

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/01/2017/DD/20/2017/DC/1025/2019]

In the matter of:

**Shri Ramesh Chand Garg
2, Jain Nagar,
Opposite Hotel Sapphire
JAGADHRI -135 003**

....Complainant

Versus

**CA. Vineet Goyal (M. No. 411502)
152, First Floor,
Sher Singh Palace,
Near Gandhi Nagar, Model Town
GHAZIABAD - 201 001**

.....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 FINAL HEARING : 16.12.2019

PLACE OF FINAL HEARING : ICAI Bhawan, Delhi

PARTIES PRESENT:

**Respondent : CA. Vineet Goyal
Counsel for Respondent : CA. C.V. Sajan**

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

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

2. The Complainant in this case is a senior citizen. He along with his two sons Shri Ashwani Kumar Garg and Sanjay Kumar Garg were partners in their respective HUF capacity in a firm by name Mahashakti Wood Products. In substance, father HUF and his two sons in HUF capacities respectively were partners in a business. The Complainant has charged that the Respondent CA Vineet Goyal has audited the financial statements for the financial year 2014-15 and has failed to carry out necessary checks which are required for the purposes of the said audit.

Brief facts of the Proceedings:

3. On the day of hearing i.e. 16/12/2019, the Committee noted that the Respondent along-with Counsel were present and appeared before it.

The office apprised the Committee that the Complainant vide mail dated 13/12/2019 has stated that he has submitted all the documents related to this case and the Committee may go on its own and decide this case.

The Committee noted the above submission of the Complainant and the Respondent was put on oath. The office explained the charges. On being asked by the Committee, the Respondent pleaded not guilty and wished to defend the charges.

The Counsel for the Respondent made submissions. After recording the submissions of the parties, the Committee concluded the hearing in the captioned matter.

Findings of the Committee

4. The attention of the Committee is drawn to 'page D-4 of the PFO'. In the said page D-4, the Committee finds the copy of the Partnership Deed dated 1st April, 2009. The said

Partnership Deed is of the firm Mahashakti Wood Products and the partners are: 1. Ramesh Chand Garg (HUF) 2. Ashwani Kumar Garg (HUF) and 3. Sanjeev Garg (HUF). The 'Clause 6' of the said Deed contains the following with respect to the Profits Sharing Ratio of the said firm "*that the net profits or losses of the partnership business after providing interests to the partners shall be divided amongst the partners in equal ratio*".

5. The Complainant also draws our attention to Partnership Deed dated 1st April 2014 of the same firm Mahashakti Woods Products wherein the following are the partners. 1. Ashwani Kumar Garg (HUF) 2. Sanjeev Kumar Garg (HUF) 3. Harshit Garg in his individual capacity. Clause 6 of the said Deed contains the Profit Sharing Ratio among the partners which is Ashwani Kumar Garg (HUF) 40%, Sanjeev Kumar Garg (HUF) 50%, Harshit Garg 10%.
6. It is found that the Complainant is no longer a partner on and with effect from 1st April 2014 and it is this change because of which the dispute is before the Committee. This is a dispute between a father, his two sons and also a grandson and a classic case of relationship in the modern times. However, it is the conduct of the member of the ICAI which takes precedence. In this matter, the member of ICAI, the Respondent has been charged of not exercising due diligence and being negligent in the performance of his professional duties as Statutory Auditor of the firm. The Respondent has carried out the audit of the said firm and the same is not in dispute. The Complainant's charge here is that the Respondent has not asked his signatures nor has he taken any steps to verify the correctness of the new Partnership Deed which was entered on 1st April 2014. The Complainant has also charged the Respondent with ignorance, carelessness and involvement in forgery as he has been removed from the partnership without his knowledge and consent and that his signature has been forged.
7. The Committee questioned the Respondent whether he has witnessed any of the signatures at any point of time or whether he was a witness to the Retirement Deed. The Respondent submits that he was never a party to the preparation of the Retirement Deed nor has he witnessed any of the signatures at any point of time and there was no mens-rea which would give rise to a suspicion regarding the genuineness of the Partnership Deed dated 1st April 2014.
8. The Complainant charges that the Respondent should have noticed the forgery and should have replied to the registered letters sent by him requesting the copies of all

audited statements certified by him. The Committee notes that this is not the job of a Chartered Accountant and more so a Statutory Auditor of a firm. In this matter, the Respondent has performed his duties as a Statutory Auditor and relied on documents placed before him for the purposes of forming an opinion. An auditor conducts an audit and is not expected to conduct an investigation unless suspicion warrants. The Complainant has not brought on record any evidence to prove his charge that the Respondent was fully aware of the forgery and removal of the Complainant through illegal means while he was performing the duties cast on him by the statute. In matters like this Chartered Accountants become easy targets and the Committee would like to record that such actions undermine the spirit of Disciplinary Mechanism of the Institute of Chartered Accountants of India. Family disputes and more so dispute between father and his children cannot be settled through the provisions contained in the ICAI Disciplinary Mechanism unless the professional has committed any mistake in his professional capacity.

Conclusion

9. 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 Clause (6) and Clause (7) of Part I of the Second Schedule of Chartered Accountant Act 1949.

10. **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/-
(CA. AMARJIT CHOPRA)
GOVERNMENT NOMINEE

Sd/-
(CA. RAJENDRA KUMAR P)
MEMBER

Sd/-
(CA. CHANDRASHEKHAR VASANT CHITALE)
MEMBER

DATE: 10-02-2020
PLACE: NEW DELHI