

CONFIDENTIAL

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-94/2013-DD/93/13-DC/601/2017

In the matter of :

**Shri Sanjay Rai,
Addl. Director (Inv.), SFIO
Ministry of Corporate Affairs,
6th Floor, Everest, 100, Marine Drive,
Netaji Subhash Marg,
Mumbai-400 002**

....Complainant

Versus

**CA. Kirit Sakerchand Sanghvi (M. No. 031123)
A-218/219, Kanara Business Centre,
Behind Everest Garden, Ghatkopar,
Andheri Link Road,
Laxmi Nagar, Ghatkopar (E),
Mumbai-400 075.**

....Respondent

Members Present:

**CA. Prafulla Preme Sukh Chhajed, President
Smt. Anita Kapur, Member (Govt. Nominee)
Shri Ajay Mittal, Member (Govt. Nominee)
CA. Debashis Mitra, Member
CA. Manu Agrawal, Member**

Date of Final Hearing: 20th August, 2019 (decided on 23rd September, 2019)

Place of Final Hearing: Mumbai

Parties Present:-

(i) Sh. Kaustubh Ghosh – Jr. to Shri Ashish Mehta, authorized Counsel for the Complainant

(ii) CA. Kirit Sakerchand Sanghvi – Respondent

(iii) Shri S. G. Gokhale, Advocate – Counsel for Respondent

Allegations of SFIO, the Complainant:

1. Shri Sanjay Rai, Addl. Director (Inv.), Serious Fraud Investigation Office, Mumbai (hereinafter referred to as the “**Complainant**”) has filed complaint in Form ‘I’ dated 12th April, 2013 (**C-1 to C-73**) against **CA. Kirit Sakerchand Sanghvi, (M.No.031123) Mumbai** (hereinafter referred to as the “**Respondent**”). The brief background of the extant case is as under:

- 1.1 M/s. Jayant Vitamins Limited (hereinafter referred to as “**M/s JVL**”) was incorporated on 15.01.1971 as per the Memorandum of Association the main object of the Company was to manufacture Vitamin C, Sorbitol and products ancillary thereof. The Company was producing 80% of the Country’s requirement of Vitamin C before its operations were brought to halt in April, 1997 on account of appointment of Court Receiver of High Court, Bombay. It is stated that the Respondent had certified the Financial Statements of M/s JVL for Financial Year 1998-1999 to 2007-2008 and was also the Auditors of M/s Rutvij Chemicals Limited hereinafter referred to as “**M/s RCL**”) which was a Company controlled by Ex-Chairperson and Director of M/s. JVL.
- 1.2 During the Financial Year 1995-1996, M/s. JVL had shown investment in the equity of M/s. RCL at Rs. 79,00,000 for 7,90,000 nos. of equity share of RCL for Rs. 10/- each. During the month of March, 1996, M/s RCL signed a deal with M/s JVL for purchase of Technology/ plant/ Machinery/ Land. The purchase price was payable by M/s RCL to M/s JVL in the form of equity shares of M/s RCL amounting to Rs. 3,00,00,000/- for 30,00,000 nos. of equity shares of Rs. 10/- each. As per the Form 2 filed by JVL on 28.8.1996, 30 lakh shares of RCL @ 10 each were allotted to it on 29.03.1996. It is alleged that the investments of M/s JVL in the equity of M/s RCL underwent changes every year. However, the Respondent did not verify change in the said investment of JVL and thus helped the management in portraying an untrue affairs.

- 1.3 It was stated that the since the date of acquisition of the equity till 31.03.2002, it was valued at Rs. 10/- each share and suddenly in the year ending 31.03.2003 the value was shown at NIL. Even during the period of 1998-1999 to 2001-2002, the equity fluctuated between Rs. 2.60 crore, 2.50 crore, 3 crore and was suddenly brought to NIL. This sudden change of equity value from Rs. 3 crores to Rs. NIL should have caught the attention of the Respondent but he conveniently ignored this glaring error. During the course of investigation when the respondent was asked to explain the same, he stated to have placed disclaimer. As per the Complainant, the Respondent could not take shelter behind disclaimer as any man of prudence. He was signing the Audit Report with the said disclaimer year after year without asking any question.

Against the aforesaid background, the charges alleged against the Respondent is as under:

- 1.4 It was alleged that despite glaring error/discrepancy in the investments as shown in the balance sheet of M/s. JVL in respect of RCL , the Respondent had been signing the Audit Reports while giving disclaimer of opinion years after years for reasons best known to him. Thus, the accounts certified by the Respondent for all the years and submitted by the Company before ROC and BIFR did not reflect correct picture of affairs of M/s JVL.

