



भारतीय सनदी लेखाकार संस्थान

(संसदीय अधिनियम द्वारा स्थापित)

THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA

(Set up by an Act of Parliament)

PR-175/2014-DD/201/2014/DC/634/2017

[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-175/2014-DD/201/2014/DC/634/2017]

In the matter of:

Shri Suraj T Nanda

3, Manju, 286-A, Sher-E-Punjab,
Opp. Maratha Sahkari Co-Op Bank
Near Tolani Naka,
Mahakali Road, Andheri (E)
MUMBAI – 400093.

.... Complainant

Versus

CA. Haresh Ramji Joshi (M. No. 033489)

Shop No.9, First Floor
Hi-Life Mall, P M Road, Santacruz (West)
MUMBAI – 400054.

.....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 : 17th 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. Haresh Ramji Joshi (M. No. 033489)** (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 opportunity of being heard in person / through video conferencing and to make representation before the Committee on 19th March 2024.



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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 Disciplinary Committee, inter-alia, stating that he did not want to make excuses for the mistake made by him. He requested the Committee to award him the least possible punishment as his intention was not to defraud anyone. He further added that the error was technical in nature, and he relied upon his staff, but he owes the responsibility of the mistake committed by him. The Committee also noted that the Respondent in his written representation on the Findings of the Committee, inter-alia, stated as under:

a. As per para 9.3 of the Findings of the Disciplinary Committee dated 7th February 2024:

"The Appellate Authority also directed that the matter may be decided on the basis of pleadings and the statement of stakeholders already filed/record unless the Disciplinary Committee directs the parties to file additional pleadings. Further, the matter be heard by the Disciplinary Committee and the Order under Rule 18(17) of the Rules and section 21B (3) of the Act be passed within a period of 3 months from the date of receipt of this Order. It is also made clear that no adjournment shall be granted to the parties in the matter except in exceptional circumstances".

The Order under Rule 18 (17) of the Rules and section 21B (3) of the Act, had to be passed within 3 months.

b. For the first charge, the Respondent could not bring out any corroborative evidence to show that ROC record were showing 170 shares less and for the second charge, the Respondent accepted his mistakes.

c. The date of the Balance Sheet should have been 1st September.

d. No prejudice is caused to anyone due to these mistakes.

e. The Respondent requested the Committee to take a lenient view while awarding punishment.

4. Keeping in view the facts and circumstances of the case, material on record and submissions of the Respondent before it, the Committee decided to reserve the decision on the quantum of punishment to be awarded to the Respondent in the instant case.

5. Thereafter, at its meeting held on 28th March 2024, 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.

6. As regard the submission of the Respondent that the Committee has not passed Order under Section 21B (3) as per the direction of Appellate Authority within 3 months, the Committee noted that the Appellate Authority vide its Order dated 26th October 2023 remanded back the instant case to the Disciplinary Committee which was received on 8th November 2023.

6.1 In compliance with the said Order, the case was listed for hearing before the Disciplinary Committee on 2 occasions i.e. on 17th November 2023 when the case was part-heard and adjourned and thereafter on 28th November 2023 when the hearing in the case was concluded and decision on the conduct of the Respondent was kept reserved. Eventually, on 14th December 2023, the Committee decided on the conduct of the Respondent. Thereafter, the Committee arrived at a fresh Finding holding the Respondent



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"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 which was signed on 7th February 2024 and communicated to the Respondent on 12th February 2024.

6.2 In the meantime, the time limit of three months as granted by the Hon'ble Appellate Authority to complete the disciplinary proceedings in the instant case expired. Also, the tenure of the then existing Disciplinary Committee came to an end and the same was dissolved. Further, as soon as the Disciplinary Committee was reconstituted, an application dated 18th March 2024 was filed before the Hon'ble Appellate Authority to grant an extension of time period of 3 months to comply with its Order. Thus, it is evident that all efforts were made by the Disciplinary Committee to comply with the directions given by the Hon'ble Appellate Authority to complete the proceedings within the prescribed time period keeping in view the principle of natural justice. Further, the Committee is of the view that the time limit of 3 months provided by the Appellate Authority to complete the proceedings in the instant case is a part of procedural laws which are made to expedite the proceedings and due to circumstances beyond its control if the proceedings could not be completed within the prescribed time, as on date, there is nothing that estops the Committee to complete the proceedings.

