

CONFIDENTIAL

BOARD OF DISCIPLINE [BENCH-I]

[Constituted under section 21A of the Chartered Accountants Act, 1949]

Findings under Rule 14(9) of the Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007

File no. : [PR-88/2015-DD/107/2015/BOD/333/2017]

In the matter of :

Shri Padma Nabh Prabhakar, Constituted Attorney, Authorised Signatory, CTBC Bank Co. Ltd. New DelhiComplainant

-Vs-

CA. Praveen Kumar Agarwal (M.No.073743), Partner, M/s Praveen K Agarwal & Associates (FRN:005002C), Chartered Accountants, GhaziabadRespondent

Members Present:

**CA. Prafulla P. Chhajed, Presiding Officer
Shri R.K. Tewari, Member (Govt. Nominee)
CA.(Dr.) Debashis Mitra, Member**

Date of Final Hearing: 08th January, 2019

Place of Final Hearing: New Delhi

Parties Present:

**I) Complainant's representative – Shri Padma Nabh Prabhakar
II) Respondent – CA. Praveen Kumar Agarwal
III) Counsel for Respondent – CA. C V Sajan**

Findings of the Board:

1. The charge alleged in the instant complaint is that the Respondent issued a wrong certificate dated 20th January 2015 after deducting the depreciation provided in the accounts up

to 31.03.2013 from the value of Plant and Machinery while as per the Notification issued under the MSMED Act, 2006 read with RBI Master Circular dated 1st July, 2014, the "original value" of the plant and machinery is to be taken into consideration for determining, if an enterprise is a small scale enterprise or not with an intention to help the Company to qualify / fit it under the definition of small scale enterprise.

2. The Board heard the submissions of the Complainant and the counsel for the Respondent and duly considered various documents made available on record by both the Complainant and the Respondent.

3. The Board noted the Respondent's submission that Certificates dated 17th September, 2014 and 20th January, 2015 issued by the Respondent to the management of the Company were prepared and issued to the best of his knowledge and the material available on record, and the Respondent did not assist the Company in any manner for classification as SSI under UP Policy. The Respondent further submitted that he had issued a certificate dated 17th September, 2014 certifying the gross value of P&M as per Micro, Small and Medium Enterprise Development Act, 2006 (MSMEDA) as INR.89,021,206/- (without deducting any depreciation) and the said certificate was forwarded by the Management of the Company to the office of the Deputy Commissioner of District Industrial Center UP Policy ("DIC") without the knowledge of the Respondent.

4. The Board further noted the Respondent's submission that the company was declared as sick unit on 26th June, 2014 by the DIC vide Sick Unit Certificate issued vide No.372 dated 5th July, 2014 which was before the issuance of the certificate and therefore the certificates could not be alleged to be issued for granting exemption as the exemption was already granted to the Company. The Respondent further submitted that in the certificate dated 17th September, 2014 the Respondent has certified Gross Value of Plant and Machinery, whereas in the certificate dated 20th January, 2015 the Respondent has certified the Gross Value, Depreciation and WDV of Plant and Machinery as per the Company's specific requirements; thus, the allegation of the Complainant that there is a contradiction in both the certificates, is not tenable.

5. The Board, thereafter, noted the submissions of the Complainant that the Respondent has not given specific explanation as to why the depreciation was provided in the certificate dated 20th January, 2015 to arrive at the value of Plant and Machinery as defined in Micro Small and Medium Enterprises Development Act, 2006 when only original cost is to be shown and not the depreciated value. The Complainant also submitted that that the certificate has been issued by the Respondent at the request of the management of the Company, which means that he was not discharging his professional duties in consonance with the rules, regulations and guidelines framed by the Institute and was merely acting as a puppet in the hands of the management of the Company, and thus, the certificate dated 20.01.2015 was issued by the Respondent with malafide intent to somehow bring the Borrower Company under the provisions of the aforesaid Act so that it could be classified as Sick Industrial Unit under the U.P. Policy.

