

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.PR-244/15-DD/235/2015/DC/780/18]

In the matter of:

Asstt. General Manager
Bank of Baroda
 SME Loan Factory, DMR-1
 Bank of Baroda Building
 12th Floor,
 16, Parliament Street,
 Connaught Place,
New Delhi – 110001

...Complainant

Versus

CA. Ritesh Kumar
 Unit No. 306 RG- Complex-1
 Prashant Vihar, Sector-14
 Rohini
New Delhi- 110089

.....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 : 21.11.2019

PLACE OF FINAL HEARING/ORDER : ICAI, NEW DELHI

PARTIES PRESENT:

Respondent : CA. Ritesh Kumar

Counsel for the Respondent : CA. C.V. Sajan

BRIEF OF THE DISCIPLINARY COMMITTEE PROCEEDINGS:-

1. The Committee noted that on the day of first hearing held on 17th October, 2019, the Complainant was not present. The Respondent along with his counsel was present. Since there was no prior intimation from the Complainant bank, the Committee decided to continue with the hearing. Thereafter, the Respondent was put on oath. On being enquired from the Respondent as to whether he is aware of the charge leveled against him, the Respondent replied in affirmative and pleaded not guilty to the charge. With this, the hearing in the matter was adjourned.

1.1 On the day of next hearing held on 21st November, 2019, the Committee noted that neither the Complainant nor any authorized representative was present from the Complainant bank. The Respondent along with his counsel was present. The Committee noted that the notice of hearing was served on the Complainant bank. Since there was no prior intimation from the Complainant bank for adjournment of hearing and no one was present from the Complainant bank at the time of earlier hearing also, the Committee decided to continue with the proceedings ex-parte the Complainant. When the Committee decided to continue the hearing from the stage as it was left at the last hearing, the Respondent did not raise any objection to the same. Thereafter, the Counsel for the Respondent submitted a copy of status report of the matter pending in the court. After hearing the final submissions, the Committee decided to conclude the hearing.

CHARGES IN BRIEF AND FINDINGS OF THE DISCIPLINARY COMMITTEE:-

2. It is noted that Mr. Devender Rastogi, the Proprietor of M/s. Metal Mine Enterprises (hereinafter referred to as the 'Firm') was enjoying various credit facilities with the Complainant Bank which were classified as NPA on 23.10.2014 having book dues of around Rs.20.04 crores. The firm at the time of review of its credit facilities had submitted its three different Balance Sheets duly audited as on 31.03.2011 with variance of figures under different heads. The same were signed /audited by the Respondent and counter signed by Mr. Devender Rastogi, Proprietor of the firm.

3. In respect of above charge, the Respondent during the course of hearing and through his written submissions made the following submissions in his defence:-

3.1 The Respondent submitted that he was not the auditor of the said firm for the year ended 31.03.2011. He stated that the address and mobile number mentioned in Form 3CB are not his address and mobile number. Also, the letter head and signatures used in the financial documents do not belong to him and appear to be forged.

3.2 The Respondent stated that he has initiated legal proceedings against the accused persons who forged his signatures. The Respondent submitted the details of the actions initiated which are as follows:-

- a. On 7th Jan 2016 a complaint was filed with SHO, Prashant Vihar. However no FIR was registered by them. After a prolonged follow up, it was decided to move a petition with the Court
- b. On 22nd Aug 2016, an application u/s 156(3) of CrPC was moved seeking direction from court to register an FIR against the accused persons.
- c. On 4th April 2017, the FIR No 181 was registered at Prashant Vihar police Station under the directions of the court.

3.3 The Respondent submitted that it was only when he received the notice from ICAI, he learnt about the forgery and fraud played by the promoters of Metal mine Enterprises in his name.

3.4 The contents of the Proprietor's letter make it clear that Mr. Devender Rastogi (Proprietor) was party to the fraud. Mr. Devender Rastogi having used the forged documents for availing bank limits as he wanted to save himself by pleading ignorance and putting blame on his consultant. But it is very clear that he was the signatory to the balance sheets.

3.5 The Respondent further stated that it is not denied that he was the auditor of the firm for the financial year 2008-09. The dispute is about the financials for the financial year 2010-11 which was used for procurement of the bank loan and he was not the auditor for said year 2010-11.

4. During the course of hearing, to a question, the Respondent submitted that he was called by the CBI officials but he has not been charge sheeted by the CBI. The CBI has charge sheeted the proprietor as well the bank manager. Further, the criminal case filed by him against the proprietor of the firm is still pending at trial stage at Tis Hazari courts.

5. On perusal of the financial statements as alleged signed by the Respondent vis-à-vis other documents on record signed by the Respondent, it is noted that the signatures on the alleged financial statements were not matching and were completely different from the signature of the Respondent. Further, the design and style of the letter head and its contents including address & mobile number were different from that of used by the Respondent. It is further observed that the Respondent brought on record that on being

aware of the act of impersonation / forgery in his name, he went to the police station to lodge an FIR against the proprietor of the firm and when the police refused to register FIR, he approached the Court to issue appropriate direction to the Police to register FIR against the accused. After the directions of the Court, an FIR was registered against the proprietor of the firm at Prashant Vihar Police Station.

6. Further, no documentary evidence on record indicates that it was the Respondent who signed the alleged financial statements. Hence, keeping in view the above facts, the Committee is of the view that the Respondent has not signed the alleged financial statements and forgery appears to have been done in his name for which the Respondent has initiated appropriate legal action against the proprietor of the firm. Accordingly, the Committee decided to hold the Respondent not guilty with respect to the charge leveled against him.

Conclusion

7. 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 to the Chartered Accountants Act, 1949 read with Section 22 of the said Act.
- 7.1 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