7. The Committee also noted that the Respondent in his submissions on the Prima Facie Opinion at the hearing stage with respect to the first charge stated that the matter being more than 18 years old, is a case covered by Rule 12 of the Rules of Procedure. In this regard, the Committee took into view the following provisions of Rule 12 of The Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007: -

"12. Time limit on entertaining complaint or information. Where the Director is satisfied that there would be difficulty in securing proper evidence of the alleged misconduct, or that the member or firm against whom the information has been received or the complaint has been filed, would find it difficult to lead evidence to defend himself or itself, as the case may be, on account of the time lag, or that changes have taken place rendering the inquiry procedurally inconvenient or difficult, he may refuse to entertain a complaint or information in respect of any misconduct made more than seven years after the same was alleged to have been committed and submit the same to the Board of Discipline for taking decision on it under sub-section (4) of section 21 A of the Act."

7.1 The Committee noted that the said plea was not taken by the Respondent at the Prima Facie Opinion stage. The Committee further noted that the Respondent certified Form No.2 for allotment 9990 equity shares in the Company on 31st August 2012. The Complainant filed the complaint in Form 'I' on 4th July 2014. Thus, the complaint was filed approximately within 2 years of the alleged period of misconduct whereas the limitation period of 7 years has been prescribed under Rule 12 of The Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007. Thus, the Committee was of the view that the case of the Respondent does not fall under the purview of Rule 12. Hence, the said plea of the Respondent is not tenable.

8. Keeping in view the facts and circumstances of the case, material on record including verbal and written representation on the Findings, the Committee with regard to the first charge noted that the Respondent had certified the Form 2 according to which the Company had allotted 9990 fresh equity shares, ignoring the fact that authorized share capital of the Company is 10,000 equity shares and the Company had already allotted 180 equity shares in the past. Hence, only 9810 shares can be allotted. Thus, it shows that



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170 shares which were already issued earlier were re-allotted by the Company and certified by the Respondent.

8.1 The Committee with regard to second charge noted that no filing with the ROC was made by the Company in between 2001 and 2005. Further, these Balance Sheets and Annual returns were not duly signed by the Directors and its Auditor, rather were filed with 'sd/-' copy impersonating their signatures. The Form for acceptance of audit assignment by the Respondent was filed with ROC for 5 years on the same date which is in violation of the Companies Act, 1956 and thus, he failed to exercise requisite due diligence while auditing and was grossly negligent in reporting material fact and misstatement.

8.2 Hence, professional and other 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.

9. 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.

10. The Committee also noted that on the case being remanded back by the Appellate Authority on technical grounds, an opportunity was afforded to both the parties to the case i.e. the Complainant and the Respondent to substantiate their case. However, the Respondent failed to bring on record any fresh or further evidence to mitigate the efficacy of guilt on his part. Thus, the Committee did not find any reason to modify the quantum of punishment awarded to the Respondent by the (erstwhile) Committee.

11. Thus, the Committee ordered that the name of CA. Haresh Ramji Joshi (M. No. 033489), Mumbai be removed from the Register of Members for a period of 01 (One) Year.

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

प्रमाणित सत्य प्रतिलिपि / Certified True Copy

अध्यक्ष / ASSISTANT SECRETARY
संयोजक / Assistant Secretary
अनुशासन विभाग / Disciplinary Directorate
भारतीय सनदी लेखाकार संस्थान
The Institute of Chartered Accountants of India
आइ सी ए आई भवन, विवेक नगर, शाहदपुर, दिल्ली-110032
ICAI, Bhawan, Vignana Nagar, Shaheed, Delhi-110032

Shri Suraj T Nanda -Vs- CA. Haresh Ramji Joshi (M. No. 033489)

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-175/2014-DD/201/2014/DC/634/2017]

In the matter of:

Shri Suraj T Nanda

3, Manju, 286-A, Sher-E-Punjab,
Opp. Maratha Sahkari Co-Op Bank
Near Tolani Naka,
Mahakali Road, Andheri (E)
MUMBAI – 400 093

