

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

**File No. : [PR-222/14/DD/314/2014/DC794/2018]**

**In the matter of:**

**CA. KJD Srinivas (M.No.200487)**

49-24-52, Upstairs

Sankarmath Road,

Vishakapatnam

**ANDHRA PRADESH.**

....Complainant

**Versus**

**CA. N. Venkataraman (M. No. 019477)**

1-10-63/16 Chikoti Gardens,

Begumpet,

**HYDERABAD 500 016**

.....Respondent

**MEMBERS PRESENT:**

**CA. Atul Kumar Gupta, Presiding Officer**

**CA. Amarjit Chopra, Government Nominee**

**Shri Rajeev Kher, Government Nominee**

**CA. Rajendra Kumar P, Member**

**DATE OF FINAL HEARING : 26.12.2019**

**PLACE OF FINAL HEARING : ICAI Bhawan, Chennai**

**PARTIES PRESENT:**

**Complainant: Not Present**

**Respondent: CA. N. Venkataram**

**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 (5) and Clause (7) of Part I of the Second Schedule of Chartered Accountant Act 1949. The above Clause (5) of Part I of Second Schedule states as under :-

*“(5) fails to disclose a material fact known to him which is not disclosed in a financial statement, but disclosure of which is necessary in making such financial statement where he is concerned with that financial statement in a professional capacity;”*

And Clause (7) of Part I Second Schedule of Chartered Accountant Act 1949 which states that:-

*“(7) does not exercise due diligence, or is grossly negligent in the conduct of his professional duties;”*

2. In this matter, the Complainant has alleged that the Respondent who audited the financial statements for the 31<sup>st</sup> March, 2012 of M/s. Fleming Laboratories Limited had signed such financial statements without taking into account the balance of Rs.94,87,000 which was due to the Complainant who acted as a consultant of the said Company. The Complainant submits that an amount of Rs.94,87,000/- was reflected in the previous year's financial statements of 31.03.2011 has payable to him.

**Brief facts of the Proceedings:**

3. On the day of hearing, the Committee noted that Complainant was not present. The Complainant submitted a letter that he will not be able to attend the hearing and sought adjournment from the Committee. As the matter was earlier adjourned on 10-12-2019 at the request of Complainant, the Committee rejected his adjournment request and proceeded with the hearing as per the Chartered Accountants (Procedure of Investigations of Professional and other misconduct of cases) Rules, 2007. The

Respondent 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 directed him to proceed with his defence. After considering all papers available on record and pleadings, the Committee proceeded with the matter.

### **Findings of the Committee**

4. The Committee reviewed the financial statements for the years 31.03.2011 and 31.03.2012 respectively and found that the statements made by the Complainant regarding the removal of Rs.94,87,000/- is correct. The Respondent in his defence, draws to the attention of the Committee with the Memorandum of Understanding (MOU) entered between Fleming Laboratories Ltd and the Complainant annexed as 'Page 157 and 158' of the Prima-Facie Opinion.

5. The Respondent submits that it is only by way of MOU the said dues as claimed by the Complainant arose. By way of this MOU, the Complainant was treated as financial advisor to the said Company. The Respondent submits that the Complainant was retained his financial advisor and obtaining the Banking Finances to the tune of Rs.33 crores from various Banks. The clause wherein the Complainant's claims of the amount due to him is reproduced from **C-157** of the PFO.

*"The Client will pay a total amount of Rs.100 lakhs (consolidated amount) against the sanction to be obtained from the said Banks. This will be on the total value of the sanctioned amount which will be as follows"*

6. The Committee noted that the Complainant is not present before the Committee to pursue the matter and there is neither written representation from him nor his authorised representative appearing for him before the Committee. In these circumstances, based on the material available on record, and the defence submitted by the Respondent, the Committee is of the view that there is no merit in the charge of the Complainant. As the Respondent has submitted a letter issued by the Managing Director of the Company that the Complainant could not fulfil the terms and conditions as laid down in the MOU and also could not obtain the loan for the Company which was the basis of the remuneration payable to him. The Respondent however submits that the Complainant could not obtain any credit limit from any of the Banks or any of the Financial Institutions and hence the Company based on the following clauses of the

MOU recorded it fit to write back the liability in the year 31.03.2012 as per Para given on page 'C-158' states as under :-

*"In the event of Financial Advisor being unable to obtain the said sanction within the stipulated time mentioned above, he agrees to reimburse the entire amount of Rs.6.00 lakhs (received as advance from the client) within 30 days (thirty days) from the date of dissolution of this MOU.*

*This MOU will automatically dissolve by 31st March 2010 in the event of the non-sanction of the expected amount."*

### **Conclusion**

7. In view of the above findings, the Committee is of the view the Committee finds no merit in the complaint filed by the Complainant. Accordingly, in the considered opinion of the Committee, the Respondent is **NOT GUILTY** under under Clause (5) and Clause (7) of Part I of the Second Schedule of Chartered Accountant Act 1949.
8. Accordingly, in terms of Rule 19 (2) of the Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007, the Committee passes Order for closure of this case against the Respondent.

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

**Sd/-**  
**(SHRI RAJEEV KHER)**  
**GOVERNMENT NOMINEE**

**Sd/-**  
**(CA. AMARJIT CHOPRA)**  
**GOVERNMENT NOMINEE**

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

**DATE:10-02-2020**  
**PLACE: New Delhi**

