

CONFIDENTIAL

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

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

Findings cum Order under Rule 18(17) and 19(2) of the Chartered Accountants (Procedures of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007

Ref. No.PR- 214/2015-DD/205/2015/DC/722/2017

In the matter of:

**Shri Anand A. Kulkarni,
Ex – Director,
M/s Shivsagar Sugar & Agro Products Ltd.,
Indari Building, Plot No.14,
19th Class, Engineering College, Hoatal Road,
Vidyagiri,
Distt. Bagalkot – 587 102
Karnataka**

.....Complainant

-Vs.-

**CA. Nikhil Rameshkumar Laddha, (M.No.151873)
Office No.216, Paras Chamber,
Above Bank of India,
Near Laxminarayan Talkies,
Swargate,
Pune – 411 009**

.....Respondent

MEMBERS PRESENT:

**CA. Atul Kumar Gupta, Presiding Officer,
Shri Rajeev Kher, IAS (Retd.), Government Nominee
CA. Rajendra Kumar P, Member
CA. Chandrashekhar Vasant Chitale, Member**

DATE OF FINAL HEARING : 29.05.2019

PLACE OF FINAL HEARING : ICAI Tower, Bandra Kurla Complex, Mumbai

PARTIES PRESENT:

**Complainant : Shri Anand A. Kulkarni
Counsel for the Complainant : Shri Satyajit Karade, Advocate**

Respondent : **CA. Nikhil R. Laddha**
Counsel for the Respondent : **Shri S.G. Gokhale**

CHARGES IN BRIEF:-

1. The Committee noted that the Complainant was one of directors on the Board of Directors of Shri Shivasagar Sugar And Agro Products Ltd (hereinafter referred to as the “**Company**”). As per prima facie opinion of the Director (Discipline), the Respondent was held prima facie guilty in respect of the following charges only:-

i) The Respondent acted in connivance with other directors of the Company while certifying E-form 32 and he did not attach relevant evidence of cessation of Directors u/s 284 of the Companies Act with the said form.

ii) The Respondent has expressed his ignorance on the unlawful intention of the Directors, if any and also expressed his regret for the same.

iii) The Respondent affixed his official seal on the document pertaining to the alleged requisition dated 28.01.2014 u/s 169 of the Companies Act and alleged special notice dated 20.02.2014 u/s 190 of the Companies Act which were filed by Mr. Rajendra Patil, Managing Director with Registrar of Companies, Pune with the intention of making ROC to believe that the documents were true.

BRIEF OF THE DISCIPLINARY PROCEEDINGS:-

2. The Committee noted that both the Complainant and the Respondent were present along with their respective Counsel. The Complainant and the Respondent were administered oath. The Committee asked the Complainant to read out the charges levelled against the Respondent as per prima facie opinion of the Director (Discipline). The Complainant explained the charges and the Respondent pleaded not guilty to the said charges. The Counsel for the Respondent made his submissions on the charges and the Complainant also made his contentions to substantiate the charges. The Committee posed questions to the Complainant and the Respondent. Thereafter, the Counsel(s) for the Complainant and the Respondent made their final submissions. After hearing the final submissions, the Committee decided to conclude the hearing.

FINDINGS OF THE DISCIPLINARY COMMITTEE

3. The Committee observed that the crux of the charges is that the Respondent was negligent in certifying e-Form 32 in respect of removal of the Complainant and other directors of said Company and appointment of other persons as directors of the Company. Further, he affixed his official seal and signature on the documents pertaining to the requisition dated 28.01.2014 u/s 169 and special notice dated 20.02.2014 u/s 190 of the Companies Act, 1956 which is not a prudent act on his part as a professional as the same were giving an impression that the Respondent was vouching the true and correct position of the said documents.

4. As regard the charge relating to certification of Form 32, the Respondent in his defence stated that there was no any monetary involvement on his part, except the duty which was done by him being a Chartered Accountant. He personally scrutinized the documents which had been placed before him for filing the Form 32 before ROC. There was dispute between different group of directors and he was unnecessarily dragged into the matter. The Respondent brought on record copy of letter dated 11th March, 2014 relating to his appointment for certification of Form no. 32 on MCA portal.

5. In respect of above, the Complainant stated that the Respondent did not bring on record any proof to establish that Board meeting for considering requisition received under Section 169 of the Companies Act, 1956 and for considering special notice was ever convened. He further stated that there was no proof as to when the notice to the concerned directors giving them an opportunity of filing their representations to the Company was dispatched and when the notice of Extra Ordinary General Meeting for removal of Directors u/s 284 was issued.

