

CONFIDENTIAL

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 19(2) of the Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007.

File No. : [PR-322/2017-DD/332/2017/DC/967/2018]

In the matter of:

CA Chandra Prakash Bhatia
Near Hotel Meera,
M.G. Road,
Raipur – 492001

..... Complainant

Versus

CA. Gobind Prasad Agarwal (M. No. 063088)
M/s. Agarwal Gobind & Associates,
309, 1st Floor, City Plaza,
Opposite Maruti Business Park,
Besides Agarwal Hospital,
G E Road,
Raipur-492001.

..... Respondent

MEMBERS PRESENT:

CA. Atul Kumar Gupta, Presiding Officer
CA. Amarjit Chopra, Member (Govt. Nominee)
CA. P. Rajendra Kumar, Member
CA. Chandrasekhar Vasant Chitale, Member

DATE OF FINAL HEARING : 10.07.2019

PLACE OF FINAL HEARING : ICAI Bhawan, New Delhi

PARTIES PRESENT

Respondent : CA. Gobind Prasad Agarwal
Counsel for the Respondent : CA. C.V. Sajan

Charges 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 on the grounds that the respondent have not violated any guidelines issued by ICAI by quoting for concurrent audit even without minimum fee was not prescribed as Concurrent Audit of Bank is not exclusively domain for CAs.
 - 1.1 However, the Board of Discipline on consideration of this case disagreed with the said prima facie opinion on the ground that the said tender was open for bidding only to chartered accountant and there was no minimum fee prescribed in the said tender. Board noted that as per Guideline No.1-CA(7)/03/2016, there is a restriction for not responding to any tender issued by an organization or user of professional services in areas of service which are exclusively reserved for Chartered Accountants and if no minimum fee prescribed in it.
 - 1.2 Accordingly, the Board of Discipline held the Respondent is Guilty of Professional Misconduct as specified under Clause (1) of Part II of Second Schedule to the Chartered Accountants Act, 1949 and thus, referred the matter to the Disciplinary Committee to proceed under Chapter V of the Chartered Accountants (procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007.

Brief facts of the Proceedings:

2. On the day of hearing i.e. 10/07/2019, the Committee noted that Complainant was not present; however, there was an e-mail dated 02/07/2019 &

06/07/2019 from the Complainant in which he expressed his inability to be present before the Committee on the date of said hearing due to travelling abroad on the date of hearing and requested the committee to proceed with inquiry. He also stated that Committee even may discontinue the case or decide on merit as he will not be able to participate in hearing.

- 2.1 On other side, the Respondent with his Counsel appeared before the Committee. The Respondent was put on oath. In the absence of the Complainant and with consent of Respondent, the charges were taken as read. On being asked to the Respondent whether he pleads guilty, he replied in negative. Thereafter, the Committee sought whether he wish to proceed with his defence.
- 2.2 The Counsel of respondent submitted written representation and mentioned that the alleged tender is for concurrent Audit of “JilaSahkariKendriya Bank Maryadit” which falls under the purview of the Reserve Bank of India (the RBI) and as per circular issued by the RBI vide no. RBI/2015-2016/133 dated 16 July, 2015. The Concurrent Auditor of banks can either be a Chartered Accountant or a retired staff of Bank and it is Individual decision of bank to decide, Accordingly, Concurrent Audit is not an exclusive domain for Chartered Accountants. Hence, rather Question 3 it is question 4 of FAQ issued by ICAI is relevant and respondent not violated any guidelines while applying for Tender even if minimum fee is not prescribed.

Findings of the Committee

3. The Committee noted that in view of observations of the Board of Discipline, the charge against the Respondent is that there was atender invitation which was issued by Jila Sahakari Kendriya Bank Maryadit, Raipur inviting Chartered Accountancy Firm for F.Y.2017-18 for conducting Concurrent Audit of various branches to which no specification of minimum fee was present. To the abovetender Respondent applied.
- 3.1 On perusal of documents on record, the Committee noted that an Announcement was issued by council of ICAI in regard to Responding to tender where it was stated that CA should participate in tenders which are

exclusively for them only if minimum fee is prescribed. In the present case the minimum fee was not mentioned for the aforesaid tender.

- 3.2 In view of Written Statement of the Respondent as well as at time of hearing, Respondent was not in agreement with the contention of Board of discipline and relied upon the FAQ issued by ICAI Meaning of “such exclusively reserved audits”, is clarified by the Institute in FAQs issued on 7th April,2016 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 further 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.

- 3.4 Further, the Respondent also brought on record the copy of RBI master circular RBI/2015-16/133 dated July 16, 2015 wherein there is discretion of banks to consider whether the concurrent audit should be done by the external auditor or its own staff.

- 3.5 On the basis of above FAQ’s and Master circular issued by the Reserve Bank of India, the Respondent pleaded not guilty on the grounds that this act falls

under FAQ 4 not in FAQ 3 of above mentioned FAQs. FAQs permits CA in practice to apply for tender because said tender was not exclusively for CAs. And as such there is no violation of guideline issued by ICAI in this regard.

Conclusion

4. Committee reviewed the Tender, relevant RBI circular, FAQs issued by the ICAI referred to herein above and is also of the opinion that being the Jila Sehkari Kendriya Bank Maryadit falls under the jurisdiction of RBI rather in any other statue, the Clarification related “exclusivity of domain” is quite clear and alleged tender though invites only Chartered Accountants to bid, it does not fall under FAQ-3. Accordingly, in the considered opinion of the Committee, the Respondent is NOT GUILTY in terms 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/-
(CA. AMARJIT CHOPRA)
GOVERNMENT NOMINEE

Sd/-
(CA. P.RAJENDRA KUMAR)
MEMBER

Sd/-
(CA. CHANDRASEKHAR VASANT CHITALE)
MEMBER

DATE : 06-08-2019
PLACE : New Delhi