

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. : File No. PR-128/2014-DD/133/2014-DC/602/2017

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

Smt. Anita Kapur, Member (Govt. Nominee)

CA. Debashis Mitra, Member

CA. Manu Agrawal, Member

Date of Final Hearing: 25th July, 2019 (decided on 23rd Sept, 2019)

Place of Final Hearing: New Delhi

Parties Present:-

- (i) Ms. Deepmala Bagri, Asst. Director (Law) – Complainant's representative
- (ii) Shri Kunal Rawat, Advocate - Counsel for Complainant
- (iii) CA. Sanjay Kumar Anand Kumar Jain – Respondent

Allegations of SFIO, the Complainant:

1. Shri S. K. Saxena, 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 12th May, 2014 (C-1 to C-117) 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 Chitrakut Computers Pvt. Ltd. (hereinafter referred to as "the **Company**") for the financial years 2000-01, 2001-02 and 2002-03 failed to qualify in his report, the following irregularities/falsification in the Financial Statements of the Company which shows his gross negligence in performance of his duties as statutory auditors:-

- i. The Respondent had in the 'Annexure to the Auditor's Report' dated 21st September, 2001 of the Company for the year ended 31st March, 2001 reported regarding records maintained that all shares were in the name of the Company except to the extent of the exemption, if any, granted under section 49 of the Companies Act, 1956 but, in the Notes forming part of the Balance sheet as at 31st March, 2003 it was mentioned that 2 lakhs equity shares of Sharp Scan Ltd for Rs.70 lakhs and 1,32,700 equity shares of Valient Communication Ltd for Rs.41.80 lakhs were not in the name of the Company and hence, the reporting in Para 16 of the said Annexure to the Audit Report was not correct. Similar notes were reported to be stated in the financial statements for the Financial Years 2001-02 and 2002-03.
- ii. The quantity, value and details of purchase, sales and stock of shares and securities in respect of speculation trade (transactions not backed by delivery) were not disclosed in the notes to accounts of the financial statements of the aforesaid years which Respondent failed to report under MAOCARO.
- iii. Wrongly reporting in Annexure to his Reports dated 2nd September, 2002 and 2nd September, 2003 regarding the Company not accepting any deposit within the meaning of Section 58A.

Proceedings :

2. At the outset, the Committee noted that the Complainant along with his Counsel and the Respondent were present in-person to appear before it on 25th July, 2019. Since the case was being heard for the first time, the Respondent was put on oath. Thereafter, the Respondent was asked if he wished the charges to be read out or it could be taken as read. The Respondent stated that he was aware of the charges against him and could be taken as read. The Committee asked the Respondent as to whether he pleaded guilty or not. The Respondent pleaded not guilty and opted to defend the cases. The Committee, thereafter, asked the Respondent to proceed further and to give his submissions in each case. The Respondent made his submissions before the Committee. The Committee further examined the Respondent on the submissions made by him. The Counsel for the Complainant department stated before the Committee that the Respondent had pleaded guilty in the matter concerned before the Court of Metropolitan Magistrate, Girgaon, Mumbai. The Committee thereafter examined the Respondent and directed the Complainant-Department to provide a certified copy of the petition filed by the Complainant within 15 days from the date of hearing along with any other documents it desired to submit.

2.1 The Committee decided that based on submissions made and documents made available, a decision would be taken. The Committee after hearing the parties concluded the hearing in the matter and reserved its decision on the matters. Accordingly, the case was heard by the Committee.

3. On 23rd September 2019, the Committee noted that the Complainant Department had submitted the certified copies of the order passed against the Respondent by the Court of Metropolitan Magistrate, Girgaon, Mumbai. 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 second charge only. Accordingly, the Committee considered only the second charge and gave its findings on the same which are as under:

5. The Committee noted the plea of the Respondent that the financials of the Company in the impugned case are for FYs 2000-01, 2001-02 and 2002-03, for which enquiry was initiated by SFIO in 2006 and the complaint was filed with the Institute in 2014 which was after lapse of 11 to 13 years. He argued that as per Rule 12 of the Chartered Accountants (Procedure of Investigation of Professional and Other Misconduct and Conduct of Cases) Rules, 2007, complaints filed after 7 years should not be registered. The Committee did not find merit in this plea and noted that Rule 12 give discretion to the Director (Discipline) considering the then prevailing circumstances of the case. In any case, the charge being alleged primarily related to information contained in financial statements, which were duly available on records.

6. The Committee noted that the surviving charge in the PFO alleged against the Respondent was that he had failed to disclose in his report under MAOCARO that the details of quantity and value of shares purchased and sold in respect of speculative transactions i.e. transactions not backed by delivery, were not being maintained. The Respondent had stated in Annexure to his statutory audit reports for the FY 2000-01 (**para 16 on C-28**), 2001-02 (**para 19 on C-48**) and 2002-03 (**para 19 on C-67**) that *“The Company has maintained proper records of transactions and contracts in respect of shares, securities, debentures and has also made timely entries therein.”* However, related quantitative disclosures were not reported separately in the Notes to Accounts.

6.1 A speculative transaction means a transaction in which a contract for the purchase or sale of any commodity, including stocks and shares, is periodically or ultimately settled otherwise than by the actual delivery or transfer of the commodity or scrips. The contract is settled otherwise and squared up by paying out the difference which may be positive or negative. In the case of a stock broker undertaking speculative transactions, there can be both positive and negative differences arising by settlement of various such contracts during the year. From the ‘Guidance Note on Tax Audit under Section 44AB of the Income Tax Act, 1961’, it was noted that each transaction resulting into whether a positive or negative difference is an independent transaction. Further, amount paid on account of negative

difference paid is not related to the amount received on account of positive difference. In such transactions though the contract notes are issued for full value of the purchased or sold asset the entries in the books of account are made only for the differences.

Thus, Committee is of the view that disclosing the quantitative details of such shares, so traded, is not required.

7. As regard the submission of the Complainant Department that the Respondent had pleaded guilty in the matter concerned before the Court of Metropolitan Magistrate, Girgaon, Mumbai, the Committee noted that the Court Order produced before it indicates that a fine of Rs.2000 (two thousand) was imposed on the Respondent for offence under Section 227 read with Section 233 of the Companies Act, 1956. In this connection, the Committee found merit in the plea of the Respondent that he had pleaded guilty to buy peace of mind. In view of the above, the Committee decided to hold the Respondent not guilty of professional misconduct with respect to this matter.

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 Clauses (7) and (8) 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 the Respondent.

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

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

Sd/-
(CA. Debashis Mitra)
Member

Sd/-
(CA. Manu Agrawal)
Member

Date : 15th October, 2019

Place : New Delhi