

CONFIDENTIAL

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

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

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

File no. : PR-148/2014-DD/164/14-DC/702/2017

In the matter of:

Shri S.K. Saxena

Deputy Director (FA),
Serious Fraud Investigation Office (SFIO),
2nd Floor, Paryavaran Bhawan,
CGO Complex, Lodhi Road,
NEW DELHI-110 003

..... Complainant

Versus

CA. Sanjay Kumar Anand Kumar Jain ... (M. No. 039938)

53/27, II Floor,
Ramjas Road,
Karol Bagh
NEW DELHI - 110 005

..... Respondent

Members Present:

CA. Prafulla Preme Sukh Chhajed, President
Shri Ajay Mittal, IAS (Retd.), Member (Govt. Nominee)
CA. Debashis Mitra, Member
CA. Manu Agrawal, Member

Date of Final Hearing: 3rd April, 2019 (decided on 28th May, 2019)

Place of Final Hearing: New Delhi

Parties Present:-

- 1) Ms. Deepmala Bagri, Assistant Director, SFIO - from Office of the Complainant**
- (2) Ms. Nidhi Agarwal, Law Consultant - Complainant's Representative**
- (3) Shri Santosh Prasad Chaurasiya, Advocate – Counsel for Complainant**
- (4) CA. Sanjay Kumar Anand Kumar Jain – Respondent**

Allegations of SFIO, the Complainant:

1. Shri S.K. Saxena, Deputy Director (FA), Serious Fraud Investigation Office (SFIO), New Delhi (hereinafter referred to as the “Complainant”) (C-1 to C-113) has filed complaint in Form ‘I’ dated 6th June, 2014 against CA. Sanjay Kumar Anand Kumar Jain (M. No. 039938), New Delhi (hereinafter referred to as the “Respondent”). The Complainant in his complaint has alleged as under:-

1.1 The Respondent was the Statutory Auditor of the M/s. KNP Securities Pvt. Ltd. (herein after referred to as the ‘**Company**’) for the financial year 2000-01 to 2002-03 and had failed to point out the possible irregularities in the maintenance of books of accounts in his audit reports

1.2 As per the fact of the case, the Company was registered with Registrar of Companies, Mumbai on 10.04.1995 to carry on the business of acting as share and stock broker, underwriters and dealers in securities. The company is one of the Companies belonging to Ketan Parekh Group (KPG) under the control and supervision of Ketan V. Parekh through his relative Directors. The Company is a trading member of the Mumbai Stock Exchange.

1.2.1 During the course of investigation, it was revealed from the Tax Audit Report for the year 31.03.2001 that the Company had taken deposit – unsecured loan from M/s. APM Financial Consultancy to the extent of Rs.1,65,00,000/- (Rupees One Crore Sixty Five Lakhs only) and Rs.5,00,000/- (Rupees Five Lakhs only) from M/s. DPK Stocks & Securities which were repaid during the year ended 31.03.2001. As the depositors were the proprietorship concerns and the loan was in the nature of deposit within the meaning Rule 2 of Companies (Acceptance of Deposits) Rules, 1975 and the receipt of said loan / deposit by the Company was violation of Section 58A of the Companies Act, 1956 read with the said deposit rules. It was alleged that the Respondent failed to report the same when being the Statutory Auditor of the Company had stated the annexure to his audit report for the year 31.03.2001 that *“In our opinion and according to the information and explanation given to us the Company has not accepted*

any deposit from the public within the meaning of Section 58A of the Companies Act, 1956.”

1.2.2 Further, the quantity and value particulars of stock purchases and sales of shares and securities in the segment of speculation trade was not disclosed in the notes accounts of the Financial Statement for period ending on 31.03.2001, 31.03.2002 and 31.03.2003. It was stated that the Respondent in his statement on oath dated 21.08.2006 had stated *‘Non delivery transactions generating profit / loss are taken in the account alongwith delivery profit / loss. Quantitative details are given only in respect of delivery transactions’*. It is alleged that he Quantity and item-wise details were not maintained by the Company of such shares and securities brought and sold under the speculation trade and the Respondent being the statutory auditor had failed to report the same in his audit report.

12.3 In exercise of the powers under Sub-Section-4A of Section 227 of the Companies Act, 1956, the Central Govt. issued the Manufacturing and Other Companies (Auditor’s Report) Order, 1988 (MAOCARO). Para 9 laid down that the auditor should comment on loans or ICDs given to companies listed in the Register maintained under section 301 of the Companies Act, 1956 as to whether the terms and conditions of such loans / ICDs are prima facie prejudicial to the interest of the Company. The Respondent being the Statutory Auditor of the Company failed to point out the prejudicial nature of interest free loans given by the Company to other group companies which was directly affecting the interest of the Company.

Proceedings:

2. At the outset, the Committee noted that the Complainant along with the Counsel as well as the Respondent were present in person to appear before the Committee. Since the matter was fixed for the first time, the Complainant and Respondent were put on oath. On being asked whether the Respondent pleaded guilty, the Respondent pleaded not guilty. The Committee, thereafter, proceeded ahead with

the hearing in the matter. The Counsel for the Respondent made his submissions in the matter. The Committee, thereafter, examined the Respondent as well as the Counsel for the Complainant. After hearing both the parties, the Committee directed both the parties to file their written submissions, within 10 days from the date of hearing. Accordingly, the case was heard by the Committee.

3. On 28th May 2019, the Committee at its next meeting while considering the information received from the parties noted that till then no document was received from either of the parties in relation to the case. The Complainant department as well as the Respondent being present for other matters were asked if they intend to provide further submission in extant matter. Both the parties clarified that there were no document/ information which they intend to submit other than that already placed on record. The Committee, thereafter, based on the documents available on record as well as the oral and written submissions made by both the parties concluded the hearing and decided the matter.

