

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-40/15-DD/49/15/DC/902/2018]

In the matter of:

**Shri Subrata Ghosh,
22/4A, Rustomji Street,
Kolkata – 700 019**

.....Complainant

Versus

**CA. Subhankar Bose (M.No.014089),
23A/5, Khanpur Road,
PO Naktala,
Kolkata (W.B.) – 700 047**

.....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
CA. Dayaniwas Sharma, Member**

DATE OF FINAL HEARING : 07.11.2019

PLACE OF FINAL HEARING : ICAI, Kolkata

PARTIES PRESENT:

**Complainant : CA. Subrata Ghosh, Kolkata
Respondent : CA. Subhankar Bose
Counsel for Respondent : Shri Rahul Auddy, Advocate**

Brief of the Disciplinary Proceedings:-

1. On the day of hearing i.e. 07.11.2019, the Committee noted that the Complainant was present. The Respondent along with his Counsel was present. Both the Complainant and the Respondent were put on oath. On being enquired from the Respondent as to whether he is aware of charges leveled against him, the Respondent replied in affirmative and pleaded not guilty with respect to the same. With the consent of the Complainant and the Respondent, the Committee decided to continue further in the matter. The Counsel for the Respondent, thereafter, made submissions on the charges. The Complainant also made his contentions. After hearing the final submissions, the Committee decided to conclude the hearing in the above matter.

CHARGE IN BRIEF AND FINDINGS OF THE COMMITTEE:-

2. The Committee noted that the Respondent was the Auditor of M/s Mitra and Ghosh Publications Private Limited (hereinafter referred to as the “**Company**”) for the financial years 2013-2014. The Complainant claimed that he is the largest shareholder in the Company after inheriting 33.5% shares in the Company which was owned by his father. However, Board of Directors in collusion with the Respondent Firm has purposely shown Mr. S.N. Roy as the largest shareholder. The Respondent has shown wrong shareholding pattern in the Balance Sheet of the Company for the financial year 31st March, 2014.

3. The Complainant during the course of hearing and through his written submissions made the following submissions to substantiate the charges levelled against the Respondent:-

3.1 The Complainant stated that he is the owner of 33.5% share of his family business which his father floated in the year 1934. After the demise of his father, he got the shares transferred in his name. He was the single largest shareholder of the Company as per the Company shareholding pattern but in the annual accounts signed by the Respondent for the financial year 2013-14, someone else i.e. Shri S.N Roy who was holding jointly with M Chakaraborty only 366 shares, was shown as single largest shareholder in the Company.

3.2 Shri S N. Roy was holding only 45 shares in his individual capacity but he had been paid dividend amount of Rs. 8,220/- for 411 shares @ Rs. 20/- per shares during the years 2008-

09 to 2010-11 which has been reflected as the payments made to Key Management Personnel under Related Party disclosures. Shri S.N. Roy was being paid excess amount on account of dividend than what he was actually entitled to.

4. In respect of charge as mentioned above, the Respondent in his defence made the following submissions through his written as well as verbal submissions made before the Disciplinary Committee:-

4.1 The Respondent in his defence stated that the joint shareholding of Shri S N Roy & M Chakraborty (i.e. 366 shares) and that of Shri S N Roy (45 shares) in his individual capacity as reflected in the shareholding pattern enclosed by the Complainant with his complaint was clubbed together and inadvertently shown in the name of Shri S. N. Roy which was a clerical mistake. The Respondent denied of having derived any benefit by such disclosure.

4.2 The Complainant has been a shareholder of the Company since 1994 and he had never raised any issue regarding the 366 shares shown to be held by Shri S.N. Roy. Despite being aware of the same, the Complainant never raised the objection to the same. When the Complainant had various issues against the Company in 2015, he made a complaint against him. In any event, such reflection does not have any other implication in the affairs of the Company or the shareholders, as such, inasmuch as the ownership is determined not by the recording in the Balance Sheets but by the names reflected in the shares certificates.

4.3 The other co-owner of the said 366 shares i.e., Shri M. Chakraborty has never raised any issue regarding the same. In any event, it is an admitted position that Shri S.N. Roy holds 45 shares of the Company and 366 shares jointly with Shri M. Chakraborty and as such the recording as to number of shareholding and the percentage is not incorrect but the name of the other joint holder is not mentioned.

