

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

[File No. PPR/P/103/14/DD/40/INF/15/DC/771/18]

In the matter of Information treated against:

**CA. Sudhir Kumar Thakur,
133, GT Road (N),
3rd Floor, Salkia,
Kolkata – 711 106**

.....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/ORDER : 07.11.2019

PLACE OF FINAL HEARING/ORDER : ICAI, Kolkata

PARTIES PRESENT:

Respondent : CA. Sudhir Kumar Thakur

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

BRIEF OF THE DISCIPLINARY COMMITTEE PROCEEDINGS:-

1. The Committee noted that on the day of hearing i.e. 7th November, 2019, the Respondent along with his Counsel was present. The Respondent was put on oath. On being enquired from the Respondent as to whether he is aware of the charges leveled against him, he replied in affirmative and pleaded not guilty. With the consent of the Respondent, the Committee decided to continue further in the above matter. Thereafter, the Counsel for the Respondent made his submissions. The Committee also raised questions to the Counsel for the Respondent. After hearing the final submissions, the Committee directed the Respondent to submit copy of financial statement for the previous year and subsequent years by next day i.e. 8th November, 2019. With this, the hearing in the matter was concluded.

1.1 On 8th November, 2019, the Counsel for Respondent expressed his inability to produce the copy of the aforesaid financial statements as the financial statements were not available as the name of the Company was struck off by the concerned ROC.

CHARGES IN BRIEF AND FINDINGS OF THE DISCIPLINARY COMMITTEE:-

2. The Committee noted that the Informant (CBI) has alleged that in the balance sheet of M/s. Ampoules & Auto Pvt. Ltd. (hereinafter referred to as the “**Company**”), the Sales (annual turnover) for the year ending 31.03.2008 was shown as Rs. 101,80,12,451/- (**C-77**) and that for the year ending 31.03.2009, it was shown as Rs. 105,78,54,050/- (**C-65**). However the actual turnover of the said Company for both the financial years 2007-08 and 2008-09 was much below Rs.100 crores. The Company in its Income Tax returns for the assessment year 2008-09 (For F.Y. 2007-08) reflected their annual turnover to be Rs. 16,80,12,451/- (**C-34**) and for the assessment year 2009-10 (i.e. F.Y. 2008-09) it was shown as Rs. 30,52,50,500/- (**C-16**). It has further been pointed out that the Respondent in complicity with Shri Chandan Mandal, former Director of the said Company fraudulently manipulated the books of accounts of the Company and inflated the Turnover figures over Rs. 100 crores for the aforesaid two years.

3. In respect of above charge, the Respondent through his written as well as verbal submissions made the following submissions in his defence:-

3.1 The Respondent stated that the matter relates to the attestation of financial statements of M/s. Ampoules & Auto Pvt. Ltd by the Respondent as an auditor for the financial years 2007-08 and 2008-09 (Corresponding assessment years 2008-09 and 2009-10 respectively). The Respondent stated that the charges in the instant matter are

based on charges filed by the CBI in the Hon'ble Delhi District Court. The Respondent stated that the Supreme Court of India in case of M. Paul Anthony v. Bharat Gold Mines Ltd. and Anr., AIR 1999, SC 1416, arrived at the decision that in disciplinary case if the matters of the law and fact are essentially the same then the Disciplinary Committee has to wait till the judicial body comes to the decision. The CBI has forwarded the issue relating to the professional misconduct of the Respondent. The CBI filed the case before the concerned court under the provisions of Sections 420 & 120-B of the IPC for having connived with the management and falsely certified the financial statement of the Company.

3.2 The Respondent stated that he has signed the financial statements for both the financial years under question and financial statements of both the years show the figure of sales and others receipts in excess of Rs.100 crores. The Respondent stated that as per eligibility condition of tender issued by BSNL, the bidder must have the required qualification of Rs.100 Cr annual turnover during the last two years and the balance sheets audited by the Respondent was submitted in the bid.

3.3 The Respondent stated that in the letter dated 30th October, 2014 of the CBI, it has been mentioned that another draft balance sheets were found which had the sales figures less than 100 crores of Rupees. Though a reference of draft balance sheet is coming out in the allegation letter yet copy of the draft balance sheets were not provided with the allegation letter. There was nothing on record as to how these draft balance sheets was linked to the alleged professional misconduct of the Respondent who was the auditor of the Company.

3.4 The Respondent stated that in next part of the charge, it was alleged that the Income Tax returns of the Company for the Assessment Years 2008-09 and 2009-10 reflect turnover much below Rs.100 crore. In this regard, the Respondent stated that amount of the income disclosed in the income tax return of both the financial years relevant to the Assessment Year 2008-09 and 2009-10 is below 100 crores. However, the Income Tax Returns were not prepared and attested by the Respondent. The Income Tax returns were prepared and filed by the Company and the Respondent was only auditor of the Company. The Respondent certified the tax audit reports for both the financial years (relevant to the assessment years 2008-09 and 2009-10). The Respondent stated that tax audit reports include one portion which is called Annexure-1 which discloses the figure of the sales for that particular year and the preceding year. The Annexure-1 for the

assessment year 2008-09 was included in the tax audit report. The figure of the sales reflected in the tax audit report is 100% tallying with the figures of sales reflected in the financial statement which were audited by the Respondent. The Respondent further stated that the copy of the tax audit reports which was provided to him by the Disciplinary Directorate do not contain the Annexure-1. The Respondent brought on record copy of Annexure-1 of the tax audit report. The Respondent stated that the Committee may call for the records from the Income Tax department to make sure that Annexure-1 was there or not. The tax audit report and the financial statements have the same figures of sales and other incomes which is Rs.100+ crores for the both the years.

