

CONFIDENTIAL

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

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

Findings 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-239/12-DD/10/2013/DC/448/2016]

In the matter of:

Shri Anuj Mittal

4, Crossgate, Lokhandwala Complex
Opp. Sanghvi Hospital, Andheri (West)

MUMBAI - 400 053.

.....Complainant

Versus

CA. Nareshkumar Jiwrajka (M.No.037144)

C-303, Orion, Vasant Galaxy
Bangur Nagar
Goregaon (West)

MUMBAI- 400 104.

.....Respondent

MEMBERS PRESENT:

CA. Atul Kumar Gupta, Presiding Officer

CA. Amarjit Chopra, (Government Nominee)

Shri Rajeev Kher, IAS Retd. (Govt. Nominee)

CA. Chandrasekhar Vasant Chitale, Member

DATE OF FINAL HEARING : 10.08.2019

PLACE OF FINAL HEARING : ICAI Tower, Mumbai

PARTIES PRESENT :

Complainant : **Not Present**
Respondent : **CA. Nareshkumar Jiwrajka**
Counsel for Respondent : **Shri S.G. Gokhale, Advocate**

Charges in Brief:-

1. The Committee noted that in the Prima-Facie Opinion formed by 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 is guilty under Clause (2) of Part IV of the First Schedule, Clause (11) of Part I of the First Schedule and Clause (1) of the Part I of the Second Schedule to the Chartered Accountants Act, 1949. The aforesaid Clause (2) of Part IV of the First Schedule states as under :-

“(2) in the opinion of the Council, brings disrepute to the profession or the Institute as a result of his action whether or not related to his professional work”

And Clause (11) of Part I of the First Schedule states as under:-

“(11) engages in any business or occupation other than the profession of chartered accountant unless permitted by the Council so to engage:

Provided that nothing contained herein shall disentitle a chartered accountant from being a director of a company (not being a managing director or a whole time director) unless he or any of his partners is interested in such company as an auditor;”

And Clause (1) of the Part I of the Second Schedule states as under:-

“(1) discloses information acquired in the course of his professional engagement to any person other than his client so engaging him, without the consent of his client or otherwise than as required by any law for the time being in force;”

2. The allegation in brief against the Respondent is that he has refused to provide NOC to newly appointed auditor on being removed from the auditorship of certain companies of the Complainant. Further, the Respondent has played a crucial role in the fraud committed by Mr. Randhir Jha, one of the then employees of certain group Company. The Respondent became ineligible to be the Statutory Auditor of the

Company of the Complainant after becoming Director of Mithila Dairy Private Limited as he became salaried employee of M/s Mithila Dairy Pvt. Ltd. with effect from 20.6.2011 as per communication of the ICAI without resigning from the Company. Further, the Respondent has disclosed all the information relating to the Complainant 'group of Companies to Mr. Randhir Jha.

Brief facts of the Proceedings:

3. On the day of hearing i.e. 10/08/2019, the Respondent appeared along with his counsel but there was nobody from the complainant side to corroborate the complaint and lead evidence related thereto. The matter was earlier adjourned on 21st July 2019 for the subject to receipt of documents from the Respondent. The Respondent was already on oath. Thereafter, the Committee asked the Respondent whether he wishes the charge to be read out or it can be taken as read. The Respondent stated before the Committee that he was aware of the charges made against him and same may be taken as read. On being asked to the Respondent whether he pleads guilty, he replied in negative. Thereafter, the Committee sought whether he wishes to proceed with his defence. Thereafter, the Respondent placed his defence. So, based on the documents available, the Committee continued the hearing.

Findings of the Committee

4. The Committee noted that there were two prima-facie charges, one was related to the Certificate of Practice viz-a-viz the employment. The committee noted that in the all the returns were duly filed by him and Form 26 AS (Tax Credit) submitted by the Respondent with all relevant letters was also submitted to the ICAI.
5. The Committee noted that related to the second charge of the fraud being committed by one of the employee of the Company wherein, the Respondent was appointed as auditor and there were two cases being filed on the two different employees of the Company named as Mita Text Export. The Respondent as an auditor was also being charge-sheeted in both the cases. In one of the cases, the Respondent was held not guilty by the respective authorities and in the second

case also there was no clear cut charge being made out neither in the complaint by the complainant nor in the charge-sheet as there was no adverse implication related to the role of the Respondent was present.

6. The Committee noted that with regard to holding directorship of the Company, the Respondent submitted that he had already obtained necessary permission from the ICAI in this respect. A letter dated 08.07.2011 (W-43 of PFO) of the ICAI, in which the ICAI informed to the Respondent that salaried employment as Director with effect from 20.06.2011 with Mithila Dairy Private Limited has been noted.
7. The Committee noted that with regard to next allegation the Respondent has disclosed all the information relating to the Complainant 'group of Companies to Mr. Randhir Jha. The Respondent in his submission placed on record that he was not an employee of the Company and also he never indulges in such type of practice.
8. The committee also noted that since in the absence of complainant on all the occasions of the hearing as the matter was earlier heard on 16/03/2017, 19/12/2019 , 09/05/2019 and 21/07/2019. No one appeared from the complainant side to corroborate or submit any further evidence in support of their complaint filed with the ICAI.

Conclusion

9. In view of the above facts and finding available on record the Committee is of the view that non presence of the Complainant on all the occasions and in absence of the any specific corroborative evidence available on record and perusal of various returns and Form 26AS on record with the intimation letter to ICAI afford rescue to the Respondent. The Committee has to extend benefit of doubt to the Respondent. Accordingly, in the considered opinion of the Committee, the Respondent held **NOT GUILTY** in terms under Clause (2) of Part IV of the First Schedule, Clause (11) of Part I of the First Schedule and Clause (1) of the Part I of the Second Schedule to the Chartered Accountants Act, 1949.

10. 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-
(SHRI RAJEEV KHER, IAS RETD.)
GOVERNMENT NOMINEE

-Sd-
(CA. CHANDRASEKHAR V. CHITALE)
MEMBER

DATE:10.02.2020
PLACE: NEW DELHI