

**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-143/2014-DD/154/2014-DC/603/2017**

**In the matter of :**

**Shri K S Kaushik**

Deputy Director, 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 Chhajer, 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 23<sup>rd</sup> 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 K.S. Kaushik, 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 29<sup>th</sup> 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 M/s. Panther Industrial Products 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 It is stated that Schedule J of Balance Sheet ended on 31.3.2001, show NIL balance of sales and purchases of securities made during the year, whereas it was found from the scrutiny of the debit note issued by the company to M/s Nakshatra Software, Chitrakoot Computer Pvt Ltd., Goldfish Computer Pvt. Ltd and Panther Fincap & management services Ltd that the Company (PIPL) has sold equity shares. Further from the debit note issued by Classic Credit Limited, it was found that the company had purchased 3 lac shares of Landmark Leisure valuing Rs. 4,57,20,000 during 2000-01. The above said purchase/sale details were submitted to Income Tax department by the company. Accordingly, it was alleged that quantitative details of purchase, sales and stocks of shares and securities as disclosed in the Balance Sheet was not correct and the Respondent being statutory auditor failed to qualify the audit report or report under MAOCARO with respect to the same.

1.2 It was reported that the Respondent was examined before the inspector during the course of investigation. He had stated in respect of question no. 18 mentioned that “There is no mistake in my report. Of course, the quantitative details gone along with the report were left out inadvertently. However, the same can be cross examined with the details/ records/statement of other companies which reflects & confirm the said transaction. The corrigendum issued subsequently confirm the said quantitative details.”

1.3 It was alleged that the Respondent being statutory auditor of the company had failed to qualify his report for the financial year 2000-2001 and same amounts to false certification

of material facts in his audit report in terms of the provisions of Section 227 of the Companies Act. Therefore he did not fulfil his duties and does not furnish the information in the balance sheets and his audit report as required by this Act in a true and fair view.

**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 25<sup>th</sup> 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 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.

2.2 On 23rd Sept, 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:**

3. The Committee noted the plea of the Respondent stating that the financial of the Company in the impugned case is for FY 2000-01, for which enquiry was initiated by SFIO in 2006 and the complaint was filed with the Institute in 2014 that is after lapse of 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) to take into account the then prevailing circumstances of each case and decide. In any case, the charge being alleged related to information contained in financial statements, which could be considered based on information available on records.

4. The Committee noted that the charge alleged against the Respondent was with respect to the details of quantity and value of shares purchased and sold reported as NIL under Additional disclosures to the financial statements. The Respondent in his defence submitted that the Company had issued corrigendum in respect **(W-4)** of information contained in Financial Statement. He also brought on record the copy of minutes of Annual General Meeting held on 29.12.2001 wherein the said corrigendum was approved **(D-5 to D-7)**. It was noted that the Respondent had signed the audit report on 27.10.2001.

5. On perusal of the corrigendum, it was observed that the closing balance of equity shares was nil considering the quantity of reported sale and purchase of equity shares. On comparing the values of purchases, sales vis a vis stock, it was noted that it resulted into a loss of Rs. 3,07,40,000/- which was duly reported in Profit and loss Account under the head Income from Shares and securities **(C-29)**. Accordingly, it was noted that omission of such information had not affected the true and fair view of the profit/loss reported in the financials and that due correction was made well before the enquiry was initiated by the Complainant Department.

6. 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 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 (6) and (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 the Respondent.

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

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

**Sd/-**  
**(CA. Debashis Mitra)**  
**Member**

**Sd/-**  
**(CA. Manu Agrawal)**  
**Member**

**Date : 15<sup>th</sup> October, 2019**

**Place : New Delhi**