions to the Complainant to submit the following within next 10 days with a copy to Respondent:-

- a. To submit the response on submissions of Respondent dated 14.08.2020
- b. To submit documents showing how NAV was in variance in relation to the mandate.

The Committee also gave directions to the Respondent to submit the following within next 10 days:

- a. To submit his response to the submissions made by the Complainant.
- b. Documents in support of his calculation of NAV

16.4 With this, the hearing in the matter was partly heard and adjourned.

17. On the day of twelfth hearing held on 25th August, 2023, the Committee noted that the Complainant vide his email dated 24th August, 2023 sought adjournment on several medical conditions of his mother and to appoint an advocate to present his case before the Committee. The Committee further noted that the Respondent vide his email dated 18th August, 2023 informed the office that he has not received any submissions from the Complainant which were directed by the Committee during the last hearing. On consideration of the same, the Committee, on account of natural justice, acceded to the request of the Complainant and accordingly adjourned the case to a future date.

18. On the day of thirteenth hearing held on 4th October, 2023, the Committee noted that the Respondent was present through Video Conferencing Mode. The Committee further noted that the Complainant's Counsel Mr. Darshan Gandhi, Advocate was also present through Video Conferencing Mode. At the outset, the Committee noted that the Complainant's Counsel submitted his request to cross examine to the Respondent and CA. Shyam Malpani. When the Committee asked for the grounds of such a request, he was unable to provide suitable reasons. Accordingly, in the absence of any cogent reasons, the Committee overruled the request of the Complainant's Counsel.

Thereafter, the Committee asked the Complainant's Counsel about non-submission of the documents directed to the Complainant in the hearing held on 10th August 2023. On the same, the Complainant's Counsel sought time to submit the documents in the matter. The Committee on consideration of his request directed him to submit his written submissions within next 15 days with the copy to the Respondent. The Committee further directed the parties that no more adjournment shall be granted to them. Accordingly, the instant matter was adjourned on request of the Complainant's Counsel to a future date.

19. On the day of the final hearing held on 17th November, 2023, the Committee noted that the Complainant along with his representative Mr. Harshal Patel

were present through Video Conferencing Mode and his Counsel, Advocate Darshan Gandhi was present physically at Delhi Office. The Committee further noted that the Respondent along with his Counsel CA. Utsav Hirani were also present through Video Conferencing Mode.

At the outset, the Committee noted that Counsel for the Respondent sought time for his submissions on the grounds that the Complainant's reply dated 22nd October 2023 is more than 400 pages and the same was received by them only one week back and due to Diwali festival, his staff was on holiday and hence, they were not able to make reply on the same. He further submitted that the Complainant vide an email dated 12th November 2023 had forwarded further documents and due to a very short time he was not able to prepare defence on the same. The Committee, on the same, informed him that the reply dated 22nd October 2023 is mainly a compilation of all the earlier submissions of both the parties and the additional submissions of the Complainant are very limited and are of 38 pages only. The Committee further informed him that the reply dated 12th November 2023 of the Complainant is a mere compilation of case law of decided cases.

- 19.1 Thereafter, the Respondent was asked to submit his case on merits. The Respondent/ his Counsel in their submissions had, inter-alia, submitted as under:
- i. That the Complainant in his initial complaint had only said that the NAV report is not prepared as per his whims and fancies.
 - ii. That after filing this first complaint, the Complainant submitted another document which expanded the whole complaint, which included many other allegations which were not included in the Form-1.
 - iii. That it is important to understand that Reliance Capital Limited was a majority shareholder and the Complainant was a minority shareholder. The issue is between the minority shareholder and the majority shareholder.
 - iv. There are certain details which were given by the Complainant to the Respondent. However, there were no documents available for the same

and hence those particular items were not considered in the calculation and hence, those amounts were not included in that particular report which was issued.