.... Complainant

Versus

CA. Haresh Ramji Joshi (M. No. 033489)

Shop No.9, First Floor
Hi-Life Mall, P M Road, Santacruz (West)
MUMBAI – 400 054

.....Respondent

MEMBERS PRESENT:

CA. Ranjeet Kumar Agarwal, Presiding Officer (Through Video Conferencing Mode)

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)

DATE OF FINAL HEARING: 28.11.2023

DATE OF JUDGEMENT : 14.12.2023

PARTIES PRESENT

Complainant: Shri Suraj T Nanda (Through Video Conferencing Mode)

Counsel for Complainant: Mr. Ajit Anekar, Advocate (Through Video Conferencing Mode)

Respondent : CA. Haresh Ramji Joshi (Through Video Conferencing Mode)

Counsel for Respondent: Mr. S.G. Gokhale (Through Video Conferencing Mode)

1. In the instant case, the Respondent preferred an appeal before the Appellate Authority. The Appellate Authority vide its order dated October 26, 2023 (received on November 8, 2023) directed for re-hearing/ fresh hearing of the instant matter.

BACKGROUND OF THE CASE:

2. The brief background of the case is that:
 - a. At the time of incorporation of **M/s. Allwyn Colour and Construction Private Limited** (hereinafter referred to as the "Company") on 22nd April 1982, the authorised share capital of the Company was Rs 1,00,000/- divided into 10,000 equity shares of Rs. 10/- each out of which 5 equity shares each were allotted to two subscribers at the time of incorporation of the Company and subsequently 170 equity shares of Rs.10/- each were allotted by the Board to the persons who had contributed capital towards the corpus of the Company for construction of industrial building. Hence the subscribed shareholding of the Company was 180 equity shares of Rs. 10/- each.
 - b. The Complainant was one of such persons who were allotted shared by the Board and hence was a shareholder of the Company.
 - c. The Respondent was Statutory Auditor of the Company for the years 1985, 1986 and 1987. He had also conducted audit of the Company for financial year ending 31st March, 2007 to 31st March, 2011.
 - d. Allegations in the present case relates to certification of financials and filing of Forms 23B, 23AC and 20B of the Company related to financial year ending 31st March, 2007 to 31st March, 2011 of the Company.

CHARGES IN BRIEF: -

3. The Committee noted that the charges against the Respondent Firm are as under:

- a. That the Company had allotted 9990 fresh equity shares, of which 180 equity shares were already allotted in the past. The Respondent as Statutory Auditor of the Company in the Balance Sheets of the Company for 5 years i.e., for financial year ending 31st March, 2007 to 31st March, 2011 (which were certified on a single date) had certified that the issued, subscribed and paid up share capital of the Company as Rs.1,00,000/- divided into 10,000 equity shares of Rs.10/- each. He in certification had shown that the Company had allotted 9990 fresh equity shares, ignoring the fact that authorized capital of the Company is 10,000 equity shares and the Company had already allotted 180 equity shares in the past. The Respondent had shown such allotment of shares with retrospective effect dated 2nd February 2000.
- b. That the Respondent had filed **Form No.23B** for acceptance of his appointment as statutory auditor of the Company with the Registrar of Companies, Maharashtra, in one go on a single date itself i.e., on 5th September 2012 and that too for all the five financial years i.e. 31st March 2007 to 31st March, 2011. Similarly, he certified **Form No. 23AC** for filing of the Balance Sheet of the Company for five years i.e., 31st March, 2007 to 31st March, 2011 the same day i.e., on 7th September, 2012 i.e., again on a single date itself; and also certified **Form No. 20B** on a single date i.e., 31st August, 2012 for filing of the Annual Returns of the Company for five years i.e., as on 30th September, 2007 to 30th September, 2011.



