

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-102/2014-DD/160/14-DC/681/2017

In the matter of:

**Shri Sanjay Kumar Gupta
Deputy Director,
Ministry of Corporate Affairs
“A” Wing, 5th Floor
Shastri Bhawan
Dr. R. P. Road
New Delhi-110 001**

.....Complainant

Versus

**CA. Rajesh Gulati (M. No.089046)
49 Priya Enclave
Karkardooma
Delhi-110 092**

.....Respondent

Members Present:

**CA. Prafulla Preme Sukh Chhajed, Presiding Officer,
Shri Ajay Mittal, Member (Govt. Nominee),
CA. Debashis Mitra, Member**

Date of Final Hearing: 26th November, 2019

Place of Final Hearing: New Delhi

Parties Present :-

- (i) CA. Rajesh Gulati - Respondent**
- (ii) CA. CV Sajan – Counsel for Respondent**

Allegations of the Deputy Director, MCA:

1. The matter pertains to Form-2 which was certified by the Respondent. This was for allotment of 6983760 equity shares of Rs.10/- each on the basis of scheme of Arrangement. The Company attached a resolution passed on 18.11.2011 increasing the paid up capital to Rs.699,49,600/- after this allotment. However, in the Annual Return made upto 29.9.2012, the paid up capital is shown as Rs.1,12,000/- only. The Complainant stated that on seeking clarification the Respondent replied that the E-Form-2 was filed inadvertently, as the effect was to be given after transfer of property as per the court order which was yet to be done.

2. The Complainant has alleged that the Respondent has not taken due diligence and has certified the e-Form without application of mind and without referring to the order of Hon'ble High Court attached to the Form, and has thus effected allotment which was not a compliance of the Court Order. Thus, as per the Complainant, the Directors of the Company and the professional are liable for action u/s 628 of the Act.

Proceedings:

3. At the outset, the Committee noted that the Respondent along with his Counsel was present in person before it. The Committee further noted that the Complainant vide e-mail dated 21st November, 2019 stated that he was on leave and the facts were before the Disciplinary Committee and the Committee could decide based on the facts available on record.

The Committee, thereafter, asked the Counsel for Respondent to proceed further and to give submissions in the matter. The Counsel for Respondent submitted his defence in the matter before the Committee.

After considering the oral as well as written submissions made by the Complainant and/or Respondent as well as the documents available on record, the Committee decided to conclude the matter.

Findings of the Committee:

4. On perusal of the documents on record it has been noted that shareholders of the Company applied for permission of the Hon'ble Court to induct the personal immovable property owned by them into the Company in lieu of allotment of equity shares in proportion to their value of property inducted by them through the scheme of arrangement filed with the Court. The Hon'ble High Court passed the arrangement order dated 2nd August, 2011 (**W-11 to W-13**) whereby it clearly stated that only on transfer of properties the Company would transfer the shares. The Company passed a resolution on 18th November, 2011 (**C-17**) for allotment of shares on the basis of which form 2 was filed with ROC on 7th December, 2011.

5. In this regard, the Committee noted that the Company on the Respondent's recommendation filed request letter to ROC to withdraw Form 2 to nullify the effect of allotment on 20th December, 2012 (**W-16 to W-17**). It was further noted that the shares were actually allotted in pursuant to the Scheme of Arrangement. However, the Respondent had certified Form 2 without fulfillment of pre-conditions of the allotment in accordance with the Court order.

6. Further, the Committee noted that the Respondent in his written statement has admitted the lapse, but however pleaded that the same does not involve any cheating, or deception on his part. Furthermore, in the extant case, the Respondent had certified Form 2 after verifying and examining the documents provided to him by the Company such as the copy of Order passed by the Hon'ble High Court of Delhi approving the scheme of arrangement, Form 21 filed with ROC, extract of the minutes of the Board of Directors held on 18.11.2011 for allotment of shares to the shareholders, Board Resolution for allotment of shares to the shareholders and legal opinion dated 18.08.2011. Therefore, it cannot be denied that the Respondent did not exercise due diligence while certifying the e-Form.

7. Thus in light of the above, the Committee is of the considered view that since no specific allegation was made against the Respondent that indicated negligence on his part, the Respondent is held **NOT GUILTY** of the alleged professional misconduct falling within the meaning of Clause (7) of Part I of the Second Schedule to the

Chartered Accountants Act, 1949. The Committee further cautioned him to be more careful in future.

CONCLUSION :

8. Thus, in conclusion, in the opinion of the Committee, the Respondent is held **NOT GUILTY** of Professional Misconduct in terms of Section 22 of the Chartered Accountants Act, 1949 read with Clause (7) of Part I of the Second Schedule to the Chartered Accountants Act, 1949.

9. The Committee accordingly passes Order for closure of this case against the Respondent.

Sd/-
(CA. Prafulla Preme Sukh Chhajed)
Presiding Officer

Sd/-
(Shri Ajay Mittal)
Member (Govt. Nominee)

Sd/-
(CA. Debashis Mitra)
Member

Date : 16th January, 2020

Place : New Delhi