

CONFIDENTIAL

DISCIPLINARY COMMITTEE [BENCH – II (2018-2019)]

[Constituted under Section 21B of the Chartered Accountants (Amendment) 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-289/2012-DD/292/13/DC/436/16]

In the matter of:

**Ms. Gudiya Gupta
Packwell Manufacturers (Delhi) Pvt. Ltd.,
602, Mercantile House,
No.15 Kasturba Gandhi Marg,
New Delhi- 110 001.**

... Complainant

Versus

**CA. Sanjeev Kumar Bindal, (M. No.091274)
C/o. Vinod Sanjeev Bindal & Co.,
CAs (Firm Regn. No. 012493N)
Shiv Sushil Bhavan,
D-219, Vivek Vihar-I,
New Delhi 110 095.**

.... Respondent

MEMBERS PRESENT:

**CA. Prafulla P. Chhajed, Presiding Officer
Shri Rajeev Kher, I.A.S. (Retd.), Govt. Nominee
CA. Amarjit Chopra, Government Nominee
CA. Mangesh P. Kinare, Member
CA. Sushil Kumar Goyal, Member**

DATE OF FINAL HEARING : 09.07.2018

PLACE OF FINAL HEARING : ICAI Bhawan, New Delhi

PARTIES PRESENT:

**Complainant : Ms. Gudiya Gupta
Counsel for the Complainant : Advocate Nikhil Jain
Counsel for the Respondent : Advocate Siddarth Garg**

Charges in Brief:-

1 The Committee noted that the Complainant had made many charges against the Respondent, however, the Respondent was held Prima Facie Guilty in respect of only two charges, which are as under:-

1.1 The first charge of the Complainant is that Balance Sheet of the Company signed by the Respondent for the year ended 31.03.2009 on 28/08/2009 contains signature of Sh. S.P. Gupta as director, who infact ceased to be director since 19.06.2009. Further, it has also been alleged that the said Balance Sheet was not approved by the Board of Directors and also was not authenticated as per the requirements of Section 215 of the Companies Act, 1956.

1.2 The Second charge of the Complainant against the Respondent is that as per newspaper reports, the Central Bureau of Investigation (CBI) has prepared a list of twenty three persons who have been declared as "Undesirable Contact Man". The name of the Respondent also appears in that list.

Brief facts of the Proceedings:

2. On the day of hearing i.e. 09/07/2018, the Committee noted that the Complainant with her Counsel and the Counsel for the Respondent were present and appeared before it.

2.1 The Complainant was put on oath. The Counsel for the Complainant briefed on the charges alleged against the Respondent. The Counsel for the Respondent requested for adjournment on the ground that he has received further rejoinder of the Complainant running into 437 pages just two days ago and he needs time to go through the same and to prepare his defence/reply.

2.2 However, the Committee did not accede to the request of the Counsel for the Respondent and decided to proceed with the matter in view of the fact that the adjournment has been granted to Respondent in this case at earlier occasion also.

2.3 The Counsel for the Complainant substantiated the charges and made his detailed oral submissions. Thereafter, the Counsel for the Respondent also made his submissions.

2.4 The Committee examined both the parties and after recording the submissions of the Complainant /her Counsel and the Counsel for the Respondent, it directed the Respondent to file following documents within 7 days with a copy to the Complainant:-

- (i) Copy of Minutes of Board of Directors meeting approving the Balance Sheet of the Company for Financial Year 2008-2009.
- (ii) Affidavit from the Respondent regarding appearance of his name in news paper cutting under “undesirable contact man” list.

2.5 The Committee also directed that the Complainant can also file her submissions, if any, on the same in next 7 days time.

2.6 The Committee further directed that after receiving the above documents, it shall decide that whether this matter needs further hearing or it may be concluded based upon submissions of the parties receivable as above.

2.7 In view of above directions of the Committee, the Respondent has filed following documents:

- (i) Written submissions dated 16/07/2018 on charges of the Complainant.
- (ii) Affidavit dated 16/07/2018 duly signed by the Respondent and notarized.
- (iii) A copy of Order of Information Commissioner dated 19/12/2017 in appeal no. CIC/MPERS/A/2017/107414/MP. However, the Respondent did not submit copy of minutes as stated at point 2.4 (i) above.