6. The Board further noted that the Complainant Bank has brought on record the sequential events that when the DIC issued letters dated 05.08.2014 and 03.09.2014 (intimating the Complainant Bank that the Commissioner of Industries is declaring the Borrower Company as a sick industrial unit under the U.P. Policy and restrained the Complainant Bank from taking any further steps for recovery of its dues), the Complainant Bank immediately vide its reply dated 08.09.2014 lodged its protest and challenged that as the investment of the Borrower Company in the plant and machinery as on 31.03.2013 amounting to Rs. 15.62 crores, the Borrower Company cannot be a small scale unit and thus cannot be a sick industrial unit under the U.P. Policy. In response to the said letter, when DIC issued another letter dated 24.09.2014, it was stated that out of Rs. 15.62 crores, if the value of gen set, pollution control equipment's etc. amounting to Rs. 6.72 crores is deducted, then the total value of plant and machinery stands reduced below Rs. 5 crores (wrongly stated to be Rs. 8,90,222/-). Apparently, the said letter was issued by DIC on the basis of certificate dated 17.09.2014 issued by the Respondent. However, as there was calculation mistake in the DIC letter dated 24.09.2014, the Complainant Bank drew the attention of the DIC vide its counsel letter dated 15.01.2015 in which it was stated that even if the figures mentioned in the letter dated 24.09.2014 is taken to be correct, then the value of plant and machinery would be Rs. 8,90,21,206/- which figure is much higher than the limit prescribed under the Act i.e. Rs. 5 crores and it was stated that in view of this, the Borrower Company cannot be classified as a sick industrial unit. Apparently to wriggle out the Borrower

Company as well as the officials of DIC from the wrong stand which they have taken in the previous correspondence, the Respondent issued a revised and wrong certificate dated 20.01.2015 in which with mala fide intent to reduce the value of investment in the plant and machinery below Rs. 5.00 crores, the depreciation was deducted knowing fully well that in terms of law depreciation cannot be deducted to arrive at the value of plant and machinery for the purposes of the Act.

7. The Board also noted the fact that in case of manufacturing enterprises, MSMED Act 2006 read with the Master circular of the RBI dated 1st July, 2014 provides that a small enterprise is an enterprise where the investment in plant and machinery is more than Rs. 25 lakhs but does not exceed Rs. 5 crore, and while calculating the said investment the original price, irrespective of whether the plant and machinery are new or second handed, shall be taken into account, as per Notification No. S.O. 1722 (E) dated 5th October, 2006 issued by the Ministry of Small Scale Industries. Thus, it is evident that as per requirement of MSMED Act, 2006, the value of Plant and Machinery has to be taken at original cost as contended by the Complainant Bank. On perusal of the alleged certificate dated 20th January 2015, the Board noted that in the certificate the Respondent had clearly provided as under:

*“As per our examination and explanation given by the management we certify that plant and machinery as defined in Micro, Small and Medium Enterprises Development Act 2006 is below:
(emphasis provided)*

Gross Value of machinery as on 31.3.2013 89021206

Less: Depreciation provided in the accounts Upto 31.3.2013 41853995

Written down value of plant and machinery used in the Manufacturing of production 47167211 “

Thus, there was no tenable justification for the Respondent to provide for depreciation in the said certificate and the same was not in consonance with the requirements of the MSMED Act 2006.

8. The Board also noted that the Respondent had earlier issued a certificate dated 17th September, 2014 to the same entity certifying the value of Plant and Machinery as on 31st

March, 2013 without providing for depreciation on the same. Thus, issue of a new certificate on the same subject for the same period certifying a different value without giving a reference to the earlier certificate clearly hints that the certificate was issued with a malafide intent.

9. The Board also held that the defence of the Respondent that the alleged certificate dated 20th January 2015 had been issued as per the requirement of the management of the company clearly points to the fact that the alleged certificate had been issued by the Respondent to assist the Company so as to qualify it under the definition of small scale enterprise, thereby compromising with the professional ethics.

Conclusion:

10. Thus, in conclusion, in the opinion of the Board, the Respondent is **GUILTY** of Other 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.


-Sd-
(CA. Prafulla P. Chhajed)
Presiding Officer

-Sd-
(R.K. Tewari)
Government Nominee

-Sd-
(CA (Dr.) Debashis Mitra)
Member



Date: 28th January, 2019
Place: New Delhi

Certified Copy

Ajay Kumar Jain
Deputy Secretary
Disciplinary Directorate
The Institute of Chartered Accountants of India
ICAI Bhawan, I.P. Marg, New Delhi-110 002

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ORDER UNDER SECTION 21 A(3) OF THE CHARTERED ACCOUNTANTS ACT, 1949 READ WITH RULE 15(1) OF THE CHARTERED ACCOUNTANTS (PROCEDURE OF INVESTIGATIONS OF PROFESSIONAL AND OTHER MISCONDUCT AND CONDUCT OF CASES) RULES, 2007.