4.4 As regard the dividend paid to Shri S.N. Roy, the Respondent stated that as per relevant provision of Section 205 of the Companies Act, 1956, in case of joint shareholders, cheque of dividend is sent to one of the joint shareholders at his address. In the instant matter, the other joint holder of the said 366 shares has never raised any complaint in respect of the dividend being made over to Shri S.N. Roy. In any event, payment of dividend in the sole name of Shri

S.N. Roy does not have any financial implication on the affairs of the Company. No dividend was paid in excess by the Company to any person. The Respondent also stated that there is no deceitful personation as an owner of any share or receiving money due to such ownership.

4.5 While concluding the submissions, the Respondent stated that the alleged discrepancy is not at all a material discrepancy which would attract violation of the provisions of the Chartered Accountants Act, 1949.

5. On perusal of the documents and submissions on record, it is observed that as per the Complainant, the actual shareholding pattern of the Company as on date of the Balance Sheet was as under:-

Name	No. of shares held
<i>S N Roy & M Chakraborty</i>	366
<i>Subrata Ghosh (i.e. the Complainant)</i>	335
<i>Smt. Jayshree Paul</i>	94

In the financial statement of the Company for the financial year ending 31st March, 2014, signed by the Respondent, details of shareholding given under note no.1 to Notes to accounts was as under:-

Name	No. of shares held	% held
<i>Sabitendranath Roy</i>	411	41%
<i>Subrata Ghosh(i.e. the Complainant)</i>	335	33.5%
<i>Smt. Jayshree Paul</i>	94	9.4%

5.1 From the above, it is seen that there was no change in the number of shares held by the Complainant but the joint shareholding of Shri S.N.Roy and Shri M.Chakraborty (366 shares) were shown in name of Shri S.N. Roy (411 Shares). In this regard, the Respondent's defence was that the joint shareholding of Shri S.N. Roy and Shri M.Chakraborty (366 shares) and that of Shri S N Roy in his single name (45 shares) was clubbed together and inadvertently shown in the name of Shri S.N. Roy which was a clerical mistake.

5.2 It is noted that preparation of the financial statement is the primary responsibility of the management and an auditor is required to give true & fair view on the same. The Committee

also observed that as per requirement of revised schedule VI to the Companies Act, 1956, name of the shareholders holding more than 5% shareholding was required to be given and as per this requirement, name of the shareholders was given in the notes to account. It is observed that only shareholding pattern as reflected in the notes to the accounts was disputed by the Complainant and he has not disputed the amount of share capital as reflected in the Balance Sheet of the Company. Further, it cannot be denied that Shri S.N. Roy was not owner of 411 shares though 366 shares being held by him jointly with Shri M. Chakraborty.

5.3 Moreover, as per requirement of Sub-section 5(b) of Section 205 of the Companies Act, 1956, in case of joint shareholders, any dividend payable in cash may be paid by cheque or warrant to the registered address of that one of the joint shareholders which is first named on the register of members, or to such person and to such address as the shareholder or the joint shareholders may in writing direct the Company. From the submissions of the parties, it is observed that name of Shri S.N Roy and Shri M. Chakraborty was registered as first and second joint holder respectively. Further, there was nothing on record to show that second joint holders, Shri M. Chakraborty has ever objected to the payment of dividend to Shri S.N. Roy as per the requirement of Section 205(5)(b) of the Companies Act, 1956. Moreover, the amount of dividend on total shares 411 (366 shares in joint capacity and 41 shares in individual capacity) paid to Shri S.N. Roy was not material.

5.4 Keeping in view all the above submissions and facts, the Committee is of the view that discrepancy related to the wrong shareholding pattern appears to be a clerical mistake and does not impact the true & fair view of the Balance Sheet of the Company. Further, the payment of dividend to Shri S.N Roy appears to be in accordance with the requirement of Section 205 of the Companies Act, 1956. Accordingly, the Committee decided to hold the Respondent Not Guilty with respect to the charge leveled against him.

Conclusion:-

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

7. 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/-

Sd/-

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

DATE : 3rd February, 2020

PLACE : New Delhi