2.8 The Respondent in above submissions have submitted that there was no information to him on removal of Shri S.P. Gupta from directorship of the Company.

Further, there is no requirement under the Companies Act, 1956, for the auditor to keep copy of minutes of meetings of the Company. There is also no requirement under the Companies Act for the auditor to check MCA website regarding directors of the Company.

2.9 Moreover, in respect of second charge, the Respondent submitted that he was neither aware of appearance of his name in any such list nor of such list itself. He was never ever been put to notice by CBI with respect to appearance of his name in any such list that may have been taken out by CBI. Further, the Respondent stated that in reply to RTI, the CIO of CBI in Order dated 19.12.2017 has stated as under:-

“The CIO denied having given any such information to newspaper/media. In fact, the appellant was presuming that his name was published in the list in question as it was a highly secret document and the same had not been disclosed to media at all.”

Thus, reliance of Complainant on alleged newspaper reports is false and malicious.

2.10. On other side the Complainant vide her letter dated 23/07/2018 has stated as under:-

(i) The submissions made by the Respondent are totally wrong and incorrect. Shri S. P. Gupta ceased to be Director of the Company since 19/06/2009 and Form 32 was filed with ROC on 20/07/2009, i.e. much before signing the audit report.

(ii) Maintaining minutes book relating to audit work is the requirement of the ICAI for all audit work undertaken by any auditor.

(iii) Section 215 of the Companies Act, 1956 clearly provides that the auditor has to mandatorily sign the Balance Sheet and provide his audit report only after it has been approved by the Directors of the Company and signed by two Directors.

(iv) Various Government agencies like Delhi Police, SFIO have not only taken cognizance of illegal and criminal action of the Respondent but have confirmed his professional misconduct. Various Courts such as National Company Law Tribunal and National Company Law Appellant Tribunal and Delhi High Court have passed negative Orders against him in various cases.

(v) The Respondent was very well aware that he has signed the Balance Sheet of the Company on the strength of only one ex-director Shri S. P. Gupta. He himself has

confirmed that he has signed the balance sheet on the strength of only one Director before Regional Director, ROC in his rejoinder filed on 09.11.2012.

Findings of the Committee

The above submissions of both the parties were placed before the Committee in its meeting held on 18/09/2018 at New Delhi, wherein, the Committee after considering the above submissions decided that no more hearing in this matter is required and accordingly, decided to conclude the case and gave its findings as under:-

3. The Committee noted that there are two charges against the Respondent which is explained in para 1.1 and 1.2 above.

3.1 The Committee noted the further written submissions of the Respondent and the Complainant as narrated in para 2.8, 2.9 and 2.10 above respectively.

3.2 In respect of the first charge, the Committee noted that the Respondent in above submissions has admitted that there was no information available with him to the fact that Shri S.P. Gupta has been removed from Directorship of the Company.

3.3 The Committee perused the Audited Financial Statements of the Company signed by the Respondent on 28/08/2009 and noted that the same was signed by only one Director i.e. by Shri S.P. Gupta.

3.4 The Committee further observed that as per its directions on the day of final hearing, the Respondent failed to produce copy of minutes of meeting of Board of Directors in which Shri S.P. Gupta was authorized to sign annual Financial Statements of the Company.

3.5 The Committee was of the view that though there is no requirement to check the website of MCA before signing of Balance Sheet, however, the Respondent even

could not provide a copy of board resolution approving such Balance Sheet which is a basic document for any auditor to retain in his working papers.

3.6 Moreover, the Committee checked the requirements of Section 215 of the Companies Act, 1956, which reads as under:-

“ In the case of any other Company, the balance Sheet should be signed by its manager or secretary, if any, and by not less than two directors of the Company one of whom shall be a Managing Director where there is one.

When only one of its Director is for the time being in India, the balance sheet and profit & loss account shall be signed by such director; but in such a case there shall be attached to Balance Sheet and profit and loss account a statement signed by him explaining the reason for non-compliance with provisions”.

