

**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-193/15/DD/188/2015/DC/623/2017]**

**In the matter of:**

**CA. (Ms.) Deepika Garg**

13 Kyd Street  
Flat 6D, 6<sup>th</sup> Floor  
**Kolkata-700 016**

**.....Complainant**

**Versus**

**CA. Ankit Garg (M. No. 067674)**

**M/s Ankit & Associates (FRN. 326791E)**

Chartered Accountants  
Diamond Heritage  
Room No. 1207A  
12<sup>th</sup> Floor, 16 Strand Road  
**Kolkata- 700 001**

**.....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**

**DATE OF FINAL HEARING : 07.11.2019**

**PLACE OF FINAL HEARING : ICAI, Kolkata**

**PARTIES PRESENT:**

**Respondent : CA. Ankit Garg**

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

**BRIEF OF THE DISCIPLINARY PROCEEDINGS:-**

1. The Committee noted that the Complainant was not present. The Respondent was present along with his Counsel. The Committee noted that the hearing in the above matter was fixed and heard on 4<sup>th</sup> January, 2019 but the Committee could not arrive at any decision in the matter. Accordingly, the hearing in the matter was re-fixed on 7<sup>th</sup> November, 2019 at Kolkata. The Committee also noted that the Complainant vide her e-mail dated 1<sup>st</sup> November, 2019 requested for adjournment of hearing. The said request was denied in view of the fact that adjournment had already been granted to the Complainant on earlier occasion and she was not present in last hearing also. Since the Complainant was not present, the Committee decided to continue with the proceedings. On being enquired from the Respondent as to whether he wishes to have de-novo hearing or the hearing can be continued from the stage as it was left in last hearing, the Counsel for the Respondent stated that he would like to rely on the submissions / argument already on record. The Counsel for the Respondent also made his brief submissions on the charges. After hearing the submissions of the Counsel for the Respondent, the hearing in the matter was concluded.

2. The Committee went through the documents on record and in respect of earlier hearings held in instant matter, the Committee noted as under:-

2.1 On the date of hearing i.e., 04<sup>th</sup> January, 2019, the Complainant was not present. The Respondent was present along with his Counsel. There was an e-mail dated 02.01.2019 from the Complainant stating therein that she was not in position to personally attend the hearing any further as she is medically unwell. She also requested the Committee not to adjourn the hearing on account of her absence. Since the Complainant herself requested not to adjourn the hearing in her absence, it was decided to proceed ahead in the matter ex-parte the Complainant. The hearing was continued from the stage as it was left in last hearing, to which the Counsel for the Respondent did not raise any objection. The Counsel for the Respondent made his submissions on the charges. The Committee posed some questions to the Counsel for the Respondent. Thereafter, the Counsel for the Respondent made his final

submissions. The Committee directed the Respondent to submit certificate / letter from the Companies (Zircon, ARS, Amtek) as regard the date of transfer of shares along with details of date of appointment and date of audit, within 7 days of the hearing. With this, the hearing in the instant matter was concluded.

- 2.1.1 As per directions of the Disciplinary Committee, the Respondent vide letter dated 8<sup>th</sup> January, 2019 submitted copy of certificates from Zircon Infracon Pvt Ltd., ARS Financial Consultants Pvt Ltd and Amtek Financial Consultants Pvt Ltd regarding transfer of equity shares held by his relatives. As per these certificates, the appropriate transfer deeds on 07.02.2011 and 01.12.2010 in accordance with the consent of Board of Directors were obtained by the aforesaid companies and recorded at the Board meeting of the Company.
- 2.2 On the day of hearing held on 10<sup>th</sup> January, 2018, the Complainant and the Respondent along with their Counsel were present. The Committee noted that certain documents / information had been sought from the Respondent which was not submitted by him. On this, the Counsel for the Respondent stated that the documents are ready but the same should not be shared with the Complainant as the same may be misused by her against the Respondent. The Committee asked the parties to the case to withdraw for some time. The parties were again called in the hearing room. The Respondent submitted a bunch of documents related to the Section 340 of CrPC proceedings going on against the Complainant. The Committee refused to accept this bunch of documents as the same was in no way related to this case. Thereafter, the Respondent's witness Shri S K Garg (father of Respondent) was examined by the Respondent's Counsel followed by cross examination by the Committee. The Committee asked the Complainant whether she would like to cross examine the Witness now or after receipt of deposition of the witness. She preferred to have the copy of deposition of Witness first and to examine him at the time of next hearing. The witness stated that he has retracted his statement dated 30.04.2014 vide his sworn affidavit dated 20.05.2014 which was filed with Income tax department at the time of assessment proceedings of Dollar Group of Companies. He also said that he is ready to provide copy of said affidavit provided the same may not

be shared with the Complainant. Since, the witness was not ready to share the copy of affidavit with the Complainant, the same was returned by the Committee to him after perusal of the same. After hearing the submissions, the hearing was adjourned.

