

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/86/16-DD/127/16-DC/961/2018

In the matter of:

Sh. K. S. Kaushik

Deputy Director,
Serious Fraud Investigation Office,
Ministry of Corporate Affairs,
New Delhi – 110003

....Complainant

Versus

CA. Priyanka Garg (M. No. 406867)

D-1075, Indira Nagar,
Lucknow (U.P) - 226016

....Respondent

Members Present:

CA. Prafulla P. Chhajed, Presiding Officer
Shri Ajay Mittal, Member (Govt. Nominee)
CA. Manu Agarwal, Member
CA. Debashis Mitra, Member

Date of Final Hearing: 26th November, 2019 (decided on 15th January, 2020)

Place of Final Hearing: New Delhi

Parties Present:

- (i) Smt. Deepmala Bagri, Asstt. Director (Law), SFIO – Complainant's Representative**
- (ii) Shri Pradeep Chandra Sati, Consultant, SFIO – Complainant's Representative**
- (iii) Shri Kunal Rawat, Advocate – Counsel for Complainant**
- (iv) CA. Priyanka Garg – Respondent**

Allegations of the Dy. Director, SFIO against the Respondent:

1. Sh. K. S. Kaushik, Deputy Director, SFIO, New Delhi (hereinafter referred to as the “Complainant”) has filed complaint in Form ‘I’ dated 19th April, 2016 (C-1 to C-332) against CA. Priyanka Garg (M. No. 406867), Lucknow, (hereinafter referred to as the “Respondent”). The background in brief in respect of the allegations raised by the Complainant in her complaint against the Respondent is as under:-

1.1 The Government of India, Ministry of Corporate Affairs ordered an investigation into the affairs of M/s Basil International Ltd. (hereinafter referred to as the “Company”) by the Serious Fraud Investigation Office (SFIO) whose main activity was the mobilization and collection of money from the public at large under two schemes namely Product Card Scheme and Redeemable Preference Share Scheme. In its investigation report, it recommended disciplinary proceedings against the Respondent for professional misconduct. Accordingly, the complaint was filed under the Chartered Accountants Act, 1949

1.2 That the Respondent was the statutory auditor of M/s. Basil International Ltd. (hereinafter referred to as the “Company”) for the period 2008-09. During investigation, it was found that Respondent had conspired with the Directors and while auditing the accounts of the Company and had been negligent as the Financial Statements of the Company for the financial year 2008-09 did not reflect the true and fair view of the state of affairs of the Company which were in contravention to the provisions of the Companies Act, 1956.

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

a) That the Respondent failed to take necessary steps and instructions as required and also failed to point out possible irregularities in Books of Accounts of the Company (**para 5 on C-4**).

b) That there were two sets of Balance Sheets which proved that proper books of accounts of the Company were not maintained. The Respondent conspired with Directors and participated in fraud of the Company. Hence, she failed to exercise due diligence and was grossly negligent in conduct of her professional duties **(Para (iv) on C-6)**.

c) The figures of the Balance Sheets were not reliable as the accounts were not properly maintained. The auditor failed to point out discrepancies in accounts **(C-187)** regarding issuance, and redemption of preference shares which is in contravention of the provisions of Companies Act, 1956.

d) The auditor failed to point out discrepancies in respect of maintenance of accounts of debtors, creditors, loanees and banks. It has further been alleged that profit of the Company was shown falsely and loan entries were not maintained.

Proceedings:

2. At the time of hearing on 26th November, 2019, the Committee noted that the Complainant along with its authorized Counsel as well as Respondent were present. On being asked by the Committee whether they had received the Prima-Facie Opinion formed by the Director (Discipline), both the parties agreed. Since, it was first hearing in the matter, the Respondent was put on oath. Thereafter, the Committee asked the Respondent as to whether she wished the charges to be read out or these could be taken as read. The Respondent stated that she was aware of the charges against her. On being further asked whether she pleaded guilty or not, the Respondent pleaded not guilty and opted to defend her case. The Committee decided to proceed further.

At initiation of the proceedings, it was noted that whereas the Respondent had submitted a copy of her written statement to SFIO in March 2019, however, till date latter could not file its Rejoinder in the matter. The Committee seriously noted the casual approach being adopted by the

Complainant department. In any case, in order to avoid further delay, the Committee decided to proceed in the matter and viewed that if during the hearing, need for certain documents would arise, the same would be looked into by the Complainant Department.

Accordingly, the Committee asked the Respondent to proceed further on the merits of the case. Thereafter, the Respondent made her oral submissions in the matter. The Committee examined the Respondent on the submissions made by her. The Committee, thereafter, examined the Counsel for the Complainant in the matter. The Respondent made her final submissions in the matter. The Committee, thereafter, based on the documents available on record and after considering both oral and written submissions made by both parties, concluded hearing in the matter.

