

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/244/2014-DD/35/16-DC/652/2017

In the matter of:

Shri Laltu Pore

Asstt. General Manager,
Securities and Exchange Board of India
Eastern Regional Office
16, Camac Street,
L & T Chambers, 3rd Floor,
Kolkata-700017

.....Complainant

Versus

CA. Sarmistha Samanta (M. No. 063549)
M/s S. Samanta & Associates (FRN 326604E)
Chartered Accountants,
Uttaran Adarsh Pally East,
NH 2 North,
Burdwan-713 102

.....Respondent

Members Present:

CA. Prafulla P. Chhajed, Presiding Officer
Smt. Anita Kapur, Member (Govt. Nominee)
Shri Ajay Mittal, Member (Govt. Nominee)
CA. Manu Agarwal, Member
CA. Debashis Mitra, Member

Date of Final Hearing: 15th July, 2019

Place of Final Hearing: Kolkata

Parties Present:

- (i) CA. Sarmistha Samanta- Respondent**
- (ii) CA. A. P. Singh – Counsel for Respondent**

Allegations of the Assistant General Manager (AGM), Securities and Exchange Board of India (SEBI):

1. Shri Laltu Pore, Assistant General Manager, SEBI, ERO, Kolkata (hereinafter referred to as the “**Complainant**”) has filed complaint in Form ‘I’ dated 28th December, 2015 (**C-1 to C-48**) against **CA. Sarmistha Samanta (M. No. 063549) M/s S. Samanta & Associates (FRN 326604E), Burdwan** (hereinafter referred to as the “**Respondent**” and “**Respondent Firm**” respectively). The Complainant in his complaint has alleged as under:-

1.1 M/s. Amazan Agro Products Limited (hereinafter referred to the “**Company**”) had raised money through debentures and also through public issue of preference share in the year 2009-10. However, the Respondent being the auditor in her audit report for the year 2009-10, had certified that the Company had neither issued any debentures during the year nor there was any outstanding debentures as on 31st March, 2010. Further, it was reported that the Company had not raised money by public issue during the year.

Proceedings :

2. At the outset on 15th July 2019, the Committee noted that the Respondent, along with her Counsel, was present during the hearing. It was also noted that the Complainant vide its letter dated 8th July, 2019 informed that they have already submitted all the relevant documents/details vide its letter dated 28th Dec, 2015 and 3rd May, 2018. It was, accordingly, viewed that based on facts available the Committee may proceed with the matter on merits.

The Committee, further, noted that during the previous hearing held on 26th July, 2018, the Counsel for the Respondent had, inter-alia, raised his preliminary objections on the authorization of the extant complaint which as per him was not in consonance with the provisions of Rule 3(3) of the said CA Rules 2007. Accordingly, the then Committee had given the directions to seek necessary information from the Complainant which was duly received vide Complainant’s letter dated 12th Sept, 2018 and forwarded to the Respondent vide mail dated 20th Nov, 2018 on which the Respondents had given her submissions.

In view of the above, the Committee proceeded ahead in the matter and the Counsel for Respondent proceeded by making defense in the matter. The Committee thereafter examined the Respondent in the matter. The Counsel for the Respondent thereafter made his final submissions in the matter. Accordingly, the hearing in the matter was concluded.

3. The Committee noted that the Counsel for Respondent in his oral submissions made at the time of hearing on 26th July 2018 pointed out the manner in which the complaint filed was not as per the requirement of Rule 3(3) of the (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007 i.e., the complaint had not been authorized by an individual holding an office equivalent to that of a Joint Secretary nor had been signed by an individual holding an office equivalent to that of an Under Secretary of Central and/or State Government. It was stated that two complaints were filed in the matter by Shri Sudip Kumar Saraf and Shri Laltu Pore, the Complainant, but none of them were authorized as per the requirement of Rule 3(3) of the CA Rules, 2007.

4. The Committee noted that the issue raised by the Respondent regarding the issue of authorization was referred to the SEBI which vide its letter dated 12th September 2018 stated as follows:

- SEBI is a statutory body established by the Act of Parliament for the purpose of protecting the interest of investors in securities and to promote the development of and to regulate the securities market and for matters connected there with or incidental there to and in order to achieve the said objectives, SEBI recruits officers at various grades.
- The officers so recruited by SEBI are governed under SEBI (Employees Service) Regulation 2001. Whereas the recruitment, functions and duties of officers in Central government are governed under Central Civil Services (Conduct) Rules, 1964. As both of these rules and regulations were framed for different purposes, the designations, functions and duties of these officers cannot be analogous to each other. Further, it was stated that there are no norms in SEBI that established a strict/ direct one-to-one equivalence between the designations of its officers and those of Government of India.