Proceedings:

2. At the time of hearing on 20th August 2019, the Committee noted that the Respondent, along with his Counsel, was present. As regard the Complainant, it was noted that the Counsel for the Complainant vide e-mail dated 18th August 2019 had sought adjournment of the hearing on the grounds of his unavailability on the date of hearing which was denied on the grounds that the erstwhile Disciplinary Committee had already granted adjournment in past on three occasions i.e. on 25th April 2018, 16th July 2018 and 1st August 2018. Further, the then Committee had also directed that it was last opportunity for the Complainant Department and it had to appear before the Committee for the next hearing and if failed to appear, the Committee would decide the matter ex-parte. It was also noted by the Committee

that the Counsel for the Complainant again did not appear but sent his Junior Counsel, Shri Kaustubh Ghosh, to seek adjournment in the matter on his behalf. The Committee considered the numerous adjournments sought by the Complainant and in view of proviso and explanation to Rule 18(18), the Committee did not accede to the request of the Counsel for the Complainant to adjourn the matter. Accordingly, the Committee decided to proceed further. It was also brought to the notice of the Committee that the Junior Counsel was not having any authorization by his Senior. Though he was not carrying any authorization, still as a principle of natural justice, he was permitted to remain present so that directions of the Committee, if any, might be communicated to the authorized Counsel of the Complainant. Accordingly, the Committee proceeded ahead in the matter.

2.1 It was noted and pointed out to the Junior Counsel that as per the direction of erstwhile Committee, the Counsel for the Complainant was asked as follows:

- (i) Considering various disclaimers given by the Respondent for all the years till 2010-11 and the reply of the Respondent dated 10th August, 2017 specifically page no. 16A wherein the movement of Investments was shown/explained by the Respondent. The Complainant was asked to substantiate the charges made against the Respondent
- (ii) To verify from its records if audited financial statements of the Company for the Financial Year 2000-01 were available and if so to submit a copy of the same to the Committee.

However, said documents/information had not been made available to the Committee till the date of hearing. The Committee, thereafter, asked the Counsel for the Respondent to make his defense before the Committee. The Respondent was examined in the matter. The Counsel for Respondent made his further oral submissions before the Committee.

2.2 After hearing both the Respondent and his Counsel, the Committee directed the Junior Counsel that last opportunity was being granted to the Complainant to provide his written submission substantiating the complaint as sought by erstwhile Committee within 7 days from the date of hearing. The Committee further decided

that if on consideration of the documents/information received, it would transpire that another hearing was required, then only the case would be further heard. Otherwise, it would be decided based on the documents available on record. The Counsel for the Respondent also requested for a copy of documents that would be submitted by the Complainant for perusal of the Committee. Accordingly, the case was taken as part-heard subject to further hearing, if felt necessary, after consideration of documents/information, that would be available on record. Else the case would be treated as concluded and the decision in the matter would be accordingly taken.

2.3 On 23rd September, 2019, the Committee noted that the Complainant department did not provide any information despite the same being repeatedly sought by the Committee. The Committee noted that due opportunity was given to the Complainant department which it failed to avail. Accordingly, the Committee decided to conclude the matter based on written and oral submissions of the Complainant and the Respondent as well as the documents available on record. The Committee, accordingly, decided to take its decision on the matter.

Findings of the Committee:

3. The Committee noted that the allegation against the Respondent was that he while acting as the statutory auditor of JVL from the F.Y. 1998-99 to 2001-02 did not verify the sudden change in the investment by JVL in the equity of RCL and thus, helped the management in portraying an untrue affairs to the public more so when the Respondent was also an auditor of RCL.

4. The Committee noted the submissions of the Respondent wherein he had stated that though he was reported to be a statutory auditor of M/s. JVL for the FY 1998-99 onwards, it was an established fact on record that no accounts for FY 2000-01 were available and hence no audit was conducted for that period. In other words, he admitted to the auditor of M/s. JVL for FY 1998-99, 1999-2000 as well as from 2001-02 to 2006-07. He further submitted that in the year 1998-1999, when he was appointed Statutory Auditor, the net worth of the Company was being eroded from

time to time and was already negative and thus the “going concern” nature of the Company was in doubt. However, the Respondent had hoped that the Company would revive and therefore he opted to continue as a Statutory Auditor. He was requested by the Management of JVL to submit Audit Reports for the year upto Financial Year 2006-2007 as the said accounts were required to be submitted before BIFR, so he had signed the audit reports for FY 2001-02 to FY 2006-07 on 3rd Nov 2007. In 2011, when Appellate Authorities passed the Order dated 27th Sept 2011, it was clear that the Company would not revive so he resigned in 2011.