Findings of the Committee:

4. The Committee noted that the first charge alleged against the Respondent was that in Annexure to his audit report dated 2nd September, 2001 for the F.Y 2000-2001 (**para 13 of C-27**), he had incorrectly stated that the Company had not accepted any deposit within the meaning of Section 58A of Companies Act, 1956 whereas in the Tax Audit Report of the same period, the Company had disclosed deposit –unsecured loan from M/s. APM Financial Consultancy to the extent of Rs.1,65,00,000/- (Rupees One Crore Sixty Five Lakhs only) and Rs.5,00,000/- (Rupees Five Lakhs only) from M/s. DPK Stocks & Securities which were repaid in the said period. It was contended that the depositors were the proprietorship concerns and the loan was in the nature of deposit within the meaning Rule 2 of Companies (Acceptance of Deposits) Rules, 1975 and hence the loan / deposit were taken in violation of Section 58A of the Companies Act, 1956 read with the

said Deposit Rules. Thus, it is alleged that the Respondent had made incorrect reporting in annexure to audit report when he stated that during the year no deposits were received by the Company within the meaning of Section 58A of Companies Act, 1956.

4.1 The Committee noted that the Respondent has submitted before it that the said amounts were received from M/s APM Financial Consultancy in the course of its share broking business and hence was exempt. In case of M/s DPK Stocks & Securities, the amount was received on behalf of M/s Shivam Investments and due to lack of co-ordination; the account of DPK Stocks and Securities was opened in the books of the Company. In order to substantiate his submissions the Respondent also submitted copy of ledger account of M/s APM Financial Consultancy (**W-8**), M/s DPK Stock & Securities (**W-9**) and M/s Shivam Investment (**W-10**).

4.2 The Committee in this context noted that Rule 2 (b) (vi) of Companies (Acceptance of Deposits) Rules, 1975 excludes any amount received as an advance from any purchasing agent, selling agent, or other agents in the course of or for the purposes of the business of the company or any advance received against orders for the supply of goods or properties or for the rendering of any service from the definition of the term 'Deposits'. It further noted that the amount received by the Company from M/s APM Financial Consultancy and M/s DPK Stocks & Securities as stated in the tax audit report of the Company for the same year were received in course of share broking business of the Company and did not fall within the ambit of the definition of "Deposits" so as to attract the provisions of Section 58A of the Companies Act 1956. Accordingly, the Respondent is held not guilty with respect to this charge.

5. The Committee noted that the next charge against the Respondent is that he had failed to disclose in his Audit Report the details of quantity and value of shares

purchased and sold in respect of transactions not backed by delivery. The Respondent had stated in Annexure to his statutory audit report for the F.Y. 2000-01 (**para 20 on C-27**), 2001-02 (**para 16 on C-52**), 2002-03 (**para 20 on C-76**) that *“The Company has maintained proper records of transactions and contracts in respect of shares, securities, debentures and other investments and has also made timely entries therein. Shares, securities, debentures and other investments have been held by the Company in its own name”*. It is noted that the fact of undertaking non-delivery transactions was admitted by the Respondent in his statement on oath (recorded under Sec 240(2) of the Companies Act, 1956 by SFIO) on 21.06.2006. However, neither the income/loss from such transactions nor related quantitative disclosures were reported separately.

5.1 The Committee noted the plea of the Respondent that the Disciplinary Committee in its report dated 03.02.06 in the case of CA Rajiv Khandelwal, wherein similar issue had arisen in the case of NH Securities Ltd in respect of transactions not backed by delivery, had held him not guilty of professional misconduct on basis of EAC opinion. He also stated that NH Securities Ltd was an associated concern of KNP Securities Pvt. Ltd.

5.2 The Committee in this context noted that the transactions not backed by delivery are the speculative transactions where the shares are not delivered physically and only the difference earned or lost is recorded in the books of accounts. Such difference is the ‘turnover’/income of the company. Thus, requiring the quantitative details of shares traded against such transactions is practically not possible. The Committee, thus, decided to hold the Respondent not guilty of professional misconduct with respect to this charge.

6. The Committee noted that the last charge alleged against the Respondent is that he has reported that the interest free loans given by the company to the entities

listed in Register maintained under section 301 of the Companies Act, 1956 were not prejudicial to the interest whereas as per the Complainant, the said money was given by Company from borrowed money i.e. loans taken from the Banks.

6.1 The Committee noted that the Respondent in his submissions has stated that for the year ended 31st March, 2001, there were no loans and advances given as per audited annual accounts and as regard the year ended 31st March, 2002, he has stated that the said amount reflected in Schedule H of the audited annual accounts is the payout of certain normal day-to day business expenses incurred by group companies whose bank accounts were attached by the Income Tax Department in April 2011.

6.2 In view of the fact that the impugned amounts were not loans, therefore, the provisions of MAOCARO were not applicable on extant case so the need to report about the same in the annexure to the Auditor's Report does not arise. Accordingly, the Committee decided to hold the Respondent not guilty of professional misconduct with respect to this charge.

Conclusion:

7. Thus in conclusion, in the considered opinion of the Committee, the Respondent is held **NOT GUILTY** of professional misconduct falling within the meaning of Clause (7) of Part I of the Second Schedule to the Chartered Accountants Act, 1949.

8. The Committee accordingly passes order for closure of this case against him.

Sd/-
CA. Prafulla Preme Sukh Chhajed,
Presiding Officer

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

Sd/-
CA. Debashis Mitra
Member

Sd/-
CA. Manu Agrawal
Member

Date : 23rd September, 2019

Place : New Delhi