

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.: PR/90/14-DD/117/14-DC/502/2016

In the matter of:

**Shri S Vijayarangam,
Asstt. Gen. Manager, Special Enforcement Cell,
Securities and Exchange Board of India (SEBI),
SEBI Bhawan, C-4 A, G Block, Bandra Kurla Complex,
Bandra (East),
Mumbai-400 051**

.....Complainant

Versus

**CA S N Chaturvedi (M. No. 040479) &
CA DSR Murthy (M. No. 018295)
of M/s Chaturvedi & Co. (FRN 302137E),
81, Mittal Chambers, 228, Nariman Point,
Mumbai-400 021**

.....Respondents

MEMBERS PRESENT:

**CA. Prafulla Premsukh Chhajed, Presiding Officer
Smt. Anita Kapur, Member (Govt. Nominee)
Shri Ajay Mittal, Member (Govt. Nominee)
CA. Manu Agrawal, Member**

PARTIES PRESENT:

**Respondents: CA S N Chaturvedi and CA DSR Murthy
Counsel for Respondent: CA A.P. Singh**

DATE OF HEARING: 20th August 2019 (decided on 31st October, 2019)

PLACE OF HEARING: Mumbai

Allegations of the Complainant:

1. **Shri S Vijayarangam, Asstt. Gen. Manager, Special Enforcement Cell, Securities and Exchange Board of India (SEBI)**, (hereinafter referred to as the “**Complainant**”) has filed complaint in Form ‘I’ dated 11th April, 2014 against **M/s Chaturvedi & Co. (FRN 302137E) Mumbai** (hereinafter referred to as the “**Respondent Firm**”). The Complainant in his complaint had alleged that:-

1.1 Sahara Housing Investment Corporation Ltd (hereinafter referred to as “**SHICL**”) had collected amounts aggregating approximately Rs.6,380.50 crore from various subscribers through Red Herring Prospectus (RHP) dated 16.10.2009.

1.2 It is stated that the auditors for the RHP of SHICL were M/s. Chaturvedi & Co. (Registration No.302137E) i.e. the Respondent firm. The Respondent being the then statutory auditor of SHICL had certified the said RHP wherein the Companies had distorted and concealed the public issues of Optionally Fully Convertible Debentures (OFCDs) by it and misrepresented them as issued by way of private placement, which inter-alia deprived crores of investors of the Investor Protection Safeguards under the Companies Act, SEBI Act, and SEBI (ICDR) Regulations, thereby not only failing in discharging their responsibilities as an auditor, but also assisting the Companies to raise huge funds in violation of the Companies Act, SEBI Act and SEBI (ICDR) Regulations without any regulatory approvals from SEBI.

Proceedings:

2. At the time of hearing on 21st August 2019, the Committee noted that both the Respondents along with their common Counsel were present in person during the hearing of the matter. As regard the Complainant, there was neither any communication received from the Complainant-Department nor any of its representative appeared before the Committee to represent it. It was also noted that the Complainant Department vide its letter dated July 11, 2018 informed the Committee that based on material available on its record inputs were given at the time of filing the Complaint as well as in the Rejoinder. Accordingly, it had requested the Committee to proceed with the matter as considered appropriate. Thus, the Committee decided to proceed ahead in the matter.

The Committee, thereafter, informed the parties that since the composition of the Committee had undergone a change; an option of de-novo hearing in the matter was available to them. The parties requested that the hearing be proceeded further and the evidences available on record be adopted by the Committee. The Counsel for Respondents thereafter made oral submissions.

At the outset, the Counsel for Respondent requested the Committee to allow withdrawal of Respondent No. 2 from the case and raised preliminary objections on the authorization of the extant complaint, which as per him, was not in consonance with the provisions of Rule 3(3) of the CA Rules, 2007. The Committee informed him that the said objection was also placed before erstwhile Committee for which various correspondences had taken place between the Committee, Complainant and the Respondent. The same had been noted and taken on record and the Committee accordingly asked him to proceed ahead on the merits of the case. Accordingly, the Counsel for Respondent proceeded and submitted his written submissions before the Committee. The Counsel for Respondent thereafter, made oral submissions to defend the case. The Committee examined the Respondents in the matter.