**Shri Padma Nabh Prabhaker, Constituted Attorney,
Authorised Signatory, CTBC Bank Co. Ltd. New Delhi**Complainant

-Vs-

**CA. Praveen Kumar Agarwal (M.No.073743), M/s Praveen K Agarwal &
Associates (FRN:005002C), Chartered Accountants, GhaziabadRespondent
[PR-88/2015-DD/107/2015/BOD/333/2017]**

CORAM:

**CA. Atul Kumar Gupta, Presiding Officer
Shri Arun Kumar (Government Nominee)
CA. Prasanna Kumar D, Member**

1. That vide findings dated 28th January, 2019 the Board of Discipline was of the opinion that **CA. Praveen Kumar Agarwal** is guilty of Professional Misconduct falling within the meaning of Clause (2) of Part IV of the First Schedule to the Chartered Accountants Act, 1949 read with section 22 of said Act.

2. That an action under Section 21A(3) of the Chartered Accountants Act, 1949 was contemplated against **CA. Praveen Kumar Agarwal** and communication dated 4th April, 2019 was addressed to him thereby granting him an opportunity to make written representation. Further, vide letter dated 8th April, 2019 **CA. Praveen Kumar Agarwal** was granted an opportunity to represent himself in person & make his representation before Board on 29th April, 2019.

3. That **CA. Praveen Kumar Agarwal** appeared before the Board on 29th April, 2019 and made his submissions that he had certified all the three figures in the certificate viz., Gross value of Plant and Machinery, Depreciation and Written Down Value. QA



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5. As per the findings of the Board dated 28th January, 2018 **CA. Praveen Kumar Agarwal** was found guilty on the grounds that he issued a wrong certificate dated 20th January 2015 after deducting the depreciation provided in the accounts up to 31.03.2013 from the value of Plant and Machinery while as per the Notification issued under the MSMED Act, 2006 read with RBI Master Circular dated 1st July, 2014, the “original value” of the plant and machinery is to be taken into consideration for determining, if an enterprise is a small scale enterprise or not with an intention to help the Company to qualify / fit it under the definition of small scale enterprise.
6. The Board noted that as per Micro, Small and Medium Enterprises Development Act 2006 read with the Master circular of RBI dated 1st July, 2014(**C-32**), in case of Manufacturing enterprises “*A small enterprise is an enterprise where the investment in plant and machinery is more than Rs. 25 lakhs but does not exceed Rs. 5 crore*”.

It has also been clarified that “*investment in plant and machinery is the original cost excluding land and building and the items specified by the Ministry of Small Scale Industries vide its notification No. S.O. 1722 (E) dated October 5, 2006 (Annex I)*”.

The above position has further been clarified in notification No. S.O. 1722 (E) dated October 5, 2006(**C-48**) which states that “*while calculating the investment in plant and machinery refer to paragraph 1, the original price thereof, irrespective of whether the plant and machinery are new or second handed, shall be taken into account provided that in the case of imported machinery, the following shall be included in calculating the value namely.....*”

6. The Board noted that **Praveen Kumar Agarwal** in his certificate dated 20th January, 2015 had certified as under:

As per our examination and explanation given by the management we certify that plant and machinery as defined in Micro, Small and Medium Enterprises Development Act 2006 is below: (emphasis provided)

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Gross Value of machinery as on 31.3.2013 89021206

Less: Depreciation provided in the accounts Upto 31.3.2013 41853995

Written down value of plant and machinery used in the
Manufacturing of production

47167211

6. The Board noted that **Praveen Kumar Agarwal** had issued two certificates dated 17th September, 2014 and 20th January, 2015. The Board also noted that although **CA. Praveen Kumar Agarwal** seemed to have followed caution but at the same time he while issuing certificate dated 20th January, 2015 was required to give reference of certificate dated 17th September, 2014 and this lapse was also admitted by **CA. Praveen Kumar Agarwal**.

7. Upon consideration of the facts of the case, the consequent misconduct of **CA. Praveen Kumar Agarwal**, and keeping in view his written and oral submissions, the Board was of the view that the Respondent although had taken adequate steps but at the same time he failed to adhere technical procedural requirements by not adhering the performa as exactly given in the Act. Hence, failure in adhering the format had lead to confusion among the authorities. Accordingly in the considered opinion of the Board ends of justice shall be met if minimum punishment is awarded to him.

8. Accordingly, the Board ordered that **CA. Praveen Kumar Agarwal** be reprimanded.

Sd/-
(ATUL KUMAR GUPTA)
PRESIDING OFFICER

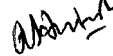
Sd/-
(ARUN KUMAR)
GOVERNMENT NOMINEE

Sd/-
(PRASANNA KUMAR D)
MEMBER

DATE : 29.04.2019

PLACE : New Delhi

Certified True Copy


R.S. Srivastava
Assistant Secretary
Disciplinary Directorate

The Institute of Chartered Accountants of India
ICAI Bhawan, I.P. Marg, New Delhi-110 002