- v. The report nowhere says that there is a certification which is being done instead it simply says that they have reviewed what compilation the management has made with regard to the amounts. If the Complainant had issues with the calculation, he could have discussed with the shareholders.
- vi. The appointment of the Respondent was made by the shareholders for evaluating this particular matter with regards to exit of RCPL from the Companies and not by the Complainant only. The other shareholder is Reliance Capital as per the financial statements and as per the Complaint as well.
- vii. That letter dated 11th November 2017 and email dated 18th December 2017 clearly mentions that the details of assignment had to be finalized by Mr. Hari Nair, representative of Reliance Capital Ltd. and the same had to go through settlement agreement and to determine the amount which had to be left in the Quant Capital.
- viii. That in the report it was clearly mentioned that the Respondent was requested by the Company to vet the statement of net assets, if any.
- ix. That they had verified everything before including them in NAV and will give the bifurcation of the inclusions to the Committee with their reasoning.
- x. That first of all draft report was issued, comments were received from the management including minority shareholders and after considering the comments, report was finalized.
- xi. That the report is not binding on anyone, it can be accepted or rejected.
- xii. That the Complainant had given him a mandate letter wherein he had made certain adjustments however the said adjustments were not matching with the books of accounts so based on his vetting and the supporting documents given by the management he had given his comments in report, with which the Complainant had objections.

19.2 When the Complainant was asked to make his submissions, he/ his Counsel inter-alia, submitted as under:

- i. That for valuation the Complainant had filed complaint before ICAI and not before NCLT or any other forum.
- ii. That the Respondent was saying that he had just given the feedback however he had given the title as 'report'.
- iii. That the Respondent had compromised with the management and had inflated the book value of the Company.
- iv. That the Respondent had not considered the feedback given on his draft and even not responded to the same.
- v. That the Respondent was saying that the scope of original mandate was modified however the mandate was never subject to modification.
- vi. That initially the Respondent's intention was to hide the scope of the mandate letter which was modified subsequently after the issuance of report not prior to that.
- vii. That the Respondent had not produced any document before 17th December 2017, which is the issuance date of report, which shows that the scope of mandate letter of 11th November was modified and amended to compute the amount to be written in financial statement.

19.3 The Committee posed certain questions to both the Complainant and the Respondent to understand the issue involved and the role of the Respondent in the case. On consideration of the same, the Committee gave directions to the Respondent to submit counter on the submissions dated 22nd October submitted by the Complainant and Written Submissions, if any within 15 days with a copy to the Complainant.

The Committee also directed to the Complainant to submit his further submissions, if any, within 15 days with a copy to Respondent.

- 19.4 Thereafter, the Committee, looking into the Respondent's submissions against the charges levelled, recorded his plea and accordingly concluded the hearing by reserving its judgment.
20. Thereafter, this matter was placed in meeting held on 14th December 2023 wherein the same members, who heard the case earlier, were present for consideration of the facts and arriving at a decision by the Committee. The Committee noted pursuant to its direction given in the hearing held on 17th November, 2023, the Complainant had submitted the required documents wherein the Complainant had inter-alia mentioned as under:
- a. That no proceedings were filed by the Complainant before any other forum.
 - b. That email dated 21st April 2017 at page no. 315 of compilation dated 22nd October 2023 shows that the Respondent was using email id: hemanshu.solanki@smalpani.com which clearly proves that the Respondent was working under/ with CA Shyam Malpani and the defence given by CA Shyam Malpani that he was nowhere connected with the Respondent firm i.e. M/s SKHD or with the Respondent is not correct.
 - c. Though the NAV report was not signed by CA Shyam Malpani, he was equally guilty.
 - d. That both CA Shyam Malpani & the Respondent use to operate from the same premise and the Complainant had attended multiple review meeting in their Marine Line office.
 - e. To compute the Net Asset Value as on 30th July 2017, the Respondent cannot start computation with 31st March 2014 as the same was neither mentioned in Definitive Agreement nor anywhere else nor a scientific approach to start with computation.
 - f. There is apparent inflation of NAV by Rs. 50 Cr. by not reducing the Compulsory Convertible Preference Shares – CCPS while computing the NAV as on 30th September 2017.
 - g. There was no clause of addition of interest income on Inter Corporate Deposits and Fixed Deposits; the Respondents had deliberately added the same and fraudulently increased the Net Asset Value by Rs. 22.09 Cr. and 31.05 Cr.

- h. Recovery benefit is required to be passed on by QCHPL to QCPL as per clause no. 5.2.5 of Definitive Agreement. Though it was under agreement, the Respondent did not consider the same while calculating the NAV.
- i. The Complainant has enclosed resignation letter of KMPs, Audit Report of RCL and QCPL.