After hearing from the Respondents, the Committee directed the Respondents to provide the following information within 10 days from the date of hearing :

- i) Copy of Respondent's resignation as statutory auditors of the company.
- ii) Copy of letter received from the incoming statutory auditors asking for No Objection Certificate (NOC).
- iii) Copy of the communication made between the Respondents and the incoming statutory auditors.
- iv) Date as to when the information about appointment of subsequent statutory auditor was uploaded in ROC.

Based on all the documents/information available on record as well as written/oral submissions made by the Respondents, the hearing in the matter was concluded and judgment was kept as reserved.

3. On 31st October 2019, the Committee duly considered the documents available on record and accordingly, based on the written and oral submissions of both the Complainant and the Respondents, the Committee took its decision in the matter.

4. The Committee noted that both the Respondents vide their submission dated 30th July 2018, had also pointed out that the manner in which the complaint was filed was not as per the requirement of Rule 3(3) of the (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007 i.e. the complaint had not been authorized by an individual holding an office equivalent to that of a Joint Secretary nor had been signed by an individual holding an office equivalent to that of an Under Secretary of Central and/or State Government. It was stated that the complaint was filed by Sri S. Vijayarangam, an AGM, on 11th April, 2014 under authorization by Sri A. Sunil Kumar (as Chief General Manager) which was accorded on 22nd April 2014. Thus, the Respondents pleaded that the complainant had neither been filed as per Rule 3 (3) nor was authorized on the date of filing the complaint. Accordingly, the Respondents had questioned the entire process followed for filing the complaint with the Institute.

5. The Committee noted that the issue raised by the Respondents regarding the issue of authorization was referred to the SEBI which vide its letter dated 12th September 2018 stated as follows:

- SEBI is a statutory body established by the Act of Parliament for the purpose of protecting the interest of investors in securities and to promote the development of and to regulate the securities market and for matters connected there with or incidental there to and in order to achieve the said objectives, SEBI recruits officers at various grades.
- The officers so recruited by SEBI are governed under SEBI (Employees Service) Regulation 2001. Whereas the recruitment, functions and duties of officers in Central government are governed under Central Civil Services (Conduct) Rules, 1964. As both of these rules and regulations were framed for different purposes, the designations, functions and duties of these officers cannot be analogous to each other. Further, it stated be noted that there are no norms in SEBI that

established a strict/ direct one-to-one equivalence between the designations of its officers and those of Government of India.

- As regards the complaint lodged by SEBI with ICAI, it was stated that the Complaint was lodged after due approval of the Competent Authority. The extant matter was duly approved by Shri S. Ravindran, the then Executive Director, who had authorized the complainant to lodge the complaint with ICAI on 11th April 2014.

It was noted by the Committee that the SEBI had informed that in the instant matter, the approval for filing of complaint was given by the then Executive Director (ED), and authorized by the then Chief General Manager (CGM). It was noted that the approval for filing of complaints was given by the Executive Director which was one of the highest Posts in the SEBI and beyond ED there were the posts of Whole Time Member and Chairman who were appointed by the Cabinet Committee on Appointments by the Government of India. Further, considering the hierarchy followed at SEBI, it was noted that the Chief General Manager of SEBI was of the level equivalent in authority to that of Joint Secretary in Central/ State Government. Therefore, ED/CGM of SEBI were undoubtedly competent to authorize to file the complaint in terms of Rule 3 and thus could be considered as equivalent in authority to that of Joint Secretary in Central/ State Government. It was viewed that such authority across organization being governed by different set of rules could be compared only in terms of hierarchy followed in respective organizations rather than following any absolute rules of comparison. Hence, objection of the Respondent with respect to Rule 3 was ruled out by the Committee as non-maintainable.

