

CONFIDENTIAL

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

[Constituted under Section 21B of the Chartered Accountants Act, 1949]

Findings cum Order under Rule 18(17) and Rule 19(2) of the Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007.

[Ref. No.PR/50/16/DD-77/2016-DC/766/2018]

In the matter of:

**Shri Ram Gopal, IPS
Supdt. of Police,
Central Bureau of Investigation,
Sector 30 A
Chandigarh**

.....Complainant

Versus

**CA. Kulwinder Jit Singh ...(M. No. 096092)
M/s K.J. Singh & Associates
S-134, Industrial Area
Jalandhar-144 001**

.....Respondent

MEMBERS PRESENT:

**SHRI JUGAL KISHORE MOHAPATRA, I.A.S.(RETD.), GOVT. NOMINEE & PRESIDING OFFICER
MS. RASHMI VERMA, I.A.S. (RETD.), GOVERNMENT NOMINEE,
CA. BABU ABRAHAM KALLIVAYALIL, MEMBER
CA. DAYANIWAS SHARMA, MEMBER**

DATE OF FINAL HEARING : 17.10.2019

PLACE OF FINAL HEARING : ICAI, New Delhi

PARTIES PRESENT:

Complainant : Not Present

Respondent : CA. Kulwinder Jit Singh

Counsel for Respondent : CA. C.V. Sajan

Brief of the Disciplinary Proceedings:-

1. The Committee noted that first hearing in the matter was fixed on 29.08.2019. The notice of the said hearing was duly sent to the Complainant and the Respondent. However, the said hearing was adjourned in order to provide one more opportunity to the Complainant.
- 1.1 The Committee noted that on the day of next hearing i.e. 17th October, 2019, the Complainant was not present. The Respondent along with his Counsel was present. Since last hearing fixed in the matter on 29th August, 2019 was adjourned in order to provide one more opportunity to the Complainant and there was no prior intimation from the Complainant about their absence from the present hearing, the Committee decided to proceed ahead with the disciplinary proceedings ex-parte the Complainant. Thereafter, the Respondent was put on oath. On being enquired from the Respondent as to whether he is aware of the charges leveled against him, the Respondent replied in affirmative and pleaded not guilty to the same. Thereafter, the Counsel for the Respondent decided to make his submissions on the charges. He made his submission in defence of the Respondent. The Committee also raised questions to the Respondent. After hearing the final submissions, the Committee decided to conclude the hearing in the above matter.

Brief of the Charges and findings of the Disciplinary Committee:-

2. The allegation against the Respondent is that he had given a false Certificate of Utilization to M/s Blue Heaven Builders, Phagwara (hereinafter referred to as the “**Firm**”) certifying that the Firm had spent an amount of Rs. 2.34 Cr. on the construction of White Rose Mall. The Complainant alleged that on the basis of said Utilization Certificate given by the Respondent in respect of the utilization of first loan instalment of Rs. 150 lakh, the Punjab & Sind Bank (hereinafter referred to as the “**Bank**”) had disbursed the 2nd instalment of Rs. one crore to the firm which was misappropriated by the firm. The Complainant stated the total amount involved in the fraud is Rs. 747.49 Lakh. The Complainant further alleged that the said certificate signed by the Respondent do not bear the date also.
3. The Committee noted that the Complainant vide his letter dated 30th July, 2018 made the following submissions in support of the charges:-
 - 3.1 That the Respondent submitted the false certificate on the basis of false & incorrect information provided by the accused builder and he did not go through the records i.e.

bills for purchase of construction materials and the bills towards payment of labour charges etc. The valuation was got done by the bank from M/s. D. Con, Govt. approved valuer, Jalandhar City and as per his valuation report dated 06.12.2010, amount spent on construction was evaluated at Rs.20 to 25 lakh. Another valuer, M/s. S Beri & Co., Phagwara had assessed the cost of construction at Rs.18 lakh.

3.2 That the Respondent was required to check all the purchase orders, invoices / bills and bank statements of the firm before certifying the purported certificate. Whereas he relied upon the books of accounts of the firm, it was his duty to physically verify the construction and material lying on the site and the bills regarding the payment made by the firm for the same. He should have checked the bank statements for the genuineness of payment made by the firm but the Respondent only relied on the counterfoil of the cheque book.

3.3 The transactions mentioned in the utilization certificate were not genuine. The transactions certified by the Respondent were actually not incurred on the purpose for which the said loan was sanctioned.

3.4 The Complainant stated that while issuing certificate, the Respondent did not mention about the records examined by him and the period of expenditure incurred. Moreover, the cheque payments do not specify whether payments are made as advance to suppliers or against material received.

4. In respect of charges, the Respondent made the following submissions to defend himself before the Committee:-

4.1 The Charge of the Complainant is that the firm while availing the term loan for construction of the project, has filed a certificate issued by the Respondent. As per the Complainant, utilization certificate submitted by the firm was false. The Respondent stated that to support the charge, the Complainant provided a copy of valuation certificate with his submissions dated 24th July, 2018. According to this valuation certificate, the work claimed by the firm in the utilization certificate was not actually done. The Respondent stated that the said valuation report is dated 05.09.2013 and his certificate was issued much before the date of valuation report.