6. The Committee observed that the Respondent had filed two e-Form 32 for removal and appointment of directors of the Company. In first e-Form 32, cessation of 6 directors including the Complainant and appointment of 3 directors was certified and in second e-Form 32, appointment of 5 directors with effect from 15.03.2014 was certified. It has been observed that the Respondent was held prima facie guilty only

because he could not produce on record copies of notices and proof of dispatch of the notices of the meetings.

7. The Committee noted that notice for calling of Extra Ordinary General Meeting u/s 284 of the Companies Act, 1956 dated 28th January, 2014 for removal of 5 directors and appointment of 3 persons as directors of the Company and special notice dated 20th February, 2014 for appointment of 5 directors were brought on record by the Respondent. It is also noted that copy of the Resolutions passed in the Board meeting held on 15.03.2014 for appointment and removal of directors and minutes of Extra Ordinary General Meeting held on 15.03.2014 were also brought on record by the Respondent.

8. To support the submissions that notices of meetings and notice for calling representations from the Complainant and other directors were dispatched by the Company, the Respondent submitted copy of courier receipt of dispatch of notices of Board meeting along with the copy of courier receipt for delivery of Special Notice of intention under the provisions of Section 190 of the Companies Act, 1956 to the Complainant and other directors and shareholders. In addition to above, on perusal of copy of Affidavit of one of the Ex- Directors, who was removed with the Complainant, it is noted that the same also states that notice calling upon the Complainant and other directors to give their representation was serviced by the Company. Further, copy of Affidavits from some shareholders with regard to receipt of notice of EOGM held on 15.03.2014 confirms dispatch of notices by the Company.

9. In respect of above, the Complainant contended that the Respondent brought on record receipt of Courier to evidence the dispatch of notices to the Complainant, other Directors along with other shareholders but delivery receipts of the courier are not counter signed by any recipient of the notices. Further, instructions for filing of e-Form 32 issued by MCA in case of cessation makes mandatory to attach the supporting evidence in section of 'Evidence in cessation'.

9.1 On being enquired as to who was responsible for sending notice of the meeting(s), the Complainant agreed on the fact that the Company Secretary of the Company was responsible for the same. The Complainant also stated that there are around 48000 shareholders in the Company.

10. After going through all the documents and submissions on record, it is observed that while certifying e-Form 32, the Respondent was supposed to see whether Board Resolutions regarding removal and appointment of directors is available or not and whether due process of various aspects related to the Companies Act has been followed or not. The document which was required to be attached along with e-Form 32 regarding evidence of cessations was attached in the form of Board Resolutions. Since the final evidence of cessations was board resolutions, the Committee without going into the aspect related to service of notices to directors, attending the meeting by the directors and merit of the meetings, is of the view that the ultimate requirement for filing e-Form 32 was to see availability of proper board resolution regarding cessation of directors which was seen by the Respondent with limited purpose of certifying the said e- Form 32. Hence, In view of the fact that the Respondent brought on record sufficient documentary evidence to establish that he has seen necessary documents which were required to be examined to certify the e-Form 32, the Committee decided to hold the Respondent is not guilty with respect to the charge relating to certification of e-Form 32.

11. In respect of charge relating to affixing the official seal on the requisition dated 28.01.2014 and special notice dated 20.02.2014, it is observed that the said documents were bearing the seal of the Respondent along with his membership number. The Respondent stated that the purpose of affixing seal on the documents was solely to ensure that documents should not be tampered with at a later date. The Respondent also contended that by affixing the seal he did not vouch the act of the Directors/members and he is not aware that the documents were used for such purposes. It is observed that there was nothing on record to show that the Respondent certified the authenticity of the notices and requisitions or act of the directors by affixing the seal on the same. Hence, the Committee is of the view that the submissions made by the Respondent appears to acceptable and there does not appear any malafide intention on the part of the Respondent. Accordingly, the Committee decided to hold the Respondent is not guilty with respect to this charge also.

CONCLUSION

12. Thus, taking an overall view of the facts and circumstances of the case and law and based on the submissions / documents placed on record before it, in the considered opinion of the Committee, the Respondent is **NOT GUILTY** of Professional Misconduct falling within the meaning of Clause (7) of Part I of Second Schedule to the Chartered Accountant Act, 1949.
- 12.1. 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/-
(SHRI RAJEEV KHER, IAS (Retd.))
GOVERNMENT NOMINEE

Sd/-
(CA. RAJENDRA KUMAR P)
MEMBER

Sd/-
(CA. CHANDRASEKHAR VASANT CHITALE)
MEMBER

DATE: 10.02.2020
PLACE:NEW DELHI