5. The Committee noted that the Respondent has provided on record the explanation for increase/decrease in value and/ or number of shares held by M/s. JVL and has also reconciled them with the facts given in the financial statements of the respective years. On perusal of the documents on record, it was noted that during FY 1998-99, there was a sale of 4 lakh shares of RCL and sale proceeds of Rs.54,83,000 as well as profit of Rs. 2,76,000/- on such sale were duly reflected in its cash flow statement and the profit and loss account of the company for the said year. Accordingly, the sale of such investment had brought down the investment account by the appropriate cost of the investment sold. Thereafter, in F.Y. 2001-02, the purchase of investment of 5,00,000 Lacs equity shares of RCL had increased the amount of investments from Rs. 2,50,00,000 to Rs. 3,00,00,000 in the financial statements. The Respondent had brought on record, copy of the Cash Flow Statements showing acquisition of investment worth Rs. 50,00,000. It was argued that purchase of investments does not affect Profit and Loss statement, therefore, no such effect was shown in it. Further in the Financial Year 2002-2003, there was sale of 30 lacs shares costing Rs. 3 Crore on which a loss of Rs. 2,70,00,000/- was booked in the accounts for the said year and the same was duly reflected under the head “manufacturing and other expenses” **(C-34)**. The Respondent also brought on record year wise reconciliation of sale and purchase of shares in RCL to show the amount of profit or loss made on such sales. The Committee thus viewed that the acquisition and disposal of shares in RCL were duly recorded in the financial statements and, accordingly, the findings/allegation of the Complainant department that there was a discrepancy as regards the investment of M/s JVL in the equity of

M/s RCL as number of shares increased or decreased without acquisition and disposal was unfounded and baseless.

6. It further noted that the Respondent had given the Disclaimer of Opinions consistently from 1998-99 to 2008-09 except for the year 2000-2001 for which according to the Respondent no accounts were submitted and no audit report was issued by him. It was viewed that the applicable auditing standards be it AAS 28 or SA 700 "The Auditor's Report on Financial Statements" has enunciated that an auditor should express disclaimer opinion when he failed to obtain sufficient audit evidence to express his opinion on financial statements. It was viewed that such opinion in itself portray that the Respondent being the auditor was unable to obtain sufficient appropriate audit evidence to form an audit opinion. The Committee thus viewed that as per then prevailing situation, the Respondent had clearly written that he was not getting the relevant information to form opinion for the purpose of audit report. Hence, if the Respondent opted to express disclaimer of Audit Opinion, he intended to report that in the absence of required information no specific opinion could be expressed on the accounts. So effectively, he was not stating that accounts gave "true or fair view". As regards the Respondent giving Disclaimer of Opinion persistently year after year, it was viewed that there is no bar either in the Companies Act, 1956 or the Standard of Auditing restricting an auditor to express audit opinion of only one period on a date.

7. In view of overall consideration of all facts and submissions given on record, it was viewed that no accountability with respect to professional misconduct with respect to audit of M/s. JVL could be affixed/construed on part of the Respondent., Accordingly, in light of above, the Committee held Respondent not guilty of professional misconduct falling within the meaning of Clauses (5), (6) and (7) of Part I of the Second Schedule to the Chartered Accountants Act, 1949.

Conclusion :

7. Thus, in conclusion, in the opinion of the Committee, the Respondent is **NOT GUILTY** of professional misconduct falling within the meaning of Clauses (5), (6) and (7) of Part I of the Second Schedule to the Chartered Accountants Act, 1949.

8. The Committee, accordingly, passed orders for closure of this case against the Respondent.

**Sd/-
CA. Prafulla Premsukh Chhajed,
Presiding Officer**

**Sd/-
Mrs. Anita Kapur
Member, (Govt. Nominee)**

**Sd/-
Shri Ajay Mittal, IAS (Retd.)
Member (Govt. Nominee)**

**Sd/-
CA. Debashis Mitra
Member**

**Sd/-
CA. Manu Agrawal
Member**

Date: 12th December, 2019

Place: New Delhi