- As regards the complaint lodged by SEBI with ICAI, it was stated that the Complaint was lodged after due approval of the Competent Authority. The extant matter was duly approved by Shri Ananta Barua, the then Executive Director, who had authorized the Complainant to lodge the complaint with ICAI.

5. It was noted by the Committee that in the instant matter the approval for filing of complaint was given by the Executive Director (ED) which was the highest cadre Post in the SEBI and beyond ED there were the posts of Whole Time Member and Chairman who were appointed by the Cabinet Committee on Appointments by the Government of India. Therefore, ED of SEBI was undoubtedly competent to authorize to file the complaint in terms of Rule 3 and thus could be considered as equivalent in authority to that of Joint Secretary in Central/ State Government. It was viewed that such authority across organization being governed by different set of rules could be compared only in terms of hierarchy followed in respective organizations rather than following any absolute rules of comparison.

6. As regard two complaints filed by the same Complainant-Department i.e. SEBI, one signed by Shri. S.K. Saraf on 19th August, 2014 and another by the Complainant of instant matter on 28th December, 2015, it was noted that on receipt of original complaint dated 19th August, 2014, Director (Discipline) noted certain defects viz name of person or his authority to file complaint, due verification, etc. and in view of which due approvals were taken by SEBI as informed that ED had approved/authorised the matter on 17th May, 2015 and consequently rectified complaint was filed by Shri Laltu Pore as confirmed by SEBI in its letters dated on 28th December, 2015 and 12th September, 2018. In other words, the instant complaint was filed after seeking due approvals for filing complaint which was in compliance of Rule 3 of CA Rules, 2007 and that the Director (Discipline) had taken due cognizance of the matter only when due authorization and approval were in place and everything was on record duly complied. It was also noted that Rule 5 lays down the procedure to register the complaint wherein Rule 5(5) prescribes the procedure to rectify the defective complaint when it stated as follows:

“5. Registration of complaint:

(5) If, the complaint, on scrutiny, is found to be defective, including the defects of technical nature, the Director may allow the complainant to rectify the same in his

presence or may return the complaint for rectification and resubmission within such time as he may determine.”

Thus, the Committee was of the opinion that it was well within the authority of the Director (Discipline) to have the complaint rectified for any procedural defect/lapse if on scrutiny, he noticed any defect in the complaint so filed. Hence, objection of the Respondent with respect to Rule 3 was ruled by the Committee as non-maintainable. The Committee, accordingly, decided the case on merits.

Findings of the Committee :

7. The Committee noted that as regard the first allegation, it was alleged against the Respondent that the Company has raised money through debentures during the F.Y. 2009-10 but the Respondent in para 36 of annexure to her audit report made in pursuance to the requirements of CARO, 2003 **(C-12)** for the said year reported that the Company had neither issued any debentures during the year nor there were any outstanding debentures as on 31st March, 2010.

8. The Committee noted that the Respondent had submitted in this regard that the Order of SEBI related only to the issue of Redeemable Preference Shares and even SEBI did not further took up the matter related to issue of debentures. She further stated that even if the Company had raised any money against the debentures but had neither recorded the same in its books of accounts, nor had approved any resolution in its meeting of Board of Directors and had not left any trace of any communication, the matter could not be held against her. She argued that even SEBI had disregarded this issue while delivering its Order.

9. The Committee noted that as regard the charge relating to raising money through issue of non-convertible debentures during F.Y. 2009-10, the Complainant had produced a Debenture Certificate (Private Placement) dated 19th March, 2010 **(C-5)** issued by the Company for 2000 debentures having maturing value of Rs. 2,00,000/- and since the date of issue of the said certificate was 19th March, 2010, it was taken as related to the Financial Year 2009-10 and ,accordingly, it was alleged that the Company had issued debentures during the F.Y. 2009-10.