2.3 On the day of hearing held on 25<sup>th</sup> November, 2017, the Complainant and the Respondent along with his Counsel were present. Both the parties were put on Oath. With the consent of the parties, the charges were taken as read. On being asked by the Committee, the Respondent pleaded not guilty to the charges against him and wished to defend the charges. The Complainant made her contentions on the charges. The Complainant submitted that Shri S.K. Garg, father of the Respondent in his statement has admitted that the Respondent/firm was managing shell Companies. The Committee enquired from the Complainant as to whether she has any other positive evidence except statement of Shri S.K. Garg to prove involvement of the Respondent directly in captioned matter on which the Complainant could not respond satisfactorily. After the charges being explained by the Complainant, the Counsel for the Respondent made a request to the Committee to permit him to examine the Complainant. The Committee allowed him to examine the Complainant. Accordingly, the Complainant was called in witness box and she introduced herself and was put on Oath again as witness. After brief examination of the witness by the Counsel for the Respondent, she was discharged. Thereafter, the Counsel for Respondent made his submissions on the charges of the Complainant. After recording the submissions of both the parties, the Committee directed the Respondent to produce following documents:-

- (i) Copy of Balance Sheet of M/s. Ankit Garg & Associate, Chartered Accountants for Financial Years 2008-2009 to 2013-2014.
- (ii) Copy of Income Tax Returns and Assessment Order of M/s. Ankit Garg & Associate, Chartered Accountants for Financial Years 2008-2009 to till date.

The Counsel of the Respondent further submitted that whole case is depending upon the statement of Mr. S.K Garg, the father of the Respondent; therefore, he may be called as witness to have more clarity in the matter. Acceding to the request of the Respondent, the Committee directed the office to summon Shri S. K. Garg, father of the

Respondent as Respondent's witness at next day of hearing. With this, Committee adjourned the hearing in the matter to a later date.

**CHARGES IN BRIEF AND FINDINGS OF THE COMMITTEE:-**

3. As regard the charges levelled against the Respondent, the Committee noted that the Respondent was held prima facie guilty in respect of the following four charges:-

3.1 In the first charge, it was alleged that the Respondent's father Mr. Sajjan Kumar Garg, an Advocate, on an oath u/s 131 of the Income Tax Act, 1961 before DDIT (Investigation), Kolkata on 30.04.2014 had named some illegal entities in relation to a client and the Respondent's Firm was also named in such entities. Mr. Sajjan Kumar Garg admitted that some paper Companies/shell Companies/paper concerns are operating from his premise and one of such concern is Ankit & Associates (the Respondent firm).

3.2 In the second charge, it was alleged that the Respondent firm was a partnership firm from 17<sup>th</sup> April, 2009 to 30 September, 2009 and thereafter, its status was changed to proprietorship concern of the Respondent with PAN being individual PAN of the Respondent. The Complainant alleged that the Respondent used PAN of discontinued Partnership Firm in filing Form 23AC and 23B of various Companies.

3.3 In the third charge, it was alleged that the Respondent audited various private limited companies in which he had substantial interest, directly and/or through his relatives. The Respondent had made no disclosure of interest in the financial statements audited by him.

3.4 In next charge, it was alleged that the entities in which the Respondent had substantial interest, had allotted its shares to the Respondent and his family at a significantly low rate compared to the price at which these were allotted to other entities on same day or near about the same day. No disclosure was made by the Respondent of these transactions or of huge price differential.

4. In respect of first charge relating to providing accommodation entries and illegal entities, the Complainant contended that statements made under oath before the Directorate of

Income Tax (Investigation) by the Respondent's father disclosed several bogus/paper entities being operated from Respondents office address for providing accommodation entries wherein the Respondent firm was also named as one of the bogus concerns facilitating black money conversion activity. The Complainant also stated that the Respondent was associated with the shell companies as their auditor or shareholder or director.

4.1 The Respondent in his defence stated that allegation of facilitating illegal activities and abetting money laundering as auditor have been made against him without having a shred of documents in support of such allegation. The Complainant has misused the provisions of Section 21 of the Chartered Accountants Act, 1949 in order to take personal revenge of her marital dispute with the Respondent by making false imputations against the moral character of the Respondent.

4.1.2 The Respondent further stated that the witness, Shri Sajjan Kumar Garg has submitted copy of his withdrawal / retraction statement along with affidavit duly certified by Income Tax Authorities and the documents regarding the transfer of shares of ARS Financial Consultants Private Limited by Shri S.K. Garg & Sons HUF on 01.11.2010 and the same show that S.K. Garg & Sons HUF did not hold any shares of ARS Financial Consultants Private Limited as on 31.03.2011.

4.2 In respect of above charge, the Committee noted that the Complainant made his allegation based upon the statement made by Shri Sajjan Kumar Garg (Father of the Respondent) under Section 131 of the Income Tax Act, 1961 before DDIT (Investigation), Kolkata. In one of the hearing held on 25<sup>th</sup> November, 2011, when the Committee enquired from the Complainant as to whether she has any other positive evidence except statement of Shri S.K. Garg to prove involvement of the Respondent directly in captioned matter, the Complainant could not give satisfactorily reply. Moreover, the Respondent showed the copy of withdrawal / retraction statement submitted to the Income Tax Department whereby Shri Sajjan Kumar Garg has withdrawn his statement. Since Shri Sajjan Kumar Garg has withdrawn his statement given before the Income Tax Department and there was no other documents to show that the Respondent / the Respondent firm was involved in providing

accommodation entries, the Committee decided to hold the Respondent **Not Guilty** with respect to above charge.

