

CONFIDENTIAL

DISCIPLINARY COMMITTEE [BENCH – II (2017-2018)]

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

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

Ref. No. [PR- 268/13-DD/259/2013/DC/546/2017]

In the matter of:

**Ms. Ishita Ghosh
BH-20
Salt Lake City
Kolkata-700 091**

..... Complainant

-vs.-

**CA. Sujit Kumar Bhattacharyya (M. No. 011590)
P-143, Lake Town
Block- A, Ground Floor,
Distt. 24 Parganas (North)
Kolkata-700089**

..... Respondent

MEMBERS PRESENT:

**CA. Naveen ND Gupta, Presiding Officer
Shri Amit Chatterjee, Government Nominee
CA. Sanjay Kumar Agarwal, Member
CA. Manu Agarwal, Member**

DATE OF FINAL HEARING : 09.01.2018

PLACE OF FINAL HEARING : ICAI, Russel Street, KOLKATA

PARTIES PRESENT:

Respondent : CA. Sujit Kumar Bhattacharyya

Counsel for Respondent : CA. A. P. Singh

Finding of the Committee

1. The Committee noted that the Respondent alongwith his Counsel was present, but the Complainant was not present.

The office briefed the Committee that as per its direction during its meeting held on 15/09/2017, the office had earlier sought clarification from the Complainant vide letter dated 02/10/2017 regarding her intention not to pursue this case anymore contrary to the Order of Kolkata High Court. The Complainant vide her letter dated 06/10/2017 had inter-alia stated that *"I have already stated a number of times and still state that in view of terms of settlement, I do not want to pursue the complaint made by me. However, you cannot force me to withdraw the same"*. The letter of Complainant was also placed before the Committee for its perusal in its meeting dated 24.11.2017.

2. Moreover, the office also apprised the Committee that as per its direction during its meeting held on 15/09/2017, the office had also taken legal opinion from the legal section of the Institute on the following point:- *"Though the Rule 6 of the Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007 gives a discretionary power to the Disciplinary Committee regarding acceptance or refusal of withdrawal of a Complaint at the time of hearing, however in the circumstances when there is an order of Court specifically stating that the Complainant shall take steps for withdrawal of all complaints including the complaint pending with this Committee, whether the Committee may still continue with its proceedings in this case specially when the Complainant has only given a letter that she does not wish to pursue the case but she has refused to withdraw her complaint. The Committee also directed to seek the opinion that even if the Complainant chose to withdraw the complaint, whether the Committee may refuse such withdrawal vis-à-vis the order of the Hon'ble Court and whether such refusal shall tantamount to contempt of Court in any way on the part of the Committee."*

The Chief Legal Adviser of ICAI vide office Note dated 31/10/2017 in his opinion has stated that ***"there is no direction issued to ICAI or its Disciplinary Authority with regard to pending disciplinary proceedings in caption case and therefore, if the DC, in terms of Rule 6 decides to proceed further with the***

matter despite withdrawal/ non-participation of the Complainant, it will not amount to contempt of Court as the contempt will affect only parties to the proceedings". The said opinion was also placed before the Committee for its perusal in its meeting held on 24th November, 2017.

3. In view of above contents of letter of the Complainant and legal opinion as above, the Committee in its last meeting held on 24th November, 2017 decided to proceed ex-parte the Complainant on merits of the case based upon material available on record in its meeting held on 24th November, 2017.

4. The Committee noted that first charge of the Complainant is that the Respondent despite being the statutory auditor of M/s. JDS Technology P. Ltd (hereinafter referred as **the Company**) was acting in the capacity of internal accountant of the Company and also appeared before CLB on behalf of the Company in the capacity of Internal Accountant.

5. The Committee noticed that as per its directions dated 24/11/2017, the Respondent was required to submit the following documents / clarifications:-

- (i) Copy of invoice raised by him upon the Company for payment of clerical staff.(i.e. Accountant)
- (ii) Whether any service tax was charged by the Respondent on such payments
- (iii) Whether any TDS was deducted by the Company on this payment?
- (iv) Copy of appointment letter issued to clerical staff/ accountant .
- (v) Copy of ledger accounts of above clerical staff/accountant in the books of the Respondent.
- (vi) What were the terms of loans (both secured & unsecured), interest charged, period, Security and amount of loans. (For all the loans which were given or taken between the group Company)
- (vii) Copy of Financial Statements of M/s. Zamag India Pvt. Ltd and HF JDS Hydraulic India Pvt. Ltd for financial years 2008-2009 & 2009-2010 along-with covering page specifically mentioning sales, profit, net-worth of both these Companies.

The Committee further noted that certain documents/clarifications have been submitted by the Respondent against the above.

