

CONFIDENTIAL

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

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

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

File No. : PR/333/2017/DD/343/2017-DC/978/2018

In the matter of:

CA Chandra Prakash Bhatia

Near Hotel Meera,
M.G. Road,
Raipur-492001

..... Complainant

Versus

CA. Gaurav Saboo.....(M.No.149116)

C/o Dinesh Saboo, First Floor,
Old Galla Mandi,
Near Punjab National Bank,
Dist. – Hoshangabad,
Pipariya– 461775
MADHYA PRADESH

.....Respondent

MEMBERS PRESENT:

CA. Atul Kumar Gupta, Presiding Officer
Shri Rajeev Kher, IAS (Retd.), (Govt. Nominee)
CA. Rajendra Kumar P, Member
CA. Chandrasekhar Vasant Chitale, Member

DATE OF FINAL HEARING : 30th May, 2019

PLACE OF FINAL HEARING : Mumbai

PARTIES PRESENT

Complainant : Not Present
Respondent : CA. Gaurav Saboo

CHARGE IN BRIEF:-

1. The Committee noted that in the Prima-Facie Opinion formed by the Director (Discipline) in terms of Rule 9 of the Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007, the Respondent had been held Prima Facie not guilty of professional misconduct by the Director (Discipline). However, the Board of Discipline upon consideration of this case disagreed with the said prima facie opinion. The Board had noted that as per Guideline No. 1-CA(7)/03/2016, the restriction on not responding to any tender issued by an organization or user of professional services in areas of services which are exclusively reserved for chartered Accountants is not applicable where minimum fee of the assignment is prescribed in the tender document itself or where the areas are open to other professionals along with the Chartered Accountants.
- 1.1 The Board after perusal of tender invitation had observed that the tender was open for bidding only to Chartered Accountants and that there was no specification of minimum bid in it. Since specific exclusion had been provided and the case of the Respondent did not fall in either of the category, the alleged act on the part of the Respondent in responding to the tender was against the prescribed guideline and accordingly, held the Respondent prima facie guilty of professional Misconduct falling within the meaning of Clause (1) of Part II of the Second Schedule to the Chartered Accountants Act,1949 and decided to refer the case to Disciplinary Committee under Chapter V of the Chartered Accountants(Procedure of Investigations of professional and other Misconduct and conduct of cases) Rules 2007 for further enquiry in the matter.

BRIEF OF THE DISCIPLINARY PROCEEDINGS:-

2. On the day of hearing i.e. 30th May, 2019, the Complainant was not present. The Respondent was present. There was an e-mail dated 17th May, 2019 from the Complainant wherein he mentioned that he had filed the complaint just to stop wrong practices of members in the future and for the betterment of profession. He also requested to take decision based on merits of the case. Accordingly, the Committee decided to continue the proceedings ex-parte the Complainant. The Respondent was put on oath. On being enquired from the Respondent as to whether he is aware of the charges leveled against him, the Respondent replied affirmatively and opted to defend his case. The Respondent made his submissions on the charges and the Committee also posed questions to him. After hearing the submissions, the Committee decided to conclude the hearing in the above matter.

FINDINGS OF THE DISCIPLINARY COMMITTEE

3. The Committee noted that in view of observations of the Board of Discipline, the charge against the Respondent is that there was a tender invitation which was issued by Jila Sahkari Kendriya Bank, Raipur inviting Chartered Accountant firms for conducting Concurrent Audit of various branches for Financial Year 2017-18 to which no specification of minimum fee was prescribed in the tender invitation. The Respondent applied for the aforesaid tender.

3.1 Upon perusal of documents on record, the Committee noted that an Announcement was issued by the Council of ICAI with regard to responding to tender wherein it is stated that a CA should participate in tenders which are exclusively reserved for Chartered Accountants in practice only if minimum fee is prescribed. In the present case the minimum fee was not mentioned for the aforesaid tender.

3.2 The Committee after consideration of written submissions as well oral submissions of the Respondent noted that the Respondent was not in agreement with the contentions of Board of Discipline. The Respondent stated that he relied upon the Frequent Asked Question (FAQ) issued by ICAI on 17th June, 2016. The meaning of “such exclusively reserved audits” is clarified by the Institute in the said FAQs and the relevant FAQs are as follows:

FAQ 3. *Whether a member of the institute in practice can respond to tenders floated in exclusive areas of practice of Chartered accountant?*

Answer: *A member of Institute in practice shall not respond to any tender issued by an organization or user of professional services in areas of services which are exclusively reserved for Chartered accountants by statute viz. audit under Companies Act 2013, Income Tax Act 1961, etc.*

FAQ 4. *Whether a member of institute in practice can respond to such tenders which are open to other professionals apart from CAs. However, in the tender document only CAs have been invited to respond.*

Answer: *A member of the Institute in practice can respond to such tenders.”*

3.3 It is also observed that “statue” means even in a local statute and if audit and attestation service are exclusively meant for Chartered Accountants only in the statue then the member of ICAI will not be allowed to respond to such tender unless minimum fee is prescribed. Further, as per copy of RBI master circular RBI/2015-16/133 dated July 16, 2015, it is discretion of banks to consider whether the concurrent audit should be done by the external auditor or its own staff. The Committee noted that since Jila Sehkari Kendriya Bank is a Cooperative bank and regulated under the provisions of the Banking Regulations Act, 1949, the said bank falls under the jurisdiction of RBI rather in any other statue. Hence, it can be said that concurrent audit of various branches of Jila Sahkari Kendriya Bank was not

exclusively reserved for the Chartered Accountants and it was discretion of the bank which had invited applications from the Chartered Accountants only.

- 3.4 In view of clarifications given in the FAQ's on Responding to Tenders and Master circular issued by the Reserve Bank of India, the Committee is of the view that Notifications containing Guidelines on responding to tenders should be read with FAQs issued in respect of said Guidelines which clarifies the issue involved in the instant matter in Question no.4 and allows a Chartered Accountant in practice to respond to a tender which are open for all other professionals and other persons including bank own staff but Chartered Accountants in practice only are invited to apply for the same. Accordingly, the Committee is of the view that the act on the part of the Respondent in replying to the tender was not against the requirements of the prescribed guideline.

Conclusion

4. Thus, taking an overall view of the facts and circumstances of the case and based on the submissions / documents placed on record before it, in the considered opinion of the Committee, the Respondent is **NOT GUILTY** of Professional Misconduct falling within the meaning of Clause (1) of Part II of Second Schedule to the Chartered Accountant Act, 1949.
5. Accordingly, the Committee passes an Order for closure of this case under Rule 19(2) of the Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of cases) Rules, 2007.

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

Sd/-
(SHRI RAJEEV KHER, IAS (Retd.),
GOVERNMENT NOMINEE

Sd/-
(CA. RAJENDRA KUMAR P)
MEMBER

Sd/-
(CA. CHANDRASEKHAR VASANT CHITALE)
MEMBER

DATE: 10-02-2020
PLACE: New Delhi