4. The Committee noted that the Respondent in his reply at the stage of PFO had, inter-alia, mentioned as under:

- i. As far as the facts are concerned such as dates of signing the Balance Sheets, dates of submission of Form 23B, Form 2, etc. to the ROC, contents of the Balance Sheets and various forms, the Respondent did not deny the points stated by the Complainant. However, the Respondent strongly objected to the Complainant's allegations that:
 - a) He did it with fraudulent intentions.
 - b) His appointment was illegal.
 - c) He had a conspiracy with the two Directors of the auditee Company.

- d) He intentionally violated several provisions of the Companies Act, 1956.
- ii. The Company had constructed Industrial building consisting of Galas (Units), somewhere in 1985. The units were allotted to shareholders based on their shareholding.
- iii. There were no financial activities in the Company since 1987 and the same balances were carried forward.
- iv. Mr. Kalicharan Makhijani and Smt. Malini Makhijani were the only two Directors. Since, there was no activity whatsoever, and there were no finances or assets, they were absolutely unconcerned and indifferent about compliances.
- v. The Directors claimed that they allotted 9,820 shares to themselves and introduced the required cash on 2nd February 2000 and the paid-up capital was hence increased to Rs.1,00,000/-. However, the record of submission of Returns of Allotment (Form 2) to ROC was not traceable as at that time there exists manual submission only.
- vi. As an abundant caution, they were strongly advised to complete the documentation by submitting Form 2 to ROC. This was done in the year 2012.
- vii. While filing Form No.2 in the year 2012, it was noticed that on MCA site, the paid-up share capital was being shown as Rs.100/- instead of Rs. 1,800/-. In order to set the MCA record straight, Form No.2 was filed for Rs.99,900/- instead of Rs.98,200/-. If this was not done then MCA record would show paid-up share capital less than Rs. 1,00,000/-. Hence, the Form No.2 was filed for freshly issued 9,820 shares plus earlier 170 shares.
- viii. While doing the audit, the relevant records were duly verified. Although Form 2 was not submitted, the resolution of the Board to allot the shares was very much there. It was obtained by the Respondent through the representation of the management. Form 2 is merely an intimation to the ROC.
- ix. The Company has still not paid the Respondent's fees, hence the question of his conspiracy with the Directors does not arise at all. The

Respondent has discharged his function as an auditor diligently, without any fear or favour. After all, it was just a non-functional Company – with no business, no finances. The audit was done with sole objective of updating the compliances and ensuring the continuity of its existences. The Respondent did not have the slightest idea of the motives, if any, of the Directors.

- x. There is no clause in the Articles of Association nor in the shareholders' agreement to the effect that 'only a unit holder could be a member of the Company and vice-versa' as claimed by the Complainant in his complaint.
- xi. He accordingly, summed up his submissions as under:-
 - a. By no stretch of imagination can it be said that Respondent had any fraudulent or dishonest intentions.
 - b. The Respondent's appointment was certainly not illegal as the Complainant himself has attached the necessary resolution of the Board and appointment letter of the Respondent (with the Complaint itself).
 - c. There was not even a remotest chance of conspiracy. Respondents' fees have still not been paid.
 - d. There could be an inadvertent error; but certainly no negligence or lack of due diligence on his part.
 - e. In the given circumstances, it was merely a technical compliance.

-  5. The Director (Discipline) had, in his Prima Facie Opinion dated 22nd July 2017, with respect to **first allegation** opined that the Respondent had not provided any documentary evidence to prove that the MCA site showed paid-up share capital as Rs.100/- instead of Rs. 1,800/-. It was further observed by the Director (Discipline) that the copy of resolution of Board Meeting and copy of ledger account and cash book submitted by the Respondent are not certified by the Company and neither there are signatures of any of the Directors nor any seal of the Company is affixed on the same, and thus, the same were not relied upon. Accordingly, the Respondent was held **prima facie Guilty** on this allegation.
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- 5.1 With respect to **second allegation**, it was opined that there is no resolution available on record or provided by the Respondent authorising the Respondent to certify the financials of the Company for 5 years on one date. Further, it was observed by the Director (Discipline) that the said Balance Sheets show different dates of signing, however, the Respondent has been silent on that and has not produced any corroborative evidence to substantiate his defence in the instant matter. Thus, it was opined by Director (Discipline) that the act of the Respondent in certifying and/or filing the aforesaid Forms (Form No.23B, Form No. 23AC and Form No. 20B) on a single date is under a shadow of doubt. Accordingly, he was held **prima facie Guilty** on this allegation also.
6. 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."*