As regard the discrepancy in the date of signing complaint vis-à-vis the date when the Complainant was authorized, the Committee noted that the Form I was signed on 11th April 2014 the date when ED of SEBI had accorded his approval to file the matter with ICAI. In other words, the complaint was being signed after seeking due approvals for filing complaint which was compliance of Rule 3(2) of CA Rules, 2007. Further, an authorization letter in favour of the Complainant was issued on 22nd April, 2014 and the said Form was received by ICAI on 25th April 2014 with due authorization. In any case, the Director (Discipline) had taken due cognizance of the matter and by that time authorization and approval were in place and everything was on record duly complied. It was also noted that the Rule 5 lays down the

procedure to register the complaint wherein Rule 5(5) prescribes the procedure to rectify the defective complaint when it stated as follows:

“5. Registration of complaint

(5) If, the complaint, on scrutiny, is found to be defective, including the defects of technical nature, the Director may allow the complainant to rectify the same in his presence or may return the complaint for rectification and resubmission within such time as he may determine.”

Thus, the Committee was of the opinion that it was well within the authority of the Director (Discipline) to had the complaint rectified for any procedural defect/lapse if on scrutiny he noticed any defect in the complaint so filed. The authorization being of a date later than the date of signing the complaint would not render the complaint invalid since the post facto authorization would cure the supposed defect and would relate back to the date on which the complaint was signed and presented. Hence such an objection was ruled out by the Committee as non-maintainable. The Committee accordingly decided the case on merits.

FINDINGS:

6. The Committee noted the role of the Respondents in the entire episode of issue of OFCD'S by SHICL was that he was requested by the Company vide letters dated 21.09.2009 and 24.09.2009 to provide:

- a) The consent for inclusion of the Respondent's name as Statutory Auditors of the Company in the Draft RHP which the Company proposed to issue in connection with the Private Placement of OFCDs and
- b) The Statement of Assets & Liabilities as well as Statement of profit and Loss Account for the last five financial years from FY 2004-05 to Financial Year 2008-09 as well as for interim period ending 31.08.09, in accordance with Schedule II read with 60B(2) of the Companies Act, 1956 **(W-39)**.

In other words, they had given the consent for inclusion of their names as Statutory Auditors of the Company in the Draft RHP of proposed issue of OFCDs and had undertaken to issue the aforementioned Statements for its inclusion in the said RHP whereas as per the Complainant, the Respondents being auditor of SIRECL had certified the RHPs OFCDs issue and

misrepresented them as a private placement, thereby not only failing in discharging their responsibilities as an auditor, but also assisting the Companies to raise huge funds in violation of the Companies Act, SEBI Act and SEBI (ICDR) Regulations without any regulatory approvals from SEBI.

7. The Committee noted the submissions made by the Respondents that they were the Statutory Auditors of the Company for the financial years viz. 2004-05 to 2008-09 and were requested to provide the certified a Statement of Assets & Liabilities as well as a Statement of Profit & Loss for the preceding five financial years beginning from FY 2004-05 to FY 2008-09 along with a Statement of Assets & Liabilities and a Statement of Profit & Loss for the 5 month period ended 31st August, 2009 for inclusion in Draft Red Herring Prospectus pursuant to Schedule II of the Companies Act, 1956 and the Respondent report also clearly brought out the fact that it had been prepared in accordance with Clause B of Part II of Schedule II to the Companies Act, 1956. Subsequent to filing of the Draft RHP with the ROC, the Respondents were given to understand that the Company did not receive any objection from the office of ROC in the matter. The Respondents also had discussion with the Company wherein it confirmed that a comprehensive internal review of all applicable regulatory requirements had been carried out and the Company had obtained a legal opinion from a reputed independent lawyer Mr. O N Khandelwal (ex-Justice of a High Court) on the issue. The Respondents further stated that the primary responsibility for preparing the Draft RHP was that of the management of the Company and they had not verified the Draft RHP as their name was only included as Statutory Auditors of the Company.