6. The Committee noted that the first charge against the Respondent was that despite being the statutory auditor of M/s JDS Technology P. Ltd, the Respondent was acting in the capacity of internal accountant of the Company for which he was also being paid by the Company. It was also alleged that the Respondent has appeared before the Company Law Board as the internal accountant of the Company. The Respondent took a plea that he was not acting as internal accountant and amounts given by the Company was in the nature of reimbursements to him on account of outsourced accountant provided by him to the Company on its request made to him vide letter dated 01.09.2011. After perusal of the documents brought on record by the Respondent, the Committee noticed that although there was a request letter dated 01/09/2011 from the Company to the Respondent to depute some temporary accountants in the Company. Further, there are letters from the Respondent to the Company in which the Respondent has asked for re-imburement of amounts paid to these accountants. However, after perusing the documents on record and submissions of the Respondent, the Committee noted that the Respondent could not substantiate that the temporary accountant being deputed was not his employee and working/reporting to him. Further, neither any direct appointment letter was issued by the Company to such person nor any direct payment has been made by the Company to such person. The payment to such person has been routed through the Respondent. Hence, in view of this fact, it is construed that the internal accountant of the Company was in direct control of the Respondent who was associated with the Company as the statutory auditor of the Company. Accordingly, the Respondent should have desisted from accepting the said dual assignment and thus, he is prima facie guilty of professional misconduct falling within the meaning of Clause (4) of Part I of the Second Schedule to the Chartered Accountants Act, 1949.

7. The Committee noted that next charge against the Respondent is that M/s. Zamag India Pvt. Ltd and M/s. HF JDS Hydraulic India Pvt. Ltd, both being huge loss making Companies with net worth completely eroded, the Respondent has authenticated the Auditor's Report wherein he has reportedly shown huge funds from JDS diverted to HF JDS, thus eroding JDS assets through such certification. Also, in the year 2011, Rs.11 lakhs is shown as loan to JDS by Mr. Dilip Chatterjee and Ms.

Anjali Chatterjee exactly the same Rs.11 lakhs is given as loan from JDS to HF JDS as loan which could have been given directly is routed through JDS to increase the hold on JDS assets.

7.1 In respect of this charge, the Committee noted that JDS Technology is a family owned corporate entity in which all the family members of the Complainant are directors and shareholders and the Complaint seems to be an outcome of family dispute between these family members wherein the Complainant has not brought on record the enough evidences to prove this charge and the Complainant is also not coming forward to pursue this complaint. The Committee further noted that the Inter Company deposits had been given to concerns where JDS Technology and its directors had 100% control over the management hence there was no threat of erosion of Public fund. Committee also observed that even the balance sheets of JDS Technology for the financial year 2008-09 and 2009-10 were also signed by the Complainant in the capacity of Director. Hence in view of lack of evidences and in view of non-substantiation of charge by the Complainant, the Committee finds no merit in the said charge against the Respondent and accordingly decided to drop this charge against him.

8. The next charge against the Respondent is that there is a variation in figures of Tours and Travel Account in the year 2010-11. It has further been alleged that according to ledger account total expenses on this head were Rs. 3,30,373/- while the amount shown in Profit and Loss Account is Rs. 2,19,790/- In this regard, the Committee noted that the statement of tours and travel expenses along with the ledger account of the same produced by the Complainant in support of her allegation have been duly explained by the Respondent during his submissions before the Committee. Hence, this charge also does not survive against the Respondent.

9. The Committee further observed that other charges of the Complainant are in respect of personal expenses/fictitious expenses of Managing Director and his wife being charged to Company and loans amount of Mr. Dilip Chatterjee and Anjali Chatterjee being converted into equity and fictitious expenses being booked in the name of Company for payment made to Mr. G Saha. In this regard, the Committee noted that based on the available documents and records, it is not coming out that

any personal or fictitious expenses have been incurred by the Company or its Directors. In view of lack of concrete evidences and non-co-operative attitude of the Complainant to come forward to substantiate her charges, the Committee is inclined to extend benefit of doubt to the Respondent on these charges.

9. In view of above noted findings, the Committee was of the considered opinion that the Respondent is GUILTY of Professional Misconduct within the meaning of Clause (4) Part I of the Second Schedule to the Chartered Accountants Act, 1949 in respect of first charge only. The Committee was of the view that other Clauses i.e. Clauses (5) and (7) of Part I of of the Second Schedule to the Chartered Accountants Act, 1949 are not applicable in this matter in view of dropping of all other charges against the Respondent.

Conclusion

10. Thus in the considered opinion of the Committee, the Respondent is **GUILTY** of professional misconduct falling within the meaning Clause (4) of Part I of the Second Schedule to the Chartered Accountants Act, 1949.

