

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

[Constituted under Section 21B of the Chartered Accountants (Amendment) 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.

**File No. :[PR/323/2014/DD/342/2014
PR-329/2014-DD-347/2014/DC/798/2018]**

In the matter of:

Shri M. Kiran Kumar Reddy,
#266, Lakshmi Nilayam,
4th Cross, RMV 2nd Stage,
Sanjay Nagar,
80 Ft, Road, Opp. Ramaiah Hospital
Bangalore 560 094

..... Complainant

Versus

CA. Raghavendra Naik T. (M.No.210228),
21/2, Madhuvan,
Dwarakanath Road,
Visveswapuram
Bangalore 560 004

..... Respondent

MEMBERS PRESENT:

CA. Atul Kumar Gupta, Presiding Officer
CA. Amarjit Chopra, Government Nominee
CA. Rajendra Kumar P, Member
CA. Chandrashekhar Vasant Chitale, Member

DATE OF HEARING : 29.07.2019

PLACE OF HEARING : ICAI Bhawan, Chennai

PARTIES PRESENT:

Complainant : Shri M. Kiran Kumar Reddy
Counsel for Complainant : Shri Sai Srvjan Tayi, Advocate
Respondent : CA. Raghavendra Naik T.

This is a matter arising out of the prima facie opinion formed by the Director (Disc.) holding the Respondent guilty. Mr. M. Kiran Kumar Reddy, the Complainant has alleged the following against CA. T. Raghavendra Naik, the Respondent.

1.1 The Respondent has not disclosed material fact known to him in financial statements audited by him, disclosure of which is necessary. It was further alleged that the Respondent has failed to perform his duties diligently, in making of financial statements, as he is concerned with the financial statements in a professional capacity. In this regard, it has been specifically pointed out that the Respondent has failed to report the wrong figure of Trade payable.

1.2 The Respondent failed to report a material misstatement known to him to appear in a financial statement, with which he is concerned in a professional capacity, inter-corporate transactions but the Respondent failed to report.

1.3 Not exercising due diligence and displaying gross negligence in the conduct of his professional duties. The Respondent failed to exercise due diligence while conducting Audit and without verifying agreements with Auro Logistics Ltd and Trans India Shipping Services Pvt Ltd the Respondent gave clean audit report. Without verifying the genuineness of trade payables a clean audit report was given which shows gross negligence on his part. The independent auditor's report clearly establishes the fact that the figures stated as trade payable are far from truth. The Respondent as a statutory auditor of the Company failed to discharge his duties diligently and cause irreparable loss to the Complainant as a shareholder.

FINDINGS:

2. The Committee noted that both the Complainant and the Respondent were present on all the days of hearing when the case was heard i.e. 3rd July, 4th July and 29th July, 2019. The Complainant was also represented by a Counsel while the Respondent chose to argue the case himself.

3. The Complainant is holding 13.68% of the share capital of Sri Lakshmi Narasimha Mining Pvt. Ltd. [SLM]. The Respondent has conducted the statutory audit of SLM for the financial years 2007-08 to 2012-13. It is the charge of the Complainant that the Respondent while conducting the audit for the financial year 2011-12 and 12-13 failed to report material discrepancies in the financial statements of the company with regard to trade payables of two companies viz., Auro Logistics Ltd. [ALL] and Trans India Shipping Pvt. Ltd. [TISS].

4. The Respondent in his defense has relied upon various documents. A copy of the job work agreement between ALL and Mr. Chennakeshava Reddy and a sale agreement between Mr. Chennakeshava Reddy and TISS is placed before us by the Respondent. The job work agreement entrusts the work for removal of Iron Ore to ALL by Mr. Chennakeshava Reddy. Through the sale agreement, Mr. Chennakeshava Reddy has agreed to sell certain percentage of iron ore to TISS. It is important to note that Mr. Chennakeshava Reddy was the director in SLM, the company in respect to which the Complainant is before this Committee.

