

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-362/14-DD/04/2015/DC/717/2017]

In the matter of:

**Shri Surendra Kumar Sancheti,
GD-42, Salt Lake City,
Sector – III,
Kolkata – 700 106**

.....Complainant

Versus

**CA. Tapan Kumar Saha (M.No.056755),
C/O Sibendra Saha,
3, Sastitala Road,
Narkeldanga,
Kolkata – 700 011**

.....Respondent

MEMBERS PRESENT:

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

DATE OF FINAL HEARING : 07.11.2019

PLACE OF FINAL HEARING : ICAI, Kolkata

PARTIES PRESENT:

Respondent : CA. Tapan Kumar Saha

Counsel for the Respondent : CA. A.P. Singh

Brief of the Disciplinary Proceedings:-

1. The Committee noted that on the day of hearing i.e. 7th November, 2019, the Complainant was not present. The Respondent along with his Counsel was present. Since the Complainant was absent without any prior intimation, the Committee decided to continue with the hearing ex-parte the Complainant. On being enquired from the Respondent as to whether he would like to have de-novo hearing or wish to have hearing in continuation to earlier hearing held on 4th January, 2019, the Respondent agreed to have hearing in continuation to last hearing and also stated that he would like to rely upon the submissions and documents on record. Thereafter, the Counsel for the Respondent made brief submissions related to the facts of the case and in defence of the Respondent. The Committee also posed some questions to the Respondent. Thereafter, the hearing in the matter was concluded.

1.1. In respect of earlier hearing held in the matter on 4th January, 2019, the Committee noted that the Complainant was not present. The Respondent was present along with his Counsel. On perusal of the adjournment request of the Complainant, the Committee refused to grant adjournment in the matter. Thereafter, the Respondent was put on oath. On being enquired, the Counsel for the Respondent stated that the charges can be taken as read. Accordingly, the charges were taken as read on record. The Respondent pleaded not guilty. The Counsel for the Respondent, thereafter, made submissions on the charges. The Committee posed some questions to the Counsel for the Respondent. The Committee directed the Respondent to submit explanation from the Company as to why the Form '2' was filed in the year 2008, how he came to know that Form '2' was filed erroneously and what were the triggered point for the Company to withdraw the Form '2'. Apart from above, the Committee directed the Respondent to submit confirmation from the Company that filing fees for Form 2 (dated 23.07.2008) was not debited by the Company. Thereafter, the Counsel for the Respondent made his final submissions.

CHARGES IN BRIEF AND FINDINGS OF THE COMMITTEE:-

2. The Committee noted that the Respondent was auditor of M/s Sristi Cable TV Network Ltd. (hereinafter referred to as the "**Company**") for the financial years 2008-2009 to 2012-2013. The first allegation against the Respondent is related to not reporting of 56,430 equity shares of Rs. 10/- each issued on 20th June, 2008 in the audited financial statements for the years

ending 31st March, 2009 to 2013. The second allegation against the Respondent is that the Company had never allotted any share/ security on premium whereas in the balance sheet as on 31.03.2013, amount of Rs. 51,83,554/- has been reflected towards security premium reserve without there being any lawful basis of the said securities premium reserve.

3. The Committee noted that the Complainant did not submit his further submission on the prima facie opinion whereas the Respondent made his detailed submissions on the same. Further to the hearing held on 4th January, 2019, as per directions of the Committee, the Respondent submitted the copy of the following documents:-

- i) Letter dated 7th January, 2019 of the Company regarding confirmation of Form-2 filed erroneously on 23.07.2008 and non-reflection of money receipt for filing of Form 2 in the books of accounts of the Company duly certified and confirmed by the Director of the Company.
- ii) Management representation letter for the year 2008-09 duly certified by director of the Company.
- iii) Management representation letter for the year 2012-13 duly certified by director of the Company.

4. In respect of first allegation related to non-reporting of allotment of shares in the financial statement for the financial year 2008-09, the Respondent in his defence stated that during the course of audit for the financial year 2008-2009 and subsequent years, he had not come across any document relating to filing of Form No. 2 for allotment of 56,430 equity shares. Further, there was no receipt of application money towards the said issue. After filing the instant complaint, he had downloaded the Form 2 from MCA website and found the said return of allotment filed with ROC has been signed by the director, Shri Indranil Sarkar and CS Debasis Mukhopadhyay, however, the said persons are no longer associated with the Company. Hence, neither he nor the Company has been able to seek their reply in this matter. The accounts of the relevant years were also passed by the Board of Directors and AGM without any adverse comments. The Complainant joined the Company as a Director in the year 2011-12 but has not passed on this information to the Respondent during the year 2011-12 and 2012-13. The Respondent also raised question as to why the Complainant remained silent on the aforesaid issue when he was director of the Company.

4.1 The Respondent also defended himself by stating that the preparation of the accounts is the primary responsibility of the Management of the Company. When the Complainant himself admitted in his allegation that the aforesaid Company had suppressed the fact of filing of Form 2 for allotment of 56,430 equity shares, how the Complainant can make the aforesaid allegation against him.

