

CONFIDENTIAL

ORDER SHEET

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. : PPR/P/40/15/DD/97/INF/15/DC/684/2017

In the matter of :

CA. Mahendra Kumar Dubish (M.No.084607)

D-88, Sector 30,
Gautam Budh Nagar,
NOIDA- 201 301

.....Respondent

Members Present:

Shri Naveen N.D. Gupta, Presiding Officer

Smt. Anita Kapur, Member (Govt. Nominee)

CA. Sanjay Kumar Agarwal, Member

CA. Shyam Lal Agarwal, Member

Date of Final Hearing: 4th December, 2018

Place of Final Hearing: New Delhi

Parties Present:

CA. Mahendra Kumar Dubish- Respondent

Shri K.C. Kaushik - Counsel for Respondent



Allegations of the Informant:

1. The Respondent was the statutory auditor of M/s Sai Geotechnical Engineers Private Limited (hereinafter referred to as the “Company”) for A.Y.2012-13. In the Instant case, the Informant has leveled following charges against the Respondent:-
 - a) The report had not been signed by the Directors of the Company.
 - b) As per balance sheet as on 31/03/2012, all figures had been shown as at 31/03/2010 & 31/03/2011.

Proceedings:

2. At the time of hearing on 21st May, 2018, the Committee noted that the Respondent along with his counsel was present before the Committee. Since the Respondent was not present on previous hearing, he 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 opt to defend his case. Thereafter, the Respondent made his submissions in the matter before the Committee. 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 concluded the hearing in the matter and the judgment was reserved with an instruction to the Respondent to submit his further Written Statement to defend his case.
3. At the time of last hearing held on 12th November 2018, the Committee noted that the documents/information as sought from the Respondent had been received and the Counsel for the Respondent was present to appear before the Committee. The Committee thereafter informed the Counsel that the composition of the Committee had undergone a change, and, therefore an option of de-novo hearing in the matter was available to him. The Counsel stated that since substantial defence both in writing and orally had been submitted by him at the previous hearing, the hearing in the matter may be proceeded from the stage where it was left. The Committee agreed to the same and thereafter, based on 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:

4. The Committee noted that the first charge alleged against the Respondent was that the financial statements filed along with the Income Tax returns and Tax audit report for the Assessment Year 2012-13 of the Company had been signed only by the Auditor i.e. the Respondent and not by the Directors of the Company. It was noted that the Balance Sheet as on 31st March, 2012 along with schedule of Share Capital and Computation of Depreciation Chart had been duly signed by the Respondent whereas the same were not signed by the Directors of the Company. In terms of the provisions of sub-section (3) of Section 215 of the Companies Act, 1956, the balance sheet and profit and loss account are required to be approved and signed by the Board of Directors of the Company before they are submitted to the auditors. However, in the extant case, it is noted that none of the directors had signed the given documents.

5. The Respondent had stated that during the assessment proceedings, the Directors of the company were out of station and the Balance sheet, Profit & Loss Account of the Company were submitted to the Income Tax Department to examine the facts after attesting by the Respondent. Later on, duly signed Balance Sheet, Profit & Loss Account and other documents attested by the Directors were also submitted to the office of the Dy. CIT Office. Further, the Respondent had contended that section 215 of the Companies Act, 1956 provides that the directors shall approve the accounts before they are submitted to the auditors for their report thereon. In the extant case, the balance sheet of the Company for F.Y. 2011-12 was duly signed on 01.09.2012 by the directors of the Company and the Auditors and the same was duly filed with ROC on 18.12.2012 in Form No. 23AC and 23ACA on MCA portal. Thus, it was further contended by the Respondent that in the extant case the issue was not regarding non compliance of the provisions of section 215 of the Companies Act, 1956. His submission was that as the case of the Company was pending in the assessment proceedings before the DCIT-Circle-3/Noida, and the Directors of the Company were out of station for long duration, and, therefore, the Balance Sheet, P& L Account of the company were submitted to the informant to examine the facts by attesting only by the Respondent.

6. The Committee in this regard noted that the Respondent had submitted copy of Balance sheet and P&L Account that were submitted to the Income Tax Department during the assessment proceedings vide a reply letter dated 20th February, 2015. On perusal of the



same, it is further noted that on those copies 'sd' was marked, for the signatures by the directors of the Company. It is noted that the Informant had also attached a schedule of share capital (A-5) which was not submitted by the Respondent along with his submission of letter dated 20th February, 2015. The schedule of share capital as mentioned above is having the details of authorized and issued share capital of the company. Upon perusal of the same, it is noted by the Committee that the amount of authorized and issued share capital is same for both the FY 2011 & 2012. However the Balance sheet submitted by the Respondent shows that the share capital of the company has been increased from Rs. 1 Lacs to Rs 2 Lacs from the FY 2011 to 2012 respectively. Apart from this there is no change in the numbers as submitted with the Income Tax Department with that of the original financials. As the Company involved in question is a private limited company and the stake involved here is not of general public the Committee is of the view that the aforementioned error on the part of the Respondent did not have a major impact on the financials of the Company, though it was suggestive of the careless attitude of the Respondent.


7. It was noted that the next charge against the Respondent is that in the balance sheet as on 31.12.2012 the current year's figures have been shown as at 31.03.2011 instead of 31.03.2012 and previous year's figures have been shown as at 31.03.2010 instead of 31.03.2011. The Respondent in his submissions has stated that the same was a typographical error due to inadvertence and last minute rush. Further, the Respondent has admitted his mistake and later on submitted the documents with correct figures with the Income Tax Department. The Respondent during the hearing proceedings submitted that the figures were copied and pasted from last year's figures, however, there was no difference in the figures of balance sheet. Furthermore, the mistake was only in the annexures and not even a single figure had been changed.
8. The Committee, in this regard, has noted that the error regarding mentioning of incorrect year in the financial statements as submitted before the Income Tax Department during hearing proceedings, is apparently because of rush of meeting the deadlines. The Committee is of the view that there is no malafide intention of the Respondent behind the same. As there was no change in the numbers for both the years and merely there was a typographical error in the year mentioned on the top in the tabular representation, it is viewed that the Respondent is not guilty for professional misconduct in this regard. However it is expected from a professional of such a repute to be more careful and vigilant in performing his professional assignment with more alertness in future.



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. It is to be further noted that although the Respondent herein, has been held **NOT GUILTY**, an advisory is being issued to him to be more alert and careful while dealing with the matters in his future assignments.

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

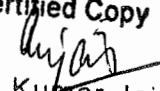

Sd/-
Shri Naveen N.D. Gupta
(Presiding Officer)

Sd/-
CA. Sanjay Kumar Agarwal
Member

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

Sd/-
CA. Shyam Lal Agarwal
Member

Date: 11th January, 2019
Place: New Delhi

Certified Copy

Ajay Kumar Jain
Deputy Secretary
Disciplinary Directorate
The Institute of Chartered Accountants of India
ICAI Bhawan, I.P. Marg, New Delhi-110 002