- 4.2 The Respondent stated that due to clerical mistake, on the face of certificate, date was not given, however annexures to the said certificate are containing date of transactions. These annexures which are forming part of the certificate shows that these were related to the period September, 2008 to November, 2008. Therefore, the valuation was carried out by the CBI after about 4 years of issuance of his certificate. The Respondent stated that he does not know that after four years what was left on the site for valuation. The Respondent stated that he was not competent to assess the physical construction on the site and he was not required to assess the value of the stock lying on the site. His job was limited to going through the books of accounts and certifying based on the transactions. Further, valuation certificate is a technical certificate given by an Engineer and it depends on what he has seen at that particular point of time at the site.
- 4.3 To a question posed to the Respondent that based on which record / documents he had issued his certificate, the Respondent stated that his certificate is self-explanatory and duly contains the details of cheque numbers, date and amounts. As regard the question related to clearance of cheques, the Respondent stated that though the Complainant has challenged the same but they did not come with any documentary evidence to show that cheques were not actually cleared. He stated that after examination the bank statement, he has issued the certificate. However, the Respondent also stated that he is not in position to produce the bank statement before the Committee due to closure of the firm.
- 4.4 The Respondent stated that the Company has provided him a valuation certificate of an Architects & valuers dated 30.04.2009. Although, he has not taken it on the face value but the figures that were in the account were in alignment with that valuation certificate. So, he took that certificate as a support. Further, the CBI has not challenged the authenticity of the said certificate. The Respondent while explaining the aforesaid valuation certificate stated that it talks about advances and materials lying at the site. Nobody claimed to have done the physical erections and it was more or less underground work excavation and laying the cements.
- 4.5 The Respondent stated that all the bank managers have been charged by the CBI and he has not been made an accused in the matter. However, he was examined by the CBI in the matter.

4.6 The Respondent also stated that the CBI has visited all the parties and found them genuine, otherwise, the CBI would have made allegation about non existence of parties. The Respondent also referred to bill of R.D. Construction, Kalicharan Karam Chand, G I Builders Pvt Ltd and a certificate from a party for supply of bricks against payment. The Respondent stated that name of these suppliers are duly appearing in the annexure of utilization certificate. The Respondent stated that the CBI has not been able to rebut any of the transactions mentioned in the annexure to the utilization certificate.

5. After taking into consideration all the submissions and documents on record, the Committee gives its findings as under:-

5.1 The Committee noted that crux of the allegation was that the Respondent had issued a false certificate of Utilization certifying that the firm has utilized / spent Rs.2,34,30,046/- on the construction of a Mall as per the books of accounts. It was also alleged that this certificate does not contain date. Based on this certificate, the bank has disbursed the second instalment of loan of Rs.1 Cr.

5.2 On perusal of the Certificate of Utilization, it is noted that the same was undated and certified by the Respondent. The Respondent in the said certificate mentioned that the certificate was issued based on books of accounts and the amounts were spent through bank account. As per certificate, Rs.2.34 cr was spent on the construction of the mall. The Respondent in defence stated that due to clerical mistake, date could not be mentioned on the certificate. However, the certificate was having reference of annexure and in the annexure details of transactions along with date was duly given. It is further observed from the annexure to the Certificate of Utilisation that the expenses pertained to the period 15.09.2008 to 16.04.2009.

5.3. It is noted that the Respondent expressed his inability to produce his working papers as the firm was closed. However, he submitted copy of a certificate issued by M/s. Rajendra Associates, Architects & valuers to effect that Rs.2.40 Cr. was incurred on constructions. The Respondent also submitted copy of bills of few parties. On perusal of certificate issued by the Architect dated 30.04.2009, it has been observed that as per said certificate, the firm had incurred expenses of Rs.2.40 Cr on construction of the Mall. Further, amount of bills were supporting the entries of expenses as mentioned in annexure to the Certificate of Utilisation.

5.4. It is noted that the valuation report brought on record by the Complainant is dated 05.09.2013 and there was nothing on record from the Complainant to establish as to how the said valuation report which is issued after 4 years is relevant to the present matter. Further, the Complainant did not bring on record copy of bank statement to show that the payment for expenses was not made through the bank account. There was nothing on record to show that the Complainant had ever challenged the genuineness of the parties to whom payments were made. It is also observed that the Complainant did not provide the copy of valuation report dated 06.12.2010 of M/s. D.Con, Govt. approved valuer. The Committee also observed that a Chartered Accountant is not expected to be expert in assessing the valuation of cost of construction and for the same he is expected to rely upon the work of report of valuers / engineers. In the present case, the Respondent brought on record copy of valuer report pertaining to the period of expenses, to show that amount as mentioned in the Certificate of Utilisation was supported by the valuer report and books of accounts. Hence, in view of above facts and submissions, the Committee decided to extend the benefit to the Respondent and accordingly, decided to hold the Respondent 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.

Conclusion

6. Thus in the considered opinion of the Committee, the Respondent is **NOT GUILTY** of professional misconduct falling within the meaning Clause (7) of Part I of Second Schedule to the Chartered Accountants Act, 1949.

6.1 Accordingly, the Committee passes an Order for closure of this case under Rule 19(2) of the Chartered Accountants (procedure of Investigations of Professional and Other Misconduct and Conduct of cases Rules, 2007.

Sd/-
(SHRI JUGAL KISHORE MOHAPATRA, I.A.S.(RETD.))
GOVERNMENT NOMINEE & PRESIDING OFFICER

Sd/-
(MS. RASHMI VERMA, I.A.S. (RETD.))
GOVERNMENT NOMINEE

Sd/-
(CA. BABU ABRAHAM KALLIVAYALIL)
MEMBER

Sd/-
(CA. DAYANIWAS SHARMA)
MEMBER

DATE : 03rd February, 2020
PLACE : NEW DELHI