SUBMISSIONS OF THE RESPONDENT ON PRIMA FACIE OPINION:-

7. The Respondent in his written submissions dated 11th January, 2018 had, inter-alia, mentioned as under:
- The observations are based on the premises that the financial of 5 years were certified on one date. But the same is factually incorrect.
 - The Balance sheets of five years rightly bear different dates. Merely because all the Balance Sheets were filed on one date, it cannot be said that they were also signed on one date. The document bearing the date is presumed to have been signed on the said date.
 - It is the allegation of complainant that they were signed on one date and therefore the burden is on the Complainant to prove the same, contrary to document itself.
 - The burden cannot be put on him to prove negative.
 - Filing of Form 23AC was the responsibility of the company.
 - It is true that he has filed Form no. 23B on one date for the five years. It was mainly because he wanted filing of Form 23B to coincide with filing of Form No.23AC by the company.

BRIEF FACTS OF THE PROCEEDINGS:-

8. The Committee noted that the instant case was fixed for hearings before this present Disciplinary Bench on following dates:

S.No.	Date	Status of Hearing
1.	17.11.2023	Part- Heard and Adjourned
2.	28.11.2023	Concluded and Judgment Reserved.
3.	14.12.2023	Decision taken on the case

9. On the day of meeting held on 17th November, 2023, the Committee noted that the Respondent had been held Guilty of professional and other

misconduct falling within the meaning of Clause (2) of Part IV of the First Schedule and Clause (7) of Part I of Second Schedule to the Chartered Accountants Act, 1949 vide order dated 2nd February, 2021 (Findings) passed by the Disciplinary Committee and consequential a punishment order was also passed.

- 9.1 The Committee noted that the Respondent, being aggrieved and dissatisfied with the aforesaid orders dated 2nd February, 2021 (Findings of the erstwhile Disciplinary Committee) and punishment order dated NIL (communicated on 3rd August, 2021 given of the erstwhile Disciplinary Committee), had preferred an appeal under section 22G of the Act.
- 9.2 The Appellate Authority without dealing with the order dated 2nd February, 2021 (Findings) on merits, and order the remand of matter to Disciplinary Committee with a direction to pass afresh order under Rule 18(17) of the Rules and section 21B (3) of the Act, after affording the Respondent as well as the Complainant an opportunity to submit their arguments.
- 9.3 The Appellate Authority also directed that the matter may be decided on the basis of pleadings and the statements of stakeholders already filed/record unless the Disciplinary Committee directs the parties to file additional pleadings. Further, the matter be heard by Disciplinary Committee and the order under Rule 18(17) of the Rules and section 21B (3) of the Act **be passed within a period of 3 months from the date of receipt of this Order. It is also made clear that no adjournment shall be granted to the parties in the matter except in exceptional circumstances.**
- 9.4 The Committee noted that the instant matter was heard by the previous bench on the various dates and the Respondent in his submissions dated 23rd April, 2021 in response to Order dated 2nd February, 2021 (findings of the erstwhile Disciplinary Committee) had, inter-alia, mentioned as under:
- a. The shares were allotted on same day of AGM is factually incorrect as shares were allotted at Board Meeting held on 02nd February, 2000.

- b. The correct fact is that the share capital was increased in the year 1999-2000 but form 2 was filed belated with ROC in the year 2012.
- c. This happened due to pending secretarial compliances, which is a common case in respect of all private limited Companies especially where there is no active business.
- d. The shares were allotted against the cash, so statement that no inflow of funds in the accounts of the Company as there was no bank account is incorrect.
- e. There is no mismatch between the two figures of Share Capital reported in the Balance Sheet and reported to the Registrar of Companies (ROC). As per all the Balance Sheets and Form no. 2 filed with ROC, everywhere it is consistently mentioned that the Share Capital is Rs. 1 lakh.
- f. The Respondent raised the issue of typographical error in Committee report and accordingly mentioned that errors in his report are also accidental and unintentional.
- g. He as a Chartered Accountant had certified relevant documents as per Companies Act, 1956.
- h. The amount paid towards paid up capital had to be introduced in cash. The only lapse on part of the Company / Directors was belated intimation to ROC. The same was more a formality and had no repercussions on the business or activity of the Company.
- i. There was no malafide intention on his part. He acted in good faith.
- j. The Complainant failed to produce any evidence to show that the Balance Sheets are incorrect.