3.5 The Respondent reiterated that the return of income was not attested by him. The assessment for the Assessment year 2008-09 was completed under Section-143(3) of the Income Tax Act, 1961 and from the reading of the order, it is very well clear that the Company's turnover was more than 100 crores of rupees. When the assessment was made under Section 143(3) of the Income Tax Act, 1961, the person who represented the Company was Mr. Gopal Agarwal but together with Mr. Gopal Agarwal, the Respondent was also asked by the Company to present all the arguments.

3.6 While clarifying the difference between the figure of turnover as shown in the financial statements audited under the Income tax and the Companies Act, 1956, the Respondent stated that as per applicable accounting standards, gross value of income is required to be shown and netting off the expenses incurred on sub-contract from the amount of turnover is not allowed. The financial statements show the gross value of the total contract but in the income submitted to the Income Tax Department, they have included only the amount of income that have been earned i.e. difference between the amount of the contractual value and sub contract given to somebody else. The Respondent stated that the matter of sub-contracting is not after thought. The Respondent pointed out that the contract was awarded to the Company by GDJ Construction Pvt. Limited, which was in turn sub-contracted to M/s. Ganco SS (India) Limited by the Company. As per copy of Form 26AS pertaining to the financial year 2008-09 (A.Y. 2009-10), the value of the contractual invoices was Rs.92.15 crores. Further, the Company has also received the copy of the certificate issued by the Income Tax Department in favor of M/s. Ganco SS (India) Pvt. Limited, authorizing that no tax may be deducted at source for contractual value upto Rs. 90 crores during the Assessment year 2009-10 **(C-3)**. This Certificate formed the basis for not deducting tax at source while making payments to M/s. Ganco SS (India) Pvt. Ltd by the Company. The Respondent, however, stated that tax was

deducted at the rate of 0.5% on the amount exceeding 90 crores and the same is supported by the copy of ledger account.

3.7 The Respondent stated that at the time of submitting the income tax return, the Company has given computation in its own manner and for the same the Respondent cannot be held liable at all. The Respondent stated that if he had shown the net figures of contracts, he would have been charged for the indefensible professional misconduct.

4. The Committee perused the documents and submissions on record and noted that the crux of the charge was that there was difference between the amount of turnover as shown in the financial statements audited by the Respondent and the Income Tax return filed by the Company. The Respondent denied that he has filed the Income Tax return of the Company for the alleged years. The Committee also noted that there was no documentary evidence on record to show that income tax return was filed by the Respondent.

4.1 The Committee observed that the Respondent has attested the financial statements and the Tax Audit reports for the financial years 2007-08 and 2008-09 and turnover of the Company in both the financial statements and the Tax audit reports (for the two relevant years) were the same. In this regard, it is observed that the Respondent brought on record Annexure -1 to the Tax Audit report for the financial year 2008-09 (A.Y. 2009-10) to establish that the amount of turnover as shown in the tax audit reports and financial statements was same. As regard the difference between the amount of turnover as shown in the financial statements and income tax returns, the Respondent stated that as per applicable accounting standard, gross value of contract is required to be shown in the financial statement whereas the in the income tax return, the gross value of turnover was adjusted with the amount of expenses incurred on sub-contract by the Company. The Committee upon perusal of the disclosures requirement of AS-7 on "*Construction Contract*", it is viewed that an enterprises is required to disclose the amount of contract revenue and expenses separately and the Respondent appears to have complied with the said disclosures requirement of AS-7 while signing the financial statement of the Company. Further, on perusal of Form 26AS of the Company for the financial year 2008-09 (A.Y. 2009-10), it is noted that TDS was deducted under Section 194C of the Income Tax Act, 1949 on Rs.92.15 Crore of payment made to the Company which supports the submissions of the Respondent.

4.2 In view of the reasons brought on record by the Respondent for difference in the amount of turnover and keeping in view the disclosures requirement of AS-7, the Committee is of the opinion that the difference in the figures of turnover has arisen due to the disclosure requirement of the accounting standard (AS-7) and adjustment of expenses incurred on sub-contract by the Company from the value of gross turnover. Moreover, the Income Tax returns were not filed by the Respondent. Hence, the Committee decided to hold the Respondent not guilty with respect to the charge leveled against him.

Conclusion

5. 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 First Schedule and Clause (7) of Part I of the Second Schedule to the Chartered Accountants Act, 1949.
- 5.1 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