“The balance sheet and the profit and loss account shall be approved by the Board of directors before they are signed on behalf of the Board in accordance with the provisions of this section and before they are submitted to the auditors for their report thereon.”

3.7 In view of above requirements of Companies Act, 1956 and on perusal of audited Financial Statement of the Company, the Committee observed that said Financial Statements were not authenticated as per Section 215 of aforesaid Act as only one Director had signed the Balance Sheet. Moreover, the Committee noted the following further discrepancies, which are as under:-

(i) There were no indication to show that Balance Sheet has been signed by Shri S. P. Gupta on behalf of the Board of Directors, as there was no narration like “Signed on and behalf of Board of Directors” above the signature of Shri S. P. Gupta.

(ii) Further, if there were circumstances that the Balance Sheet was to be signed by only one Director i.e. Shri S.P. Gupta, then there should be a statement by him along-with Balance Sheet giving reasons for non-compliance of said Section as per the requirements of Section 215 of Companies Act, 1956.

3.8 The Committee also noted that the Respondent has produced a copy of Balance Sheet having signatures of two Directors including the mother of the Complainant, Smt. Rajni Gupta alongwith his written statement dated 02/03/2016 which is claimed

by the Complainant as containing forged signature of Smt. Rajni Gupta, the other Director.

3.9 On perusal of the above, vis-à-vis affidavit of said Rajni Gupta dated 17/03/2016 brought on record by the Complainant and also the letter of the Respondent dated 05/11/2012 written to Regional Director, (Northern Region), Ministry of Corporate Affairs, Noida, wherein vide para 2.2 of said letter the Respondent has stated that *“the impugned balance sheet was signed by the auditors on the strength of Shri S. P. Gupta alone pending signature of the Other Director”*, the Committee was of the view that the said Balance Sheet with signature of two Directors as produced by the Respondent in his defence alongwith his written statement dated 02/03/2016 is an afterthought only.

3.10. In view of above noted fact and reasoning, the Committee was of the opinion that Respondent has not exercised due diligence in performance of attest function assigned to him and hence, is GUILTY of professional misconduct falling within the ambit of Clause (7) of Part I of the Second Schedule to the Chartered Accountants Act, 1949.

4. Further, the Committee noted that in respect of second charge that there are only certain press releases available on record, as per directions of the Committee, the Respondent has filed an affidavit for the aspect stating that he is unaware of appearance of his name in any such list of CBI.

Further, the Respondent has also produced copy of an Order of Information Commissioner dated 19/12/2017 wherein CBI categorically has stated before the Central Information Commissioner in appeal No. CIC/MPERS/A/2017/107414/MP that: *“The respondents denied the allegations made by the appellant stating that the appellant was merely relying on a newspaper clipping while they had verified it with their Chief Information Officer (CIO) and special unit who was a official spokesman of the organization and responsible for preparation of press release and releasing the same to the press. The CIO denied having given any such information to newspaper/media. In fact, the appellant was presuming that his name was published*

in the list in question as it was a highly secret document and the same had not been disclosed to media at all.”

4.1 In view of above categorical denial of CBI regarding publishing of such list, the Committee was of the view that source of said information/press release is not authenticated one and even same was denied by the concerned Department i.e. CBI also. Thus, the Committee, holds the Respondent NOT Guilty on this charge for “Other Misconduct” falling within the meaning of Clause (2) of Part IV of the First Schedule to the Chartered Accountants Act, 1949 read with Section 22 of the Act.

Conclusion:

5. Thus in summation and in terms of reasonings as narrated above, in the considered opinion of the Committee, the Respondent is **GUILTY** of professional misconduct falling within the meaning Clause (7) of Part I of the Second Schedule to the Chartered Accountants Act, 1949 in respect of first charge only .