9.5 The Committee noted that in the meeting held on 17th November 2023, the Complainant was present through Video Conferencing Mode. The Respondent was present before it through Video conferencing mode. Both the Complainant and Respondent were administered on oath. When the Committee asked the parties to submit their pleadings, both the Complainant as well as Respondent requested for an adjournment due to non-availability of their counsel(s). Accordingly, the Committee acceded to the request of both the parties and the matter was adjourned to the next date.

10. On the day of the final hearing held on 28th November, 2023, the Committee noted that the Complainant along with his Counsel Mr. Ajit Ajnekar, Advocate was present through Video Conferencing Mode. The Committee noted that the Respondent along with his Counsel Mr. S.G. Gokhale, Advocate was also present through Video Conferencing Mode.

10.1 Thereafter, the Complainant was asked to explain his charges. The Complainant/ his Counsel in their submissions had, inter-alia, submitted as under:

- a. That on 5th September 2012, the auditor had approved all the financials of the Company at once and filed Form 23B for acceptance of his appointment as statutory auditor on a single date i.e., 5th September, 2012 for all the financial years i.e., from 31.03.2007 to 31.03.2011.
- b. That the Respondent had certified Form 23AC and 20B for all the five years i.e., from 31.03.2007 to 31.03.2011 on same day i.e., 7th September, 2012.
- c. That an Order was passed by the earlier Bench, but the same had been remanded back for reconsideration which was limited to technical grounds.
- d. That the Respondent during the course of hearing before the previous bench had admitted his mistake and the same had been duly recorded in the Order also.

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

- a. That alleged 9820 shares were allotted in February 2000 and Form 2 for return of allotment was filed in 2012.
- b. That the Complainant might be aggrieved but as a certifying professional his role was limited to certifying the Form 2 and the decision of allotment was taken by the management of the Company.

- c. That the delay in filing with additional fees is permitted by law. Further, the name of the Company was struck off due to which filing could not be done for some years.
- d. That Form 2 and even the balance sheet of the Company were filed after restoring the name of the Company.
- e. That he had submitted the two documents which were required by the Director (Discipline) at the stage of PFO, however, these were not certified by the Company or the Respondent hence he was held guilty as far as the allotment of shares is concerned.
- f. That the said documents with certified copies had been submitted after PFO stage.
- g. That the filings of balance sheet, annual return, 23B for 5 years together was done by the Company and not him.
- h. That merely because the balance sheets are filed on one day it cannot be considered that they must have been signed also on that day and signed antedated.
- i. Even if it so, the burden is not on him and it was default of the Company.
- j. That Form 23B was given to him from time to time every year but it was filed only after the Company filed its Balance Sheets.
- k. That the financial statement of all the five years rightly bears the different dates and merely because they were filed on one date it cannot be said that they were also signed on one date.
- l. That it was the allegation of the Complainant that they were signed on same date hence the burden of proof is on the Complainant.
- m. That he can produce his appeal memo wherein he had said that the order was wrongly recorded as in the order it was mentioned that the Respondent had admitted his mistake however he had not done anything wrong.

10.3 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 parties to file written submissions, if any within next 15 days.

- 10.4 Thereafter, the Committee, looking into the Respondent's submissions against the charges levelled, recorded his plea and accordingly concluded the hearing by reserving its judgement.
11. Thereafter, this matter was placed in hearing held on 14th December 2023 for consideration of the facts and arriving at a decision by the Committee. The Committee noted pursuant to its direction given in the meeting held on 28th November, 2023, both the parties have failed to submit the required documents.
- 11.1 The Committee noted that since both the parties had not submitted any documents within the stipulated time hence they do not have anything further to submit. 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 judgement.