5. As regard the next charge relating to using the PAN of discontinued Partnership Firm in filing Form 23AC and 23B of various companies, the Respondent stated that the Respondent firm was a partnership firm which was allotted PAN AAQFA2736F. On and from 1<sup>st</sup> October, 2009, the constitution of said firm was changed and became a Proprietorship concern of the Respondent. The necessary documents for the change were filed with the Institute of Chartered Accountants of India and the PAN Card of the Partnership firm was surrendered to Income Tax Authorities along with a copy of Deed of Retirement. As regards the mistake relating to mentioning old PAN in some ROC forms, the Respondent stated that it was merely a clerical error because same type of forms which contain so many pages are filled annually and most of the forms are copy paste from the earlier year, were filed by Articled Clerk or Office Staff by making necessary changes in the information relating to that Particular year.

5.1 In respect of above charge, it is noted that though there was some instances of quoting PAN of old partnership firm on forms filed with ROC but it a fact that except quoting of wrong PAN, no other discrepancy in respect of the forms filed with ROC has been brought on record by the Complainant. Such mistake appears to be clerical mistake and has no ingredient of "gross negligence" as it does not result in any loss, damage or detriment to the party who had engaged the Respondent or to any user of the financial statements, and merely mentioning old PAN in some ROC forms cannot be considered as grossly negligence on the part of the Respondent. Hence, the Respondent is **Not Guilty** of professional misconduct and "Other misconduct" with respect to above charge.

6. As regard the next charge related to audit of the Company wherein the Respondent had substantial interest, directly and/or through his relatives, the Respondent stated that he was held prima facie guilty on the grounds that he and/ or his relative were having substantial interest the Companies, ARS Financial Consultants Pvt Ltd, Zircon Infracon Pvt. Ltd and Amtek Financial Consultants Pvt. Ltd and the Respondent failed to disclose his/relatives interest in the Company. In this regard, the Respondent stated that he was appointed as

statutory auditor of the said companies on 01.04.2011 and in support of his claim, he provided copy of his appointment letters. He also stated that as per shareholding list of the Companies submitted by the Complainant as well as by the Respondent shows that none of the relatives within the meaning of Section 6 of the Companies Act, 1956 held shares as on 31.03.2011 and 31.03.2012. Further, Annual Returns of the Companies brought on record does not show that the Respondent was holding shares during the audit period.

6.1 In respect of above charge, the Committee noted that the Complainant brought on record copy of certificates for transfer of Equity shares wherein the aforesaid companies stated that appropriate transfer deed was submitted by Mr. Sajjan Kumar Garg, Neha Garg, Rashmi Garg and S.K. Garg & Sons HUF (represented by Mr. Sajjan Kumar Garg) for transfer of their shares to third parties. In view of above certificates, the Committee is of the view that none of the Respondent's relative as defined under Section 6 of the Companies Act, 1956 held shares as on the date of his appointment as an auditor as well as on the date of signing the audit report for the financial year 2010-11 to 2012-13 in these three companies. Further, the Complainant failed to bring on record that that the Respondent was holding substantial interest in the aforesaid companies during the period of audit. Accordingly, the Committee decided to hold the Respondent **Not Guilty** with respect to above charge.

7. As regard the next charge relating to allotment of shares to the Respondent and his family members at a significantly low rate, the Committee noted that it is observed that M/s Excel Financial Consultants Private Limited had issued 6000 shares to 5 Companies on 28.03.2011 and 2062 shares to 5 Companies and 2 persons on 30.03.2011 at a premium of Rs. 9,990/- per share. All these 10 Companies and 2 individuals transferred all their shares to the Respondent on 21.01.2012. Thereafter, the Company issued bonus shares on 21.03.2012 by allotting 8 shares for each 1 share held. Accordingly, the Respondent was issued 64,496 more shares by the Company. The Company thereafter allotted shares at a premium of at Rs. 999/- per share on 31.03.2012 to above mentioned transferor companies too. It is observed that the Respondent was auditor of some of these transferor Companies. The charge is that the Respondent had not made any disclosure in the audit report of the transferor Companies that the transaction was not at arm length. It is observed that



charging of premium is a matter / policy vested with Board of Directors. From the records made available it is clear that the role of Respondent in this case is that he has certified Form 2 and 20B of M/s Excel Financial Consultants Private Limited and he was not associated with any work involving formation of his opinion on true and fair view of accounts of the Company. Hence, the Committee decided to hold the Respondent **Not Guilty** with respect to the above charge.

**Conclusion:-**

8. Thus in the considered opinion of the Committee, the Respondent is **NOT GUILTY** of Professional Misconduct falling within the meaning of Clause (2) of Part IV of the First Schedule and Clauses (4), (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 : 03<sup>rd</sup> February, 2020**

**PLACE : New Delhi**