

**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-162/2014-DD/193/14-DC/707/2017**

**In the matter of :**

**Shri S.K. Saxena**

Deputy Director (FA), Serious Fraud Investigation Office (SFIO),  
2<sup>nd</sup> 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 Premsukh Chhajed, President**

**Shri Ajay Mittal, IAS (Retd.), Member (Govt. Nominee)**

**CA. Debashis Mitra, Member**

**CA. Manu Agrawal, Member**

**Date of Final Hearing: 3<sup>rd</sup> April, 2019 (decided on 28<sup>th</sup> May, 2019)**

**Place of Final Hearing: New Delhi**

**Parties Present:-**

- (1) Ms. Nidhi Agarwal, Addl. Director, on behalf of SFIO
- (2) Ms. Deepmala Bagri, Law Consultant, on behalf of SFIO
- (3) Shri Abhishek Mishra, Advocate - Counsel for Complainant
- (4) CA. Sanjay Kumar Anand Kumar Jain – Respondent

**Allegations of SFIO, the Complainant:**

1. Shri K.S. Kaushik, Deputy Director (FA), Serious Fraud Investigation Office, Ministry of Corporate Affairs, Govt of India, New Delhi (hereinafter referred to as the "Complainant") has filed complaint in Form "I" dated 11th June, 2014 (C-1 to C-123) against CA. Sanjay Kumar Jain (M. No.039938) New Delhi (hereinafter referred to as the "Respondent"). The Complainant in his complaint has alleged that the Respondent being Statutory Auditor of Saimangal Investrade Pvt. Ltd. (herein after referred to as the **Company**) for the financial year 2000-01, 2001-02 and 2002-03 failed to qualify in his report the following irregularities / falsification in the Financial Statement of the Company as under:-

i. The quantity, value and details of purchase, sales and stock of shares and securities in respect of speculation trade have not been disclosed in the notes to accounts of the financial statements of the aforesaid years. It was also suppressed that the Company failed to maintain proper records of transactions in shares and securities.

ii. Failed to point out the prejudicial nature of interest free loans given by the Company to other group companies which directly affects the interest of the Company and its auditors.

iii. Failed to point out the violation of Section 58A of the Companies Act, 1956

**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 further 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 Complainant had raised three allegations against the Respondent out of which the Director(Discipline) had held the Respondent prima facie guilty for first charge only. Accordingly, the Committee held the inquiry for the first charge and gave its findings on the same which is as under:

5. The Committee noted that the first charge alleged against the Respondent was that he had failed to disclose in his audit report that the details of quantity and value of shares purchased and sold in respect of transactions not backed by delivery were not being maintained. On the contrary, he had stated in Annexure to his statutory audit report for the F.Y. 2000-01 (**para 19 on C-30**), 2001-02 (**C-52**) and 2002-03 (**C-73**) 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.* However, neither the income/loss from such transactions nor related quantitative disclosures were reported separately.

6. The Committee noted the plea of the Respondent that the Disciplinary Committee report dated 03.02.06 in case against 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.

6.1 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, so traded, is practically not possible. The Committee, thus, 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 : 23<sup>rd</sup> September, 2019**

**Place : New Delhi**