10. On perusal of the final Order of SEBI dated 22nd January, 2016, made available by the Complainant on record, it was noted that in para no. 5.4 **(R-7)** of the said Order it was mentioned that the Company vide its letters dated 12th August, 2013 and 09th April, 2015 denied issuing any NCDs' in Financial Year 2009-10 and 2010-11. The Committee also noted that while identifying issues involved in the case related to the Company in question, in para 6.1 **(R-8)** of the said order, SEBI had not taken up the issue related to NCDs for further consideration and thus even SEBI did not comment or pass an order with respect to issue of debentures, of which according to Respondent as well there was no proof in the books and records of the company during the year 2009-10. It was further noted that the Respondent had brought on record a copy of management representation via email dated 12th May, 2010 as well as a certificate dated 9th July 2010 **(D-8)** furnished to her by the Management which stated that no loans had been raised and no debentures were issued by the Company during the F.Y. 2009-10. It also stated that the Company had only the bank accounts as mentioned in the Schedule. It was accordingly viewed that the Respondent had duly verified during audit to obtain reasonable assurance of view being reflected by the financials. If the Respondent had not come across any instance of receipts of any money in cash or in cheques / recorded in the books of accounts of the company with respect to issue of debentures despite reviewing the documents filed with the registrar of Companies or representation given by management, she could not be held liable for the same. After all, she was a watchdog and not blood hound. Accordingly, the Respondent is held not guilty w.r.t to this charge.

11. As regard the next charge against the Respondent, it was alleged that while the Company had raised money through public issue of preference shares in the year 2009-10, the Respondent vide para 37 of Annexure to audit report **(C-12)** had reported that the Company had not raised money by public issue during the year. The Committee noted that the Respondent had in her submissions stated that she had verified that the funds were received by the Company on issue of Redeemable Preference Shares and accordingly she had verified the copies of Board resolution approved in the meetings of the Board of Directors of the company which she produced on record before the Disciplinary Committee. Further, she contended that on verification of books of accounts she found that there were less than 50 entries in

the books that recorded the receipt of the money from Redeemable Preference Shares which was confirmed by the Management as well in their representation sent on 12th May 2010 through e-mail **(D-5 to D-7)** that the said issue was not a public issue as the number of allottees were less than 50. She had further verified the records of ROC and there was no return of allotment for more than 50 persons and the return of allotment which included the list of 1169 allottees **(D-16 to D-19)** was filed on 26th July, 2010 much later, while the Respondent had issued her audit report on 14th May 2010.

12. The Committee noted that the Respondent had brought on record a copy of the certificate dated 9th, May 2010 wherein the Director of the Company had certified that the Company had allotted 14757 preference shares to 46 persons during F.Y. 2009-10 and also confirmed the same through a management representation letter sent on 12th May 2010 to the Respondent that the no. of allottees to the issue had been limited to less than 50 individuals **(D-5 to D-7)**. Further, she had brought on record management representation letter as well as resolution passed that nowhere indicated allotment to more than 50 individuals.

13. The Committee was thus of the view that during the course of conducting audit, the Respondent had taken appropriate and necessary steps to verify the allotment of preference shares by verifying the entries in books of accounts and bank statements of the company, the returns filed by the Company with ROC and also perusing the minutes of the Board of Directors before finalizing her audit opinion in this regard which was reported in para 37 of Annexure to audit report **(C-9)** that the Company had not raised money by public issue during the year. The Committee was also of the view that an auditor while conducting the audit is expected to examine the books and accounts and review the representations made by the Company at the time of audit and thus is dependent on the information provided to him/her and if nothing contradictory comes to his/her knowledge during the course of audit, then he/she is considered to be justified in relying upon the entries in books as well as the information contained in the management representation provided that due diligence expected of a chartered Accountant in such a situation is duly exercised. The Committee thus was of the view that since the return of allotment in Form 2, which formed the basis of this allegation against the

Respondent was filed by the Company on 26th July 2010 which was much after the date of signing audit report by the Respondent on 14th May 2010, therefore, the Respondent was not privy to such an information to base her audit opinion. Accordingly, in light of the facts and reasoning as mentioned above, the Committee was of the view that the Respondent is not guilty of professional misconduct with respect to this charge.

Conclusion :

14. Thus, in conclusion, in the considered opinion of the Committee, the Respondent is **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.

15. The Committee, accordingly, passed orders for closure of this case against the Respondent.

Sd/-
(CA. Prafulla Premsukh Chhajed)
Presiding Officer

Sd/-
(Smt. Anita Kapur)
Member (Govt. Nominee)

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

Sd/-
(CA. Manu Agrawal)
Member

Sd/-
(CA. Debashis Mitra)
Member

Date: 12th December, 2019

Place: New Delhi