

DISCIPLINARY COMMITTEE [BENCH – II (2019-2020)]

[Constituted under Section 21B of the Chartered Accountants (Amendment) Act, 1949]

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

File No. : [PR/51/2014/DD/273/2014/DC/467/2016]

In the matter of:

Shri Radhey Shyam Pandey

House No.129-B, Shivpuri Colony,

Rustampur, Gorakhpur

Uttar Pradesh

..... Complainant

Versus

CA. Satpal Singh, (M. No. 078332)

2nd Floor,

Prahlad Rai Trade Centre,

Bank Road,

Ayodhya Crossing,

Gorakhpur – 27300

..... Respondent

MEMBERS PRESENT:

CA. Atul Kumar Gupta, Presiding Officer

CA. Amarjit Chopra, Government Nominee

CA. Rajendra Kumar P, Member

DATE OF HEARING : 15.05.2019

PLACE OF HEARING : ICAI Bhawan, New Delhi

PARTIES PRESENT:

RESPONDENT : CA. SATPAL SINGH

RESPONDENT'S COUNSEL: CA. A.P. SINGH

Charges in brief:

1. The Respondent took a loan of Rs. 17 lakhs from the Complainant through four cheques. However, the Respondent refused to repay the loan amount to the Complainant.
2. The Respondent has told the Complainant that he would charge fees at 0.40% on the amount of loan of Rs.40 crore

Brief of Proceedings:

3. On the day of hearing i.e. 15/05/2019 at New Delhi, the Committee noted that the Respondent alongwith the Counsel was present and appeared before it. The office apprised the Committee that notice issued to the Complainant was received back with postal remark "Left". Further, in past he never appeared before the Committee. The Committee decided to proceed ahead in absence of the Complainant based upon merits of the case.

The Respondent was put on oath and he pleaded not guilty. On being asked, the Counsel for the Respondent submitted that the hearing be continued de-novo and he further requested the Committee that all his submissions made earlier will be taken on record and he has nothing fresh to add in this case.

After recording the submissions of the Counsel/Respondent, the Committee directed him to make final submission, if any, within 15 days from the date of this hearing.

With above directions, the Committee concluded the hearing in the captioned matter.

3.1 However, the Committee noted that the Respondent has not made any further submissions before it as directed at the time of hearing. To reach a conclusion, the Committee perused and took note of the papers/documents and submissions made by him before the earlier Committee.

4. The Committee noted that at the time of earlier hearing i.e. 16/01/2018, the Counsel for the Respondent stated before then Committee that despite having stated and accepted that the Respondent had been providing professional services, the Complainant has not produced even a single evidence of having paid any amount to the Respondent other than Rs. 17 lacs which is a subject matter of the instant complaint. There are no documentary evidences to testify or support the contention of the Complainant, and further because the suit filed by the Complainant is sub-judice, any decision by the Disciplinary Committee may cause irreparable damage to the professional career of the Respondent. The Respondent has explained the manner in which the entire amount of Rs.17 lacs has been adjusted, and that the Complainant's allegations of charging fee based on a percentage basis does not even fit into the figures that he has supplied.

5. The amount of Rs.17 lacs received from the Complainant was meant solely for fees, reimbursement of expenses and money expended for payment of taxes on account for the Complainant and his wife. Accordingly, there was no need for the amount of Rs.17 lacs to be deposited / retained in a separate bank account.

Findings of the Committee:

6. The Committee noted that there are two basic charges against the Respondent. Firstly, the Respondent has taken a loan of Rs. 17 lakhs from the Complainant through four cheques and later on refused to repay the loan amount to the Complainant. Secondly, he asked to charge fees from the Complainant at 0.40% on the amount of loan of Rs.40 crore which is restricted under the Chartered Accountants Act, 1949.

7. As regard the charge of availing of loan of Rs.17 lakhs and its non repayment, the Committee noted, that the Respondent in his written submissions has stated that

the amount received by him (Rs.17,00,000/-) from the Complainant was his professional fees. The Respondent gave the breakup of his fees as under:

| Financial Year | Total Fees(Rs.) |
|-----------------------|------------------------|
| 2010-11 | 2,01,000.00 |
| 2011-12 | 8,35,138.00 |
| 2012-13 | 6,83,800.00 |
| | ----- |
| | 17,19,938.00 |
| Less Received | 17,00,000.00 |
| | ----- |
| Balance | 19,938.00 |
| | ----- |

8. The Committee thus noted the contention of the Respondent that the amount of Rs.17 lacs received from the Complainant was in lieu of the professional charges which includes preparation of various projects, explaining it to various authorities, other professional services relating to income tax, sales tax, reimbursement of expenses thereon and money expended for payment of taxes on account of the Complainant and his wife's return. It is submitted that such services were rendered by the Respondent over the past several years. Accordingly, there was no need for the amount of Rs.17 lacs to be deposited / retained in a separate bank account. Considering the amount involved, the Committee asked about the nature of business of the Complainant. The Respondent informed that the Complainant is engaged in various types of businesses viz. Liquor, retail, provisional store, salt business etc. It further noted that despite several opportunities being given to the Complainant, he did not appear before the Committee to present his case and also did not provide any evidence to substantiate that the said amount was paid in pursuance to some understanding entered into with the Respondent for arranging Term Loan from Bank for setting up the cold storage unit and the same was not towards his professional services. Thus, in the absence of any evidence to substantiate the allegations, the Committee decides to dismiss the case against the Respondent with respect to this charge.

9. In respect of second charge, the Complainant has not led any evidence before the Committee, which proves his charge that the Respondent has charged the

professional fees based on percentage of loan amount. Accordingly, the Committee drop this charge against the Respondent.

10. In conclusion, the Committee observes that the Complainant has merely filed the complaint. He did not appear in person nor through authorised representative and also did not lead any evidence to prove his case against the Respondent. The Committee record its extreme anguish at the casual manner in which the Complainant has chosen to handle his case.

Conclusion

11. Thus, in the opinion of the Committee, the Respondent is **NOT GUILTY** of professional and/or Other Misconduct falling within the meaning of Clause (2) of Part IV of the First Schedule, Clause (10) of Part I of the First Schedule and Clause (10) of Part I of the Second Schedule to the Chartered Accountants Act, 1949.

12. Accordingly, in terms of Rule 19 (2) of the Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007, the Committee passes Order for closure of this case against the Respondent.

Sd/-
(CA. ATUL KUMAR GUPTA)
PRESIDING OFFICER

Sd/-
(CA. AMARJIT CHOPRA)
GOVERNMENT NOMINEE

Sd/-
(CA. RAJENDRA KUMAR P)
MEMBER

DATE : 10.02.2020

PLACE : NEW DELHI