20.1 The Committee noted that the Respondent had also submitted the documents wherein he had, inter-alia, mentioned as under:

- a. That the Complainant had brought on record new documents which contradict his statement regarding the absence of new evidence.
- b. That RCL and QCPL are not different for purpose of this assignment. Further, the assignment was based on understanding of 2 shareholder groups of QCPL i.e. RCL and Complainant.
- c. The Complainant had not provided any evidence which shows involvement of CA. Shyam Malpani with the Respondent in this matter.
- d. That it can be seen from mandate letter that the feedback was to provided only to RCL, however, the Complainant added the name of QCPL along with RCL this shows that there is no reason to believe that QCPL is different from RCL.
- e. That the Complainant was fully aware of revised scope of work, accepted the same and also provide him the documents required for the same.
- f. That the definitive agreement was never produced before him during the Statutory Audit of QCPL and was given on 06th December 2017.
- g. That he did not consider certain adjustments proposed by Complainant due to insufficient documentary evidence.
- h. It may be noted that no loss is caused to Complainant or QCPL because of their report and the resignation of Complainant was because of the majority shareholders decision for which there was no need of any report.
- i. That they have given detailed reasonable and logical explanation on facts and merits in the draft report and everything was explained to the Complainant at every stage.

- j. The Report includes representations from all parties including QCPL which is also evident from the annexures to report.
- k. That the employees of subsidiary were to be taken over by the Complainant as per definitive agreement then how can the Respondent be blamed for their resignations.
- l. That if the Complainant had any difference of opinion on the numbers so provided, he could have taken a second opinion.
- m. That in spite of discussion between both the shareholders about the scope of work, the Complainant had issued improper mandate letter which was not as per the discussion.
- n. That the Complainant himself has accepted in his submissions dated 01st December 2023 that the assignment was to be in accordance with the definitive agreement.
- o. That all subsidiaries were taken over by the Complainant due to which amount that would stand credited to the account of QCPL is supposed to be higher than Rs 200 crore and hence, the net worth of Rs. 303.36 crores as per books as on 31st March 2014 was considered to start with calculation for amount to be retained in Consolidated Financial Statements of QCPL.
- p. That the Complainant tried to influence the Respondent with money and with threat to give the report that pleases him and includes adjustments without documentary proofs and evidence.
- q. That as per clause 5.2.5 of Definitive agreement the outcome of suit filed was not decided till the date of release of report, hence, the amount was not shown as write off.

20.2 Accordingly, keeping in view the facts and circumstances of the case, the material on record and the submissions of the parties, the Committee passed its judgment.

FINDINGS OF THE COMMITTEE:-

21. The Committee noted that the charge against the Respondent was the inflation of NAV of M/s Quant Capital Private Limited and failure to work as per the given mandate. The Respondent on merits submitted that after detailed interactions with RCL and QCPL, the original mandate as given by QCPL was modified by RCL keeping the Complainant informed. Further, as per the letter dated 11th November 2017, the scope of work assigned was to only vet the statement of Net assets with adjustments and give the Respondent's feedback on amount to be retained in consolidated financial statement of QCPL after necessary adjustments and understanding between the parties.
22. The Committee noted that the mandate letter dated 11th November, 2017 was signed by Sh. Kaustubh Samant, Group CFO of QCPL and addressed to the Respondent. It is pertinent to note that as per the said letter, feedback was required from the Respondent on the statement of net assets of QCPL and no certification was involved in the whole process. Thus, the Respondent was supposed to vet and give his feedback on the statement of net assets with adjustments as applicable and nowhere in the mandate ,QCPL had asked the Respondent to either certify any NAV or to provide any 'Report on amount to be retained in consolidated Financial Statements.
23. The Committee noted that an e-mail dated 14th December 2017 sent by Sh. Kaustubh Samant, Group CFO of QCPL to Shri Gautam Doshi and Sh. Hari Nair of RCL wherein the working file was shared for which Audited Financials of September 2017 had to be taken as the starting point of calculation. However, it is observed from the "Statement of adjusted amount to be retained in Consolidated Financial Statements" of QCPL as on 30th September 2017 as prepared by the Respondent, the Respondent for calculating the amount of net assets to be retained in consolidated Financial statements of QCPL on 30th September, 2017, had taken the net worth of QCPL as per books as on 31st March 2014 as the base.