FINDINGS OF THE COMMITTEE:-

12. The Respondent on merits submitted that merely on the basis that the financial statements for all the 5 years are filed on the same day it cannot be considered that they are also signed on the same day. The onus of burden of proof is on the Complainant and not on him. The Company's name was struck off due to which filings were done at a later stage with additional fees after restoring the name. Further, he had filed Form 23B on one date for five years, it was mainly because he wanted filing of Form 23B to coincide with filing of Form 23 AC by the Company because 23AC is also filed by him.
13. The Committee with respect to **first allegation** noted that the Complainant had brought on record the financial statements of the Company for the financial years ending 30th June, 1985, 1986 & 1987 wherein the authorized

share capital is Rs 100000/- divided into 10000 equity shares of Rs. 10/- each and issued, subscribed and paid up share capital is Rs. 1800/- divided into 180 equity shares of Rs. 10/- each i.e., 9820 shares are left to be allotted. The said financial statements were certified by the Respondent. Thus, the Respondent had the knowledge of the fact that out of 10,000 equity shares 180 shares were already allotted by the Company.

13.1 The Committee noted that the Respondent had certified the Form 2 which is filed for return of share allotment with ROC and on perusal of the same, it is observed that in the said form that the Company had allotted 9990 fresh equity shares, ignoring the fact that authorized capital of the Company is 10,000 equity shares and the Company had already allotted 180 equity shares in the past and hence only 9820 shares can be allotted. Thus, it shows that 170 shares which were already issued earlier were re-allotted by the Company and certified by the Respondent.

13.2 The Committee noted that the Respondent in his defense had submitted that while filing Form 2 in the year 2012 he noticed that on MCA site, the paid up share capital was shown as Rs. 100/- instead of Rs. 1800/- and in order to set the MCA record right he had filed Form 2 for Rs. 99,900/- instead of Rs 98,200/-. However, the Respondent failed to bring on record any evidence to prove that the paid up share capital shown on MCA site was only Rs. 100/-. Hence, the contention of the Respondent is not tenable.

13.3 The Committee further noted that the Respondent mentioned that the directors of the Company allotted 9820 shares to themselves and introduced the required cash on 2nd February, 2000, however, there was no corresponding inflow of funds in the account of the Company and also failed to submit any substantial proof of infusion of the cash in the Company.

13.4 The Respondent in his defence vide his submissions dated 11th January 2018 had submitted copy of resolution of Board Meeting and copy of ledger account and cash book which were certified by the one of the Directors of the Company. The Committee on perusal of the same noted that these resolution

and documents proves that 9820 fresh equity shares were issued to two directors and that too at par. The Committee noted that these two directors hold only 5 shares each out of 180 shares allotted in the past.

13.5 The Committee also noted from the arguments presented by the Counsel of the Complainant before earlier bench that the case was not as simple and immaterial as it appeared where only a few hundreds of fresh equity shares with face value of Rs 10 each were issued without complying with the provisions of Companies Act etc., but the issue behind it was way too big off in the light of the scene being presented by the Respondent. He stated that against the nominal number of shares counting into a few hundred in the year 1985, there happens to have been standing units allocated to its shareholders' which in turn represented the property worth crores of rupees. Therefore, he goes on to emphasise that even a small change in the shareholding pattern from the original one without proportionate allocation of fresh shares to the existing ones would cause huge loss to them as their share in the units would come down which in turn will deteriorate their share in the property running into crores. The Committee evaluated the impact of this fact very sensitively.

R/ 13.6 The Committee also noted that as per Form 2, allotment of 9990 shares were shown and the Respondent failed to submit any document to establish his stand that the Respondent failed to bring on record any evidence to prove that the paid up share capital shown on MCA site was only Rs. 100/- (10 equity shares of Rs. 10 each).

R/ 13.7 It was also observed by the Committee that from the records it is apparent that Respondent had not made inexcusable mistakes in certification of accounts. For an instance, in certification of Balance Sheet amount under the head audit fees payable was increasing each year by the same amount as the cash balance on the right-hand side of the Balance Sheet. When there were reportedly no transactions above the line in the Profit & Loss Account, then, how cash balance could increase with simultaneous increase in audit fees &

that too with the same figure. This raised doubts on the conduct of the Respondent in the audit of the said company.