5. The Respondent submits that the Complainant is a part of shareholders group who approached the Company Law Board alleging oppression and mismanagement of SLM and disputing the amount due to ALL and TISS. The Respondent also submits that the Complainant was a whole time director of SLM and that he has been a signatory to the financial statement for each year upto 31.3.2013. The Respondent brings out this fact that the Complainant is alleging wrong entries in the financial statements to which he himself was a signatory.

6. The Complainant alleges that the trade payables in the books of SLM are fictitious entries and that the Respondent has not applied proper due diligence while auditing the accounts. The Respondent in his reply to this allegation submits that a scrutiny by the income tax department did actually take place and that the Complainant has communicated with the income tax department wherein he has confirmed that the said trade payables are towards actual expenses incurred. The Respondent brings out this fact that it is complainant who has written the letter confirming the trade payables to the concerned income tax officer. The said letter is dated 9.3.2015 for the entire period of accounts upto 2013. It is evident that the Complainant has signed this letter of confirmation of trade payables in the books of SLM. While on the one hand, the Complainant confirms the genuineness of the expenses by way of a letter to the income tax department he is here before the Disciplinary Committee alleging that the same are fictitious. The Committee sought a reply from the complainant for taking a double stand before the authorities. The Committee wanted to know from the Complainant whether he has informed the Income Tax Department about his wrong statement made before them and paid income tax for the expenses which are fictitious as has been claimed by him in the said complaint before the Committee. The Complainant was silent and had nothing to submit on this regard.

7. The respondent submits that the draft accounts are first placed before the Board of Directors and only after the Board has taken cognizance of the draft accounts, the same are sent to the statutory auditors. In the instant case, the Respondent points out that Mr. M.N. Pratap Reddy, brother of the Complainant prepared the draft accounts and sent the same to the Respondent. These draft accounts were not considered by the Board and hence the Respondent did not act on the same but the Respondent considered the draft accounts sent by SLM and finalized the same. The Period of accounts in question here is financial year 2013-14. The Respondents points out that the draft accounts sent by Mr. M.N. Pratap Reddy without approval of the Board reduced the liabilities knowing fully well

that the matter was subjudice and pending before different authorities. The Respondent having known this fact did not act on the draft accounts sent by Mr. Pratap Reddy. It is to be noted here that the Complainant prior to the year 2013-14 has approved the accounts which contain the outstanding. The Committee is convinced that the Complainant is taking different stand before different authorities on the accounts which have been actually approved and signed by him. The charge of the Complainant that the Respondent has failed to perform his duties diligently and failed to report a material mis-statement thus fails.

8. On the charge by the Complainant that the Respondent has failed to report that the company in question is not a going concern. The Committee finds that the company SLM has share capital, reserves and surplus which is positive. The Respondent also in the notes on accounts for the year ended 31st March, 2013 stated the following relating to going concern:-

“Based on the recent development in mining sector the underlying assumption of going concern was tested. On April 18, 2013 the Honourable Supreme Court directed the cancellation of 49 category ‘C’ mining leases in the state of Karnataka including the mining lease held by the company. However, the company filed a writ petition before the Honourable Supreme Court pleading that, the Central Empowered Committee (CEC) be directed to promote the Company to Category ‘B’. Based on this promotion the cancellation would stand revoked considering the merits of various discussions held with CEC and its finding with the appointed agencies the company is confident of future business prospects. On these grounds the fundamental assumption of ‘Going concern’ is valid”.

Based on the above averments and documents available on record and no other contrary evidence brought in by the Complainant to prove his charge, the Committee is of the view that the Respondent has rightly held that SLM is a going concern.

CONCLUSION:

In conclusion and in the considered view of the Committee, the Respondent is NOT GUILTY within the meaning of clauses (7) & (8) of Part I of the Second Schedule to the Chartered Accountants Act, 1949.

Sd/-

**(CA. ATUL KUMAR GUPTA)
PRESIDING OFFICER**

Sd/-

**(CA. AMARJIT CHOPRA)
GOVERNMENT NOMINEE**

Sd/-

**(CA. RAJENDRA KUMAR P)
MEMBER**

Sd/-

**(CA. CHANDRASEKHAR VASANT CHITALE)
MEMBER**

DATE : 10th February, 2020

PLACE : NEW DELHI