

DISCIPLINARY COMMITTEE [BENCH-III (2019-20)]

(Constituted under section 21B of the Chartered Accountants Act, 1949)

Findings under Rule 18(17) & 19(2) of the Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007

File No. : PPR/P/50/14/DD/75/INF/14-DC/710/17

In the matter of :

CA. J.L. Garg (M.No.005406) (Respondent no. 1)

CA. Ashok Kumar Agarwal (M.No.084600) (Respondent no. 2)

M/s. Goel Garg & Co., (FRN No. 00397N)

Chartered Accountants,

18th Ground Floor, National Park,

Lajpat Nagar-IV

NEW DELHI 110 024

----- Respondent

Members Present:

CA. Prafulla Premsukh Chhajed, President

Smt. Anita Kapur, Member (Govt. Nominee)

Shri Ajay Mittal, IAS (Retd.), Member (Govt. Nominee)

CA. Debashis Mitra, Member

CA. Manu Agrawal, Member

Date of Final Hearing: 26th July 2019 (decided on 23rd September, 2019)

Place of Final Hearing: New Delhi

Parties Present :

- (i) CA. Ashok Kumar Agarwal - Respondent**
- (ii) CA. C V Sajan – Counsel for Respondent**

Allegations of the G.M., Reserve Bank of India, Mumbai:

1. The Informant in its allegation letter had stated that the Respondent firm which was the statutory auditor of M/s. Mayfair Investments Private Limited (hereinafter referred to as the “**Company**”) for the F.Y. 2010-11 a Non-Banking Finance Company had failed to submit the exception report regarding Minimum Net Owned Fund being in violation of Non-Banking Financial (Non-Deposit Accepting or Holding) Companies Prudential Norms (Reserve Bank) Directions, 2007.

Proceedings:

2. At the time of hearing on 26th July 2019, the Committee noted that the Respondent no. 2 along with his authorized Counsel was present in person before it. Since it was the first hearing in the matter, the said Respondent was put on oath. Thereafter, the Respondent was asked if he wished the charge to be read out or it could be taken as read. The Respondent stated that he was aware of the charges against him. The Committee asked the Respondent as to whether he pleaded guilty or not. The Respondent pleaded not guilty and opted to defend his case.

Thereafter, the Counsel for the Respondent submitted his written submissions before the Committee and proceeded to make oral submissions. The Committee after hearing the submission of the Counsel directed the Respondent No.2 to give his written submissions within 15 days from the date of the hearing as to in what circumstances, the Respondent was made answerable to the Institute on the matter. The Committee viewed that on consideration of the submissions so made, if the Committee would require one more hearing, it would be fixed, otherwise the case would be concluded based on consideration of oral/written submissions made by the Respondent and documents available on record. Accordingly, the decision to conclude hearing in the matter was made subject to further submissions from the Respondent in the matter.

3. On 23rd September, 2019, the Committee noted that the explanation/submissions sought from the Respondent No 2 was made by him

vide letter dated 29th July 2019 which was duly considered by the Committee. Accordingly, based on written and oral submissions available on record, the Committee decided to take its decision on the matter.

Findings of the Committee:

4. The Committee noted that in the extant case, it was alleged that the Respondents had failed to submit exception report to RBI for the F.Y. 2010-11, in respect of the Company which was a Non-Banking Finance Company, as it did not have Minimum Net Owned Fund in violation of Non-Banking Financial (Non-Deposit Accepting or Holding) Companies Prudential Norms (Reserve Bank) Directions, 2007.

5. It further noted that Respondent No 2 appeared before the Committee and submitted on record that the late partner of the Respondent firm, Sh. J.L. Garg, being the Respondent no 1 was the attesting auditor and only he could be held answerable to the charges as he himself was neither involved nor he conducted the audit of the Company in any capacity. The Committee further noted that to support his contention, the Respondent no 2 had brought on record certain documents from the permanent audit files and the working papers maintained by the Respondent firm for the audit assignment of the Company for the F.Y. 2010-11 which inter-alia included copy of the engagement letter dated 5th October 2010 signed by the late Respondent no 1, minutes of the partner meeting at the office of the Firm whereat it was decided that late Respondent no 1 would be the engagement partner and audit report dated 29.09.2010 for this audit assignment duly signed and initialed by late Respondent no 1. It was also noted that in said meetings Respondent No. 2 was not present.

6. The Committee also noted his submissions that an Exception Report was duly filed with the RBI and the Respondent no 2 himself was the signatory to the Exception Report. He pleaded that proceedings in the matter deserve to be discontinued with the reason that the Respondent no 1 concerned had deceased. The Committee also noted that the Respondent no 2 had also

submitted that till the time, Late Sh. J.L. Garg was alive, all the representations before all the authorities in this matter were made under his guidance, review and controls and no further clarification /documents in this regard was asked for by any authority after his death.

7. The Committee further noted that the Respondent no. 2 vide his letter dated 29th July 2019 while giving his submission in pursuance of the directions of the Committee as to in what circumstances, he was made answerable to the Institute in the matter had stated that in response to the query raised by the ICAI as to member who would be declared as member answerable by the firm in the matter, he being one of the senior partners of the Respondent firm during that time, was requested by Late Sh. J.L. Garg, who was then terminally ill, to assist him in all possible manner to draft the reply to be submitted to ICAI. Thus, his name was also declared along with the name of Late Sh. J.L. Garg.

8. The Committee on consideration of the facts and circumstances of the case was of the opinion that it was the Respondent no 1 who had actually conducted the audit assignment related to the alleged Company. It would, therefore, not be in the interest of justice to proceed further in the matter against Respondent no 2 who was not involved in the said audit. He was involved in the matter only on humanitarian grounds during the later period to assist Late Sh. J.L. Garg i.e. the Respondent no 1 who was then ailing with terminal illness in terms of preparing his reply to be submitted to ICAI. Accordingly, in light of the fact that the Respondent No1., Sh. J.L. Garg had expired on 5th September 2015 and copy of the death certificate of the Respondent was available on record as well, the Committee noted that due to death of the Respondent No 1, the matter became infructuous and accordingly the proceedings against him were abated. It was further viewed that the Respondent no 2 was not involved in this matter in any capacity as evident from the documents brought on record by him. Thus, he had neither carried out any professional responsibility for any audit conclusions nor had signed the audit report, and therefore, no case could be made out against him.

Conclusion:

9. Accordingly, the Committee orders that the proceedings in the extant matter against the **Respondent No1., Sh. J.L. Garg (M.No.005406)** be 'Abated' and also passes orders for closure of this case against the **Respondent No 2** in light of the reasoning given above.

Sd/-
CA. Prafulla Premasukh Chhajed,
Presiding Officer

Sd/-
Smt. 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