4.2 The Respondent also stated that the Company after realizing the erroneously filing of the said return of allotment, called the board meeting dated 06th August, 2014 to request ROC, Kolkata to treat the said allotment return as void and ineffective. In support of his defence, the Respondent brought on record a letter dated 10th September, 2014 written by the director to ROC, Kolkata stating therein that Form 2 dated 23.07.2008 was erroneously filed with the ROC and the figures relating to allotment shown in the said Form 2 were not reflected in the audited Balance Sheet for the year ended 31.03.2009 as no such allotments were made nor any amount was received by the Company.

4.3 As per directions of the Committee, the Respondent also brought on record letter dated 07.01.2019 from the Company confirming that Form 2 was filed erroneously. The Company in the said letter dated 07th January, 2019 confirmed as under:-

“We confirmed that when we realised that a return of allotment for 56430 Equity Shares (Form -2) was wrongly filed through inadvertence. A Board Meeting was called on 06.08.2014 to request ROC, Kolkata to kindly treat the said allotment Return as void and ineffective.

The aforesaid letter also states that “if filing of Form – 2 was correctly done by the Company then why management of the Company afterwards by way of Board resolution dated 06.08.2014 intimating ROC to treat the said allotment void and ineffective.”

It is also relevant to mention here that the said letter also confirms the submission of the Respondent that the Company has not received share application money.

4.3.1 The Respondent also brought on record management representation letter dated 3rd August, 2009 of the Company. The Company through the said representation confirmed that no share application money was received by the Company. Hence, no question of allotment of shares arises at all. Since the Company also confirmed that money receipt evidencing filing of

Form 2 was not at all recorded in the books of accounts of the Company during the year 2008-09.

4.4 In view of above, it can be summarised that no money was received by the Company regarding allotment of shares, hence, question of reflecting the same in the financial statement of the Company for the financial year 2008-09 and in subsequent years do not arise at all. It is also relevant to mention here that the Complainant also did not bring on record any documentary evidence to show that share application money was received by the Company in order to prove allotment of shares in the year 2008. Accordingly, it has been decided to hold the Respondent not guilty of professional misconduct falling within the meaning of Clauses (5), (6) & (7) of Part I of Second Schedule to the Chartered Accountants Act, 1949.

5. In respect of second allegation related to issuance of shares on premium in 2013, the Complainant alleged that the Company had never allotted any share / security on premium while in the balance sheet as on 31.03.2013, an amount of Rs.51,83,554/- has been reflected towards security premium reserve. In respect of above, the Respondent stated that the allotment of shares at premium was perfectly made and he was completely satisfied with the amount received against shares with premium by referring to Board's decision and resolution on allotment of shares at premium. The Respondent also brought on record minutes of the Board of Directors of the Company approving allotment of shares at premium. The Respondent also referred decision of the Company Law Board and stated that the Company Law Board has upheld the allotment of share on premium.

5.1 Further to the hearing, the Respondent brought on record copy of Management representation letter dated 12.08.2013 to confirm that the allotment of shares was made in the year 2013 at premium. The said letter states that as per resolution dated 31.03.2013, 57100 new equity shares of Rs.10/- each together with total premium of Rs.51,83,554/- on those shares has been allotted in 2012-13. When the aforesaid letter read with the order of the CLB, the same confirms that the shares were allotted at premium and accordingly, the same were disclosed in the financial statement by the Company.

6. The Respondent, however, stated that while filing the Form 2 regarding allotment of shares, his staff has used digital signature and form was filed without indicating security premium. However, subsequently, the correct form was filed through PAS-3 with ROC on 07.11.2014.

7. After taking into account all the submissions and facts on record, the Committee noted that the Company Law Board has upheld the allotment of shares on premium and rejected the petition of the Complainant filed on the same ground. Hence, there was no discrepancy in reflecting security premium in the Balance Sheet of 2013. As regard the mentioning of amount of security premium in Form 2, it appears that due to inadvertence, amount of security premium was not mentioned in Form 2 which was subsequently rectified by the Company by filing new Form PAS -3 with ROC wherein amount of security premium was duly shown. Since the mistake on the part of the Respondent appears to be clerical which was duly rectified by filing new Form PAS-3, it has been decided to hold the Respondent not guilty of professional misconduct falling within the meaning of Clause (7) of Part I of Second Schedule to the Chartered Accountants Act, 1949.

Conclusion:-

8. Thus in the considered opinion, the Respondent is held **NOT GUILTY** of Professional Misconduct falling within the meaning of Clauses (5), (6) & (7) of Part I of Second Schedule to the Chartered Accountants Act, 1949.

9. Accordingly, in terms of Rule 19 (2) of the Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007, the Committee passes Order for closure of this case against the Respondent.

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

DATE : 03rd February, 2020
PLACE : NEW DELHI