

**CONFIDENTIAL**

**DISCIPLINARY COMMITTEE [BENCH-III (2018-19)]**

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

**Findings under Rule 18(17) read with 19(2) of the Chartered Accountants  
(Procedure of Investigations of Professional and Other Misconduct and Conduct  
of Cases) Rules, 2007**

**File no. : [PR-105/2014-DD/163/14/DC/720/2017]**

**In the matter of :**

**Sh. Sanjay Kumar Gupta  
Deputy Director  
Ministry of Corporate Affairs  
'A' Wing, 5<sup>th</sup> Floor  
Shastri Bhawan  
NEW DELHI – 110 001**

**.....Complainant**

**Versus**

**CA. Sandip Kumar Agarwal (M. No. 052093)  
18, Raja Basanta Roy Road  
KOLKATA-700 013**

**.....Respondent**

**Members Present:**

**CA. Naveen N. D. Gupta, Presiding Officer  
Smt. Anita Kapur, IRS (Retd.) Member (Govt. Nominee)  
CA. Shyam Lal Agarwal, Member**

**Date of Final Hearing: 30<sup>th</sup> November, 2018**

**Place of Final Hearing: Kolkata**

**Parties Present:**

- (i) Smt. Ishani J. Pandya, Asstt., ROC, W.B – Complainant's Representative  
(ii) CA. Sandip Kumar Agrawal – Respondent**

**Allegations of the Complainant:**

1. The Complainant Department has cited following allegations against the Respondent :-
  - a. The Company had passed a special resolution in its EOGM held on 05.03.2007 for shifting its registered office from NCT of Delhi to Kolkata, West Bengal. The said resolution was filed with ROC office on 16.01.2009 vide e-form 23 without obtaining confirmation from the Central Government, which was in non-compliance with the requirements of Section 17(1) of the Companies Act, 1956.
  - b. Compliance Certificate filed by the Company Secretary provided wrong information in its paragraphs 7, 17 & 26 issued on 19.11.2007 for Financial Year 2006-07.
  - c. E-form 20B (Annual Returns) of Financial Years 2010-11 and 2011-12 (W-51), (W-60) certified by the Respondent states about the Registered Office of the Company to be situated at Kolkata, whereas its e-form 23 [referred in para 1(a) above] was still then under consideration of competent authorities for seeking approval of ROC to shift the registered office. Therefore, the Respondent had certified e Form 20B knowing it to be false.

**Proceedings:**

2. At the time of hearing on 26<sup>th</sup> July 2018, the Committee noted that the representative of Complainant department and the Respondent were present in person to appear before it. The Respondent was put on oath. Thereafter, the Committee asked the Respondent whether he wished the charges to be read out or these could be taken as read. The Respondent stated before the Committee that he was aware of the allegations raised against him and the same may be taken as read. On being asked, as to whether he pleaded guilty, he replied that he did not plead guilty and would defend his case.

3. Thereafter, the Respondent was examined by the Committee on the submissions made by him. Based on the documents available on record and after considering the



oral and written submissions made by the Respondent before it, the Committee considered the matter.

4. At the time of last hearing on 30th November 2018, the Committee noted that the Complainant department's representative and the Respondent were present to appear before the Committee. The Committee thereafter informed the Respondent that since the composition of the Committee had undergone a change, an option of de-novo hearing in the matter was available to the Respondent. The Respondent stated that since he had submitted his oral as well as written defense when matter was heard last time, the case may be proceeded from the stage where it was left. The Committee agreed to the same and thereafter, considering the documents available on record, the oral and written submissions made by the Respondent, the Committee concluded the hearing in the matter.

**Findings of the Committee:**

5. On perusal of papers on record, the Committee noted that in respect of first allegation relating to E-form-23, the Respondent submitted that against the petitions filed by the Company under section 17(2) of the Companies Act, 1956 before various authorities during Nov-Dec 2007 (**W-8 to W-10**), a letter dated 05.01.2009 was received from Deputy Registrar of Companies, NCT of Delhi & Haryana (**W-12**) asking the Company, to file e-Form 61 along with petition under Section 17 of the said Act as well as e-form 23 within 10 day time failing which, the original applications filed u/s 17(2) would be treated as closed. It was argued by the Respondent that in the aforesaid captioned letter, nowhere, it was mentioned that the said filing of the alleged e-form 23 was subject to prior approval of the Central Government. He further submitted that the Company was left with no other option, than to make a hasty compliance of the aforesaid instructions.

6. The Committee noted that the said E-form dated 16.01.2009 was submitted on 17.01.2009. The allegation of the Complainant Department is that the Respondent had not checked the approval for Central Government. In this regard, it is seen from the submissions of the Respondent that as per letter dated 05.01.2009 of Dy. ROC, NCT

of Delhi and Haryana there was constraint of time of submission of E-form 23 and nowhere it was mentioned to seek prior approval of the Central Government before submitting said e-Form. Looking into the facts, the Committee was of considered view that said E-form was submitted on the instructions Dy. ROC, NCT of Delhi and Haryana in pursuance of application for change of address. In other words, it was being submitted on the guidance of the Central Government authority itself, hence, in the absence of any clarification from such authority and given the time restriction, the Respondent could take a reasonable view that separate confirmation from Central Government was not required. Accordingly, the Committee as regard this charge holds that the Respondent is not guilty of professional misconduct falling within the meaning of Clause (7) of Part I of the Second Schedule to the Chartered Accountants Act, 1949.

7. In respect of next charge related to providing of wrong information in paragraph 7, 17 & 26 of Compliance Certificate issued on 19.11.2007 for Financial Year 2006-07, it is noted that as per Director (Discipline) the said certificate was issued by the Company Secretary (C-15); hence the Respondent could not be held liable for the same. Accordingly the Committee noted that said charge was not held against the Respondent in prima-facie opinion itself. So it was not considered at the time of hearing.

8. In respect of last charge relating to E-form-20B, the Respondent submitted that there was clerical error and oversight committed while manually feeding the address in the alleged e-Forms 20B by the trainee(s) and /or assistant(s) of the Company which did not affect any person and/or public at large. The Committee noted that the annual return filed as attachment to said form bore the address of Registered Office of the Company as that of Delhi Office. Further, it noted that the Respondent had also produced other documents/ correspondence with the Complainant's Office on different dates wherein the registered office of the Company was that of its Delhi Office. Based on the facts and evidence, it is viewed by the Committee that it was an unintentional error and not a gross negligence. Accordingly, the Committee holds that the Respondent is not guilty of professional misconduct falling within the meaning of Clause (7) of Part I of the Second Schedule to the Chartered Accountants Act, 1949.

**Conclusion:**

9. Thus, in conclusion, in the opinion of the Committee, the Respondent is **NOT GUILTY** of Professional Misconduct falling within the meaning of Clause (7) of Part I of the Second Schedule to the Chartered Accountants Act, 1949.

10. The Committee accordingly passes Order for closure of this case against the Respondent.

Sd/-  
[CA. Naveen N.D. Gupta]  
Presiding Officer

Sd/-  
[Smt. Anita Kapur]  
Member (Govt. Nominee)

Sd/-  
(CA. Shyam Lal Agarwal)  
Member

Certified Copy

  
**SHASHI MAHAJAN**  
Deputy Secretary  
Disciplinary Directorate  
The Institute of Chartered Accountants of India  
ICAI Bhawan, I.P. Marg, New Delhi-110 002

Date : 11<sup>th</sup> January, 2019

Place : New Delhi

