

CONFIDENTIAL

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

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

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

File No. : PPR/P/366/14/DD/16/15/DC/665/2017

In the matter of :

**Shri Sanjay Kumar Gupta
Deputy Director
Ministry of Corporate Affairs
'A' wing, 5th Floor,
Shashtri Bhawan,
New Delhi-110001**

.....Complainant

Versus

**CA. Ravindra Kumar Agarwal (M. No. 072549)
Anand Ashram Complex
Rampur Garden
BAREILLY – 243001**

..... Respondent

Members Present:

**CA. Naveen N.D. Gupta, Presiding Officer
Smt. Anita Kapur, Govt. Nominee,
CA. Shyam Lal Agarwal, Member
CA. Sanjay Kumar Agarwal, Member**

Date of Final Hearing: 4th December 2018

Place of Final Hearing: New Delhi

Parties Present:

CA C.V. Sajan - Counsel for the Respondent



Allegations of the MCA:

Shri Sanjay Kumar Gupta, Deputy Director, Ministry of Corporate Affairs, New Delhi (hereinafter referred to as the "Complainant") had filed complaint in Form 'I' dated 19th December, 2014 against CA. Ravindra Kumar Agarwal (M. No. 072549), Bareilly (hereinafter referred to as the "Respondent"). The Complainant in his complaint has alleged that the Respondent had certified Form 32 relating to appointment of new Directors which was digitally signed by the Director, Mr. Udit Agarwal on 4th November 2011 who was not holding such authority at the time of signing of the said e-form as he had already resigned on 15th July 2011. Accordingly, it was alleged that the Respondent failed to exercise due diligence in certification of the said e- form.

Proceedings:

2. At the time of hearing on 20th July 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 if the charges 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 be taken as read. On being asked, as to whether he pleaded guilty, he did not plead guilty and opted to defend his case. Thereafter, the Respondent made his submission in the matter before the Committee. The Respondent was examined by the Committee on the submissions made by him. Therefore, the Respondent was asked to submit his further Written Statement to defend his case.

3. At the time of last hearing held on 4th December 2018, the Committee noted that the Counsel for Respondent was present. The Committee noted that the documents/information as sought from the Respondent were received on record. The Committee informed the Counsel for 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 him. The Counsel stated that since substantial defense both in writing and orally had been submitted by him at the previous hearing, the hearing in the matter be proceeded from the stage where it was left. The Committee agreed to the same and based on the documents available on record, the oral and written submissions made by the Respondent, concluded the hearing in the matter.



Findings of the Committee:

4. The Committee noted that the charge alleged against the Respondent was that he had digitally certified three Forms 32 as under:

S.No	Purpose	Name of Director	Date of Appointment	Date of Cessation	Date of Filing FORM (as per SRN)
1	Appointment of Directors (C-40 to C-45)	Suneet Arora	10.07.2011	--	04.11.2011
		Vivek Saxena	10.07.2011	--	04.11.2011
		Anupam Agarwal	10.07.2011	--	04.11.2011
		Amandeep Singh	10.07.2011	--	04.11.2011
2	Cessation of Directors (C-46 to C-51)	Udit Agarwal	--	15.07.2011	16.11.2011
		Rachit Aggarwal	--	15.07.2011	16.11.2011
3	Cessation of Director (C-52 to C-56)	Amandeep Singh	--	30.07.2011	26.11.2011

Out of the above e-forms, the Respondent had certified e-Form 32 for appointment of the new Directors namely Shri Suneet Arora , Shri Vivek Saxena , Shri Amandeep Singh and Shri Anupam Agarwal which were digitally signed by the Director, Shri Udit Agarwal .It was noted that the said Director , Shri Udit Agarwal was not holding any such authority at the time of signing of said e-form on 04.11.2011 as he had already resigned w.e.f. 15.07.2011 and the Respondent was aware of such fact. Accordingly, it was alleged that he had failed to exercise due diligence in carrying out the said certification work.

5. The Respondent in this regard submitted that till 4.11.2011, there was no material available before him which could have made him aware that Shri Udit Agarwal had resigned. Further, he argued that in case of mass resignation, the Company was not in a position to discharge the legal obligation of filing Form 32 relating to appointment of

Directors if he had not signed Form 32. There was no mechanism with MCA to accept the appointment of new Directors in case all the old Directors resigned from the Directorship. This defect of mechanism was subsequently recognized by MCA vide Circular No. 03/295, F.No. 21/272/2014, dated 03.03.2015 whereby a temporary remedy in this regard was put in place and confirmed the practice adopted by the Companies in case of resignation of the Directors.

6. The Committee noted that the said Form 32 was filed by the Company and certified by the Respondent to comply with the law as it was not possible for any newly appointed Directors to sign said Form 32 in respect of their own appointment. It was need of the hour to get the signatures of out going director of the Company on the said Form. The Committee noted the pre-requisite for digital signature of e-form32 which states as under:

To be digitally signed by Managing Director or Director or Manager or Secretary of the Company (in case of an existing Company, person signing the Form should be different from the person in whose respect the Form is being filed)”(emphasis supplied)


7. Accordingly, the Form was required to be signed by any director other than the four newly appointed Directors. Accordingly, said Form 32 could be only be signed by Mr. Udit Agarwal or by Mr. Rachit Agarwal who were the Directors of the Company as on 10.07.2011. i.e. the date of appointment of new Directors. Both of them resigned on the same date i.e. 15.07.2011 Hence, Mr. Udit Agarwal was authorized by the Board on 10.07.2011 to digitally sign Form 32 for newly appointed Directors. Such decision was taken when both outgoing and incoming Directors were present in the meeting. The Committee thus noted that the contentious filing of form was a procedural aspect of a legally valid appointment carried out on 10.07.2011 in the Company. The Committee also noted that the Directors had filed a joint affidavit in this regard with ROC, Kanpur to the effect that there was no dispute in the management or affairs of the Company regarding the same. Further, the contents of the Form 32, so submitted were also true and correct, so there was no malafide intention in such certification.



Conclusion:

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

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

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

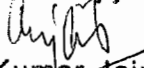
Sd/-
Smt. Anita Kapur
Member (Govt. Nominee)

Sd/-
Shri Shyam Lal Agarwal
Member

Sd/-
CA. Sanjay Kumar Agarwal
Member

Date: 29th 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