8. The Committee in this regard was of the view that it never fell within the ambit of scope of duties of the Respondents to verify whether SHICL was right in seeking certificate in accordance with Schedule II from him as his responsibility was limited to the issuance of certificates for which he was professionally engaged. It was noted that the professional engagement letter dated 21st September 2009 (**W-19**) explicitly stated that said issue of OFCDs would be done on private placement basis, without any advertisement to General Public, and for which, it was also confirmed that it would not get listed in any Stock Exchange. Such letter was duly supported by various resolutions passed by the Company to that effect. It was, accordingly, viewed that if the Company had passed resolutions resolving that it would not be a

public issue then no mistake could be attributed on part of the Respondents who relied on the stated pre-conditions and issued the audit certificates strictly according to the terms of the professional engagement. It was noted that the Respondents had only undertaken to certify the figures of profit/loss and assets/liabilities for the period which was duly done by relying up on the books of accounts, audit evidences, management representations and nothing has been brought on record by the Complainant to prove that the certificate so issued for the purpose of RHP was deficient in any manner or there was any material error or misstatement in the financial statements certified by the Respondents.

9. The Committee noted that as on the date of the professional engagement of the Respondents as well as on the date when they issued the required certificates, the said issue of OFCDs were decided by the Company to be private placement. As on that date, there was no reason for the Respondents to raise suspicion on intention of the Company. The money on such large scale was raised thereafter. In fact, the said issue was held as public issue by the Hon'ble Supreme Court in its Order dated 31st August 2012 based on then prevailing information regarding the scale in which OFCDs issue was subscribed . It was based on this Order of the Hon'ble Supreme Court that the Complainant has argued that the Respondents should have issued audit certificate in compliance of DIP Guidelines of SEBI and not according to Schedule II of the Companies Act 1956. The Committee in this context noted that from the professional engagement letter issued to the Respondents by the Company, it was quite evident that the Respondents were requested vide letter dated 21st September 2009 to issue audit certificates in accordance with the requirements of Clause B of Part II of Schedule II to the Companies Act 1956 to be included in their Red Herring Prospectus (RHP). There was no reference to DIP Guidelines in the engagement letter. Therefore, the responsibility of the Respondents was only limited to issue the certificate in accordance to Schedule II to the Companies Act 1956 and nothing else. It further noted that the status of the OFCDs issue could have never been pre-conceived as public issue at the time when the Respondents had issued certificate to be included in RHP in 2009.

10. The Committee observed that even if it was a case where the Company had to comply with the DIP Guidelines, then also the reports issued by the Respondents as an auditor would have remained the same as the reporting requirement under clause 6.10.2.1 of DIP Guidelines when compared to the requirement under clause B of Part II of Schedule II of the Companies Act

1956 were found to be exactly same. Thus, the quantum of information or certification required from the Respondents being the auditors would not have been different had the Company complied with DIP Guidelines.

11. Thus, in light of the above, the Committee was of the considered view that in extant case, the Respondents were alleged for misrepresentation of RHP relating to alleged OFCDs issue whereas the RHP contains a great deal of information covering many aspects of the company management, proposed issue and the project plans. It was viewed that the statutory auditor of RHP neither certifies the RHP nor certifies various aspects of information contained therein but only certifies the financial information contained in it. Thus the Committee was of the opinion that in extant case the Respondents did not attest or approve the RHP or its contents that was filed by SHICL with Registrar of Companies but had simply certified the statements prepared from the annual audited accounts for the preceding five financial years beginning from FY 2004-05 to FY 2008-09 along with a Statement of Assets & Liabilities and a Statement of Profit & Loss for the 5 month period ended 31st August, 2009 for inclusion in Draft Red Herring Prospectus. Accordingly, the Respondents are held not guilty of the charges alleged in the extant matter.

CONCLUSION:

12. Thus in conclusion, in the considered opinion of the Committee, the Respondents are held **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.

13. The Committee accordingly passes Order for closure of this case against the Respondents.

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

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

Sd/-
(Shri Ajay Mittal)
Member (Govt. Nominee)

Sd/-
(CA. Manu Agrawal)
Member

Date: 15th January, 2020
Place: New Delhi

