

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-135/2014-DD/151/2014-DC/612/2017

In the matter of :

Shri S.K. Saxena

Deputy Director, 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, Presiding Officer

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, 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 29th May, 2014 (C-1 to C-202) 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 M/s. Triumph Securities Ltd. (hereinafter referred to as “the **Company**”) for the financial year 2000-01 had failed to qualify his report in context of the irregularities / falsification (discussed in para 1.1- below) in the Financial Statements of the Company which as per the Complainant showed his gross negligence in performance of his duties as statutory auditors.

1.1 The Respondent being the Statutory Auditor of the Company had in Para 12 of the Annexure to his report dated 2nd September, 2001, stated that the Company had not accepted any deposit within the meaning of Section 58A of the Companies Act, 1956 which was alleged to be wilful misrepresentation and suppression of material facts, since after analysing Tax Audit Report in Form No.3CA made under section 44AB of the Income Tax Act, 1961 for the Financial Year ended on 31st March, 2001 it was found that the Company was reported to have taken the deposit/unsecured loan from M/s. B.B. Rungta & Co., to the extent of Rs.15,79,206/- in the Financial Year 1999-2000 which was repaid during the Financial Year 2000-01(**C-20**).

1.2 The Respondent had also stated in the Annexure to his Audit Report for the Financial Years ending 31.03.2001(**C-39**), 31.03.2002 (**C-57**), 31.03.2003 (**C-76**) and 31.03.2004 (**C-102**) that the Company had granted unsecured loans to companies listed in the Register maintained under Section 301 of the Companies Act, 1956 and the terms and conditions of such loans were not prima facie prejudicial to the interest of the Company except that the loans were interest free, whereas it was seen from the Balance Sheet of the Company for the said years that the Company had borrowed loans from the Banks and other Companies at the rate of interest ranging between 15% to 18%. Thus, the Company had suffered loss on account of giving interest free loans to other Companies which was definitely prejudicial to the interest of the Company and its creditors, therefore the statement of the auditors in their

reports that the interest free loans were not prejudicial to the interest of the Company was blatantly incorrect and misleading.

1.3 The Respondent had further stated in the Annexure to his Audit Reports for the three Financial Years that the Company had maintained proper records of the transactions of the contracts in respect of the shares, securities, debentures and other investments and had also made timely entries therein. The shares, securities and other investments were held by the Company in its own name, whereas during the course of investigation, it was found that the Company was indulging in speculation trade in the stock market and only net loss or profit arising out of such transactions was reported into the profit and loss account though Note to accounts forming part of the Balance Sheet which furnished quantity details of stock purchased and sale of shares and had the following remarks:

“the above does not include transactions in which a contract for purchase or sale of shares for securities is ultimately settled otherwise than by actual delivery”

It was also reported that the Respondent was examined before the Inspector during the course of investigation and his statement was recorded on oath.

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 these could be taken as read. The Respondent stated that he was aware of the charges against him and these 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 case. The Committee, thereafter, asked the Respondent to proceed further and to give his submissions. 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 law. 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 and reserved its decision on the matter.

2.2 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 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:

3. 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 and third charges only. Accordingly, the Committee considered only the said charges and gave its findings on the same which are as under:

4. The Committee noted the plea of the Respondent that the financials of the Company in the impugned case are for FYs 2000-01 to 2003-04, for which enquiry was initiated by SFIO in 2006 and the complaint was filed with the Institute in 2014 after lapse of 10 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 Director (Discipline) considering the then prevailing circumstances of each case. In any case, the charge being alleged related to information contained in financial statements, which were duly available on records.

5. The Committee noted that in the first charge, it was alleged that the Respondent had in Annexure to his Audit Report dated 2nd September, 2001 (para 13 of C-40), stated that the Company had not accepted any deposit within the meaning of Section 58A whereas as per the Audit Report in Form No.3CA made under section 44AB of the Income Tax Act, 1961 for

the F.Y. ended on 31st March, 2001 it was found that the Company had reported it to be repayment of loan or deposit (C-140).

6. It was noted from the submissions of the Respondent that M/s. B.B. Rungta & Co. was client of the Company and the amount repaid was a security deposit against purchases and sales of shares being made by the Company on behalf of it. It was also noted that the Respondent in this regard had also brought on record copy of ledger account of M/s. B.B. Rungta & Co. (W-9 to W-38) which clearly indicated that said firm was the client of the Company having lot of transactions which were business transactions for the Company. Hence, the nature of amount paid could not be treated as deposit under Section 58A of Companies Act, 1956. As regard disclosure in Tax audit report, it was viewed that Companies Act and Income Tax laws are independent. The allegation was raised in context of reporting under MAOCARO and such Reporting was not incorrectly done in view of applicable provisions of Section 58A of Companies Act, 1956.

7. As per the third charge, the details of quantity and value of shares purchased and sold in context of speculative trade were not disclosed though the Respondent had stated under MAOCARO that the Company had maintained proper records of transactions and contracts in respect of shares and securities. It was noted by the Committee that the fact that quantity of shares traded as disclosed in notes to accounts explicitly mention that such quantity did not include transactions in which contract for purchase or sale of shares or securities was ultimately settled other than by actual delivery.

8. 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.

9. As regard the submission of the Complainant Department 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.950/- (Rupees nine hundred and fifty) 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 :

10. 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.

11. The Committee accordingly passes Order for closure of this case against the Respondent.

Sd/-
(CA. Prafulla Premsukh Chhajer)
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