13.8 The Committee looking into the above holds the Respondent **Guilty** on this charge.

14. The Committee with respect to **second allegation**, regarding filing/certifying of form 23B, 23AC and 20B for 5 years on single date, noted that the Company in question was incorporated in the year 1982 & the same was a defunct company for many years for non-filing of Balance Sheet & Annual Returns with the ROC and for not complying with the minimum capital requirement as required by the provisions of the Companies Amendment Act, 2000.

14.1 The Committee noted that the Company had filed the Balance Sheet & Annual returns for five continuous years i.e., FY 2006-07 to FY 2010-11 all at once on a single date. Noticeably, no filing with the ROC was made by the Company in between 2001 & 2005. Further, these Balance Sheets & Annual returns were not duly signed by the Directors & its Auditor, rather were filed with sd/- copy impersonating their signatures.

14.2 The Committee observed that section 171 of the Companies Act, 1956 states as under:

"(1) A general meeting of a company may be called by giving not less than twenty-one days' notice in writing.

(2) A general meeting may be called after giving shorter notice than that specified in sub-section (1), if consent is accorded thereto -

(i) in the case of an annual general meeting, by all the members entitled to vote thereat ; and

(ii) in the case of any other meeting, by members of the company

(a) holding, if the company has a share capital, not less than 95 per cent of such part of the paid-up share capital of the company as gives a right to vote at the meeting, or

(b) having, if the company has no share capital, not less than 95 per cent of the total voting power exercisable at that meeting.

Provided that where any members of a company are entitled to vote only on some resolution or resolutions to be moved at a meeting and not on the others, those members shall be taken into account for the purposes of this subsection in respect of the former resolution or resolutions and not in respect of the latter"

14.3 On perusal of above provisions, it is noted that an annual general meeting can be held after giving 21 days' notice to the stakeholders. It is further noted the meeting can be called after giving shorter notice after fulfilling certain conditions.

14.4 However, in the instant matter it is noted that the AGM and Board Meeting of the Company were conducted on the same day and even the financial statement was signed on the same day. The Company did not give even a single day's notice to its shareholders and on the same date, all the Balance Sheets were signed and were approved in the AGM. Further, the Respondent failed to provide any supporting evidence for the same which is in violation of provisions of the Companies Act, 1956.

14.5 The Committee noted that Section 224 of the Companies Act, 1956 states as under:

"224 Appointment and remuneration of auditors.

(1) Every company shall, at each annual general meeting, appoint an auditor or auditors to hold office from the conclusion of that meeting until the conclusion of the next annual general meeting and shall, within seven days of the appointment, give intimation thereof to every auditor so appointed. Provided that before any appointment or re- appointment of auditor or auditors is made by any company at any annual general meeting, a written certificate shall be obtained by the company from the auditor or auditors proposed to be so appointed to the

effect that the appointment or re- appointment, if made, will be in accordance with the limits specified in sub- section (1B).]

(1A) Every auditor appointed under subsection (1) shall within thirty days of the receipt from the company of the intimation of his appointment, inform the Registrar in writing that he has accepted, or refused to accept, the appointment.]

....."

14.6 On perusal of above provisions, it is noted that a person is required to inform the Registrar about its appointment as an auditor within 30 days from the date of his appointment. However, in the instant matter it is noted that the form for acceptance of audit assignment by the Respondent was filed with ROC for 5 years on the same date which is in violation of the above said provisions.

14.7 The Committee looking into the above holds the Respondent **Guilty** on this charge too.

CONCLUSION

15. 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/-

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

SD/-

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

SD/-

(CA. SANJAY KUMAR AGARWAL)
MEMBER

DATE : 07.02.2024

PLACE: New Delhi

सही प्रतिलिपि होने के लिए प्रमाणित /
Certified to be true copy

नीलम पुंडीर / Neelam Pundir
वरिष्ठ कार्यकारी अधिकारी / Sr. Executive Officer
श्री. एम. आर. शर्मा (अधीनस्थ) / Shri. M. A. Sharma (Retd.)
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