**Sd/-
(CA. PRAFULLA P. CHHAJED)
PRESIDING OFFICER**

**Sd/-
(SH. RAJEEV KHER, I.A.S. (Retd.)
GOVERNMENT NOMINEE**

**Sd/-
(CA. AMARJIT CHOPRA)
GOVERNMENT NOMINEE**

**Sd/-
(CA. MANGESH P. KINARE)
MEMBER**

**Sd/-
(CA. SUSHIL KUMAR GOYAL)
MEMBER**

**DATE : 05th February, 2019.
PLACE : New Delhi**

DISCIPLINARY COMMITTEE [BENCH-I (2019-2020)]

[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 INVESTIGATION OF PROFESSIONAL AND OTHER MISCONDUCT AND CONDUCT OF CASES) RULES, 2007.

In the matter of:

Ms. Gudiya Gupta, Authorised Signatory, M/s. Packwell Manufacturers (Delhi) P Ltd., New Delhi

-Vs-

CA. Sanjeev Kumar Bindal (M.No.091274) of M/s. Vinod Sanjeev Bindal & Co., Delhi

[PR 289/13-DD/292/13/DC/436/2016]

MEMBERS PRESENT:

**CA. Prafulla Premsukh Chhajed, Presiding Officer,
Shri Jugal Kishore Mohapatra, I.A.S. (Retd.) (Government Nominee),
Ms. Rashmi Verma, I.A.S. (Retd.) (Government Nominee),
CA. Babu Abraham Kallivayalil, Member
CA. Dayaniwas Sharma, Member**

1. That vide report dated 05.02.2019, the Disciplinary Committee has inter-alia held **CA. Sanjeev Kumar Bindal (M.No.091274)** (hereinafter referred to as the “**Respondent**”) **GUILTY** of professional misconduct falling within the meaning of Clause (7) of Part I of the Second Schedule to the Chartered Accountants Act, 1949.
2. That pursuant to the said report, an action under Section 21B (3) of the Chartered Accountants (Amendment) Act, 2006 was contemplated against the Respondent and communication dated 3rd May, 2019 was addressed to him thereby granting an opportunity of being heard in person and/or to make a written representation before the Committee on 23rd May, 2019.
3. The Committee noted that on 23rd May, 2019, the Respondent was present and he made his oral submissions on the report of the Disciplinary Committee. The Respondent vide his letter dated 19.03.2019 also made his written representations on the said report.
4. The Respondent in his oral and written representations submitted as under:-
 - i) No information on removal of the Director was ever provided to him by the Company.
 - ii) There was no requirement under the Companies Act, 1956 to keep the copy of minutes of the Board of Directors meeting.
 - iii) The Respondent stated that the Committee has failed to appreciate that the allegation that the Respondent signed the balance sheet which was signed by one director only, was never a part of the complaint. This was first raised by the Complainant in his rejoinder.
 - iv) The Complainant had at no instant produced the copy of original balance sheet with signature of one director only. The Copy of balance sheet filed by the Complainant has no evidentiary value.

5. The Committee has considered the reasoning (s) as contained in paras no.3 to 3.10 and 5 of the Disciplinary Committee report holding the Respondent Guilty of professional misconduct vis-à-vis representation of the Respondent.

6. Keeping in view the facts and circumstances of the case, material on record and representations of the Respondent made before it, the Committee is of the view that the professional misconduct on the part of the Respondent does not qualify for a severe sentence. Accordingly, the Committee orders that the Respondent, **CA. Sanjeev Kumar Bindal (M.No.091274) be reprimanded and imposed a fine of Rs.10,000/- (Rupee Ten Thousand only) (excluding applicable taxes, if any)** upon the Respondent i.e. **CA. Sanjeev Kumar Bindal (M.No.091274)** to be paid within 30 days of receipt of this order.

**Sd/-
(CA. PRAFULLA PREMSUKH CHHAJED)
PRESIDING
OFFICER**

**Sd/-
(SHRI JUGAL KISHORE MOHAPATRA)
GOVERNMENT NOMINEE**

**Sd/-
(MS. RASHMI VERMA)
GOVERNMENT NOMINEE**

**Sd/-
(CA. BABU ABRAHAM KALLIVAYALIL)
MEMBER**

**Sd/-
(CA. DAYANIWAS SHARMA)
MEMBER**

**DATE: 23rd May, 2019
PLACE : New Delhi**