24. The Committee noted that the Respondent had stated that he had certain meetings, communications and detailed interactions on this matter with RCL, wherein they have discussed with him the format and basis which needs to be followed for vetting the amount to be retained in Consolidated Financial statement of QCPL as on 30th September, 2017 and they have, accordingly, modified the mandate. However, it is pertinent to note that he had not provided a copy of the revised approved mandate or any e-mail as exchanged by RCL with him. Hence, in absence of any evidence, the contention of the Respondent is not tenable.
25. The Committee noted that in the email dated 5th December, 2017, the CFO of QCPL, Shri Kaustubh Samant had expressly stated his concern, that the amount showcased by the Respondent as the retained capital was never requested. The excerpts of the same are below:

*“From: Kaushtubh Samant
Sent: Tuesday, December 05, 2017 7:33 PM
To: Hemanshu Solanki
'C:’ Shyam Malpani; Sandeep Tandon
Subject: QCPL Mgmt Response on your Draft Reports*

*Follow up Flag: Follow up
Flag Status: Flagged*

Dear Himanshu,

Please see our management comments on your draft reports. We would like meet you and Mr. Malpani tomorrow sometime before you finalise your report.

Reply to your draft email dated November 23, 2017- *As per mandate letter, we you were requested you to certify the Consolidated Net assets of QCPL as on 30.09.2017 after adjusting certain amount showcased in the attached excel sheet. However, statement provided by you is for the amount to be retained in Quant Capital Group which is never requested by us. You are trying to quantify the*

Consolidated Net assets of QCPL as on 01.04.2014 and taken this number as a base for so called retained capital. The Consolidated Net assets of QCPL as on 31.03.2014 is already known to all of us and this number was certified by your firm only and hence no point in again certify the same. We have never come across concept of retained capital that too in a going concern, so please focus on the mandate of Consolidated Net assets of QCPL as on 30.09.2017 and verifying the adjustments showcased in the excel sheet. Please share your definition of retained capital and enlighten us from which accounting book has defined the same.

After your first draft, we have brought to your knowledge that mandate is for net asset value as on September 2017 and your excel sheet starts with the retained capital, please rectify this mistake and start the calculation from the September 2017 instead of 2014. Please check the mandate letter again and provide the net asset value as on September 2017 as separation process is restarted and we actually need the latest net realizable value of QCPL.”

From the above it is observed that the Respondent had failed to work in line with the requirement and had adopted different methodology to perhaps suit some other hidden mandate for the reasons best known to him, which appears to be a deliberate and thought out act of causing loss to the Complainant.

26. The Committee noted that the Respondent had alleged during the year that the Complainant had filed the present complaint as he had not considered certain adjustments out of 8 adjustments proposed by Complainant due to insufficient documentary evidence. However, it is observed that the Respondent had failed to provide any bifurcations/evidence on the basis of which he had not made the said adjustments.
27. The Committee further, with regard to report given for Net Assets Value noted that the Respondent in his report had mentioned that preference share capital of QCPL amounting to Rs 50 crore for the year ended 31st March, 2014 were

redeemed however, the authorized preference share capital of QCPL for the said year is only Rs 10 crore as reproduced below:

Particulars	As at 31.03.2014	As at 31.03.2013
<u>Share Capital</u>		
<u>Authorized</u>		
1,20,00,000 Equity shares of Rs. 10 each	12,00,00,000	12,00,00,000
1,00,00,000 Preference Shares of Rs 10 each	10,00,00,000	10,00,00,000
	<u>22,00,00,000</u>	<u>22,00,00,000</u>

Particulars	As at 31.03.2015	As at 31.03.2014
<u>Share Capital</u>		
<u>Authorized</u>		
1,20,00,000 Equity shares of Rs. 10 each	12,00,00,000	12,00,00,000
1,00,00,000 Preference Shares of Rs 10 each	10,00,00,000	10,00,00,000
	<u>22,00,00,000</u>	<u>22,00,00,000</u>

28. The Committee noted that the Respondent had stated that he had worked according to the definitive agreement. However, it is observed that in the said agreement it is nowhere mentioned that the net worth of QCPL as per books as on 31st March 2014 should be taken as the base for calculation of NAV.
29. The Committee accordingly was of opinion that the Respondent has failed to work in line with the requirement and has deliberately adopted different methodology and his actions had caused loss to the Complainant. The Committee noted that the Respondent failed to exercise due diligence while performing his professional assignment.

CONCLUSION

30. In view of the above observations, considering the submissions of the Respondent and documents on record, the Committee holds the Respondent **GUILTY** of Professional and Other Misconduct falling within the meaning of

Item (2) of Part IV of First Schedule and Item (7) of Part I of the Second Schedule to the Chartered Accountants Act, 1949.

**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: 07TH FEBRUARY, 2024
PLACE: NEW DELHI**