**Sd/-
(CA. NAVEEN ND GUPTA)
PRESIDING OFFICER**

**Sd/-
(SHRI AMIT CHATTERJEE)
GOVERNMENT NOMINEE**

**Sd/-
(CA. SANJAY KUMAR AGARWAL)
MEMBER**

**Sd/-
(CA. MANU AGARWAL)
MEMBER**

**DATE : 08th February, 2018
PLACE : New Delhi**

DISCIPLINARY COMMITTEE [BENCH – I (2019-2020)]
[Constituted under Section 21B of the Chartered Accountants Act, 1949]

ORDER UNDER SECTION 21B(3) OF THE CHARTERED ACCOUNTANTS ACT, 1949 READ WITH
RULE 19(1) OF THE CHARTERED ACCOUNTANTS (PROCEDURE OF INVESTIGATION OF
PROFESSIONAL AND OTHER MISCONDUCT AND CONDUCT OF CASES) RULES, 2007.

In the matter of:

Ms. Ishita Ghosh, Kolkata

-Vs-

CA. Sujit Kumar Bhattacharyya (M.No. 011590), Kolkata

[PR-268/13-DD/259/2013/DC/546/2017]

MEMBERS PRESENT:

Shri Jugal Kishore Mohapatra, I.A.S.(Retd.), Government Nominee & Presiding Officer

Ms. Rashmi Verma, I.A.S. (Retd.), Government Nominee,

CA. Babu Abraham Kallivayalil, Member

CA. Dayaniwas Sharma, Member

1. That vide report dated 08.02.2018, the Disciplinary Committee was of the opinion inter-alia that **CA. Sujit Kumar Bhattacharyya (M.No.011590)** (hereinafter referred to as the “**Respondent**”) was **GUILTY** of professional misconduct falling within the meaning of Clause (4) of Part I of the Second Schedule to the Chartered Accountants Act, 1949.

2. That pursuant to the said report, an action under Section 21B (3) of the Chartered Accountants (Amendment) Act, 2006 was contemplated against the Respondent and a communication dated 24th October, 2019 was addressed to him thereby granting an opportunity of being heard in person and/or to make a written representation before the Committee on 7th November, 2019 at Kolkata.

3. The Committee noted that the Respondent was not present. However, he vide his letter dated 22th May, 2018 made his written representations on the findings of the Disciplinary Committee. Since there was no prior information from the Respondent about his absence and looking into the fact that the award of punishment in this case is pending for long time since the date of report, the Committee decided to proceed further with pronouncement of its Order.

4. The Committee noted that the Respondent through his written representation made the following submissions:-

4.1 There may be permissible circumstances where the practicing member may be assisting the client in preparation of the financial statement, but without in any manner engaging in critical decision making. In this particular case, the Respondent only assisted in identifying accountant for routine jobs for M/s. JDS Technology P. Ltd (hereinafter referred to as the “**Company**”), when they were faced with a challenge for manpower.

4.2 The Respondent stated that the accountants did not report to the Respondent and they were engaged for a limited period. The Complainant had not at any stage pointed out that such accountants hired for routine accounting jobs, were in any case engaged with decision making which could affect the disclosures in the financial statements. There was no scope by which they could be any threats to independents or objectivity from the stand point of the respondent.

4.3 In respect to the applicability of Clause (4) of Part I of Second Schedule to the Act, the Respondent states that the Respondent had not expressed any opinion on any financial statements of any entity, more particularly the Company, where he, his firm, or any of his partners in the firm, or their relatives have substantial interest.

4.4 In the matter of appearing before CLB, the Respondent at the request of the Company explained matters relating to the accounts of the Company to the Lawyer deputed to plead on behalf of the Company. Nowhere in the final order of CLB, the name of the Respondent appeared and as such the observation of the Disciplinary Committee is not applicable. It is not uncommon for auditors to assist the management in making any explanations of technical nature about certain disclosures in the financial statements.

5. The Committee considered the findings as contained in paras no. 4 to 6 of the Disciplinary Committee report, holding the Respondent Guilty of professional misconduct falling within the meaning of Clause (4) of Part I of the Second Schedule to the Chartered Accountants Act, 1949.

6. The Committee considered the findings as contained in the Report along with written representations of the Respondent.

7. Keeping in view the facts and circumstances of the case, material on record and written representations of the Respondent made/ submitted before it, the Committee was of the view that although looking to the facts of the case, the misconduct on the part of the Respondent has been established, yet taking into consideration the facts, the professional misconduct on the part of the Respondent does not call for a severe sentence. Accordingly, **the Committee ordered that the name of the Respondent i.e. CA. Sujit Kumar Bhattacharyya (M.No. 011590) be removed from the Register of Members for a period of 3 (three) months.**

**Sd/-
(SHRI JUGAL KISHORE MOHAPATRA, I.A.S.(RETD.))
GOVERNMENT NOMINEE & PRESIDING OFFICER**

**Sd/-
(MS. RASHMI VERMA, I.A.S. (RETD.))
GOVERNMENT NOMINEE**

**Sd/-
(CA. BABU ABRAHAM KALLIVAYALIL)
MEMBER**

**Sd/-
(CA. DAYANIWAS SHARMA)
MEMBER**

DATE :7th November, 2019

PLACE : Kolkata