3. On 15th January, 2020, the Committee considered the documents on record and decided the matter on merits.

Findings of the Committee:

4. The Committee noted that the Complainant had raised four allegations against the Respondent out of which the Director (Discipline) while forming his prima facie opinion under Rule (9) of the CA Rules 2007 had held the Respondent prima facie guilty for two charges only. Accordingly, the Committee considered only the remaining charge(s) while hearing the matter and gave its findings on the same which is as under:

5. The Committee noted that one of the allegations which survived against the Respondent was as regard the alleged issuance and redemption of preference shares which were in contravention of the provisions of section 67(3) of the Companies Act, 1956. It was alleged against the Respondent that the Company had raised money through redeemable preference shares during the F.Y. 2008-09 but the Respondent in her audit report did not comment in respect of the same for the said year rather, she had given clean report with respect to para (xx) **(C-260 and C-268)** of her CARO report stating that *“the Company had not raised any money by public issues during*

the year and hence the question of disclosure and verification of end use of such money do not arise.”

6. The Committee noted the submissions of the Respondent made in this regard that the allegation “in relation to Issue of Redeemable Preference Shares” was leveled on the basis of statement of Mr. M. K. Basu who was appointed as Director of M/s BIL on 30.08.2019 and that he had not signed the balance sheet of FY 2008-09. Thus, his statement could not be accepted with respect to FY 2008-09. Further, the statement of Mr. M. K. Basu that the preference share capital money received exceeding the authorized capital under Schedule 9 under the “Current Liabilities and provisions” was admitted on the basis of Balance sheet audited by CA. Anupam Sarkar for period starting from FY 2009-10 onwards (**C-119**) and no such remarks were made on the balance sheet audited by the Respondent. She further stated that the comments were made by the Respondent as an auditor with respect to the amount of Rs. 81,23,50,000/- for FY 2008-09 at point (xviii) in report dated 30.08.2009 as Preference share Application money was pending for allotment during the year (**C-260**). The said amount having shown nil in the balance sheet for FY 2009-10 and she had given her comment at point (xiv) in report dated 27.08.2010 that share application money was paid back to the applicants by the company. The comment in both the Auditor’s Reports was made by the Respondent after seeking explanation from the management of the company which were appropriate as the amount pertained to application money only for private placement of preference share and the said money did not pertain to public issue of the shares.

7. On being asked by the Committee as regard the list of allottees/persons from whom such an amount of Rs 81.23 Crores was raised which appeared to have been received from not less than 50 persons which would have attracted the provisions of section 67(3) of the Companies Act, 1956, the Respondent submitted that amount pertained to application money only for private placement of preference shares and did not pertain to the public issue. She further expressed her inability to provide the list of application while stating that her audit working papers were stolen by one of the

employee of the Company from her office for which she had separately lodged an FIR dated 6.8.2016 and a case was registered against him. Thus the circumstances had disabled her from submitting the relevant records in support of her defense.

8. The Committee noted that the Respondent has failed to bring on record that the money so received was not in violation of the provisions of Section 67(3) of the Companies Act, 1956 as per the audit then conducted by her. The Committee noted that the fact that application money of Rs. 8123.50 lakhs was raised by way of private placement basis only is not acceptable on a rationale that such huge amount was not practically possible to collect unless the said offer was made to more than fifty persons which if made would require her to make a comment under clause XX of CARO 2003 regarding alleged public issue by virtue of proviso to Sec 67(3) to the Companies Act, 1956. The Respondent, however, failed to produce any list of applicants from whom such a big amount was collected stating her own limitations of unavailability of audit working papers. The Committee, accordingly, was of the view that although, the Respondent was not able to establish her defense, she was at the time of alleged audits new in her profession and as per her submissions before the Committee she was acting under directions of her senior in good faith. It was noted that alleged Senior is another member against whom the matter is pending in respect of the same case before the Committee filed by the Complainant. Considering the entire facts and circumstances, the Committee, therefore, decided to give her benefit of doubt and held her Not Guilty of the alleged misconduct. The Committee further advised her to be more careful in future while carrying out her professional duties.

9. As regards the second charge relating to maintenance of accounts of debtors, creditors, loanees and banks, profit of the Company was shown falsely and loan entries were not maintained, the Committee noted that since no specific instances were brought on record to establish the guilt of the Respondent, she is accordingly, held not guilty with respect to this charge.

Conclusion :

10. Thus, in conclusion, in the considered opinion of the Committee, the Respondent is **NOT GUILTY** of professional misconduct falling within the meaning of Clauses (5) and (7) of Part I of the Second Schedule to the Chartered Accountants Act, 1949.
11. The Committee, accordingly, passed orders for closure of this case against the Respondent.

Sd/-
(CA. Prafulla Premsukh Chhajed)
Presiding Officer

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

Sd/-
(CA. Debashis Mitra)
Member

Sd/-
(CA. Manu Agrawal)
Member

Date: 3rd February, 2020

Place: New Delhi