

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/11/W/13/DD/33/W/INF/13-DC/540/2017]

In the matter of :

CA. Ujal S Mehta (M.No.112337)
25, Second Floor, Avani Complex
Behind Navrangpura Police Station
Navrangpura
Ahmedabad - 380 009

----- Respondent

Members Present:

CA. Naveen N.D. Gupta, Presiding Officer
Shri Ajay Mittal, Member (Govt. Nominee)
Smt. Anita Kapur, Member (Govt. Nominee)
CA. Shyam Lal Agarwal, Member

Date of Final Hearing : 20th November, 2018

Place of Final Hearing: Mumbai

Parties Present

Respondent : CA. Ujal S Mehta
Counsel for the Respondent : Shri Dipak R. Shah, Advocate

Allegations of the Informant, Shri S. N. Mishra, Registrar of Companies, Gujarat:

1. The Respondent was the auditor of the Company M/s. Dandi Salt Pvt Ltd.(hereinafter referred to as the "**Company**") for the period 2002-03 to 2006-07. In June 2005, it was reported that the share transfer had taken place in an auction initiated by the Office of the Tax Recovery Officer that resulted into ceasing of shareholding of existing Promoters/Directors Mr. Suresh Chandra Aggarwal and Smt. Anju Aggarwal. Accordingly, as per the Informant, they were not eligible to sign the Financial



Statements of the Company as required under section 215 of the Companies Act, 1956. However, it was noticed that the Financial Statements (C-10, C-19) for the Financial Year 2005-2006 and 2006-2007 had been signed by Mr. Suresh Chandra Aggarwal and Smt. Anju Aggarwal.

The Informant had, thus, alleged that the Respondent had not exercised due diligence as to how and in what capacity Mr. Suresh Chandra Aggarwal and Smt. Anju Aggarwal had signed the Financial Statements despite the fact that their shareholding was transferred to others and their directorship had ceased.

Proceedings

2. At the time of hearing on 25th April 2018, the Committee noted that the Respondent along with his Counsel were present in person to appear before the Committee. 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 opt to defend his case.

3. At the initiation of the proceedings, the Counsel for the Respondent submitted copies of his written submissions. Thereafter, the Counsel for the Respondent made his oral submission before the Committee. The Respondent was examined by the Committee on the submissions made by him. The Committee thereafter directed him to submit his further written submissions in next 7 days from the date of hearing.

4. At the last hearing held on 20th November 2018, the Committee noted that the Respondent was present and the documents/information as sought from the Respondent during previous hearing were received on record. 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 him. The Respondent 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



based on the documents available on record, the oral and written submissions made by the Respondent, the Committee proceeded ahead with the hearing. The Counsel for the Respondent made his final submissions. Thereafter, the Committee examined the Respondent. After submissions made by the Counsel for Respondent, the Committee further directed the Respondent to submit the following documents:

- (a) Certified copy of all documents specifically Form-32 that the Company had filed with Registrar of Companies for Financial Years 2005-06 and 2006-07
- (b) The Inspection report of an independent Company Secretary to be appointed by the Respondent for searching the documents filed by the Company with Registrar of Companies in relation to the same.

Accordingly, based on documents available on record and after considering the oral and written submissions made by the Respondent and his Counsel, the hearing in the matter was concluded.

Findings of the Committee:

5. The Committee noted that allegation against the Respondent in the instant case was that he had not exercised due diligence as he had failed to notice the change in directorship when shareholding of Mr. Suresh Chandra Aggarwal and Smt. Anju Aggarwal, Promoters/Directors was transferred to others and their directorship had accordingly ceased and still the Financial Statement of 2005-06 and 2006-07 certified by the Respondent were signed by them.

6. The Respondent in this regard submitted before the Committee orally and in various Written statements admitted to have signed the balance sheet and profit and loss account of the Company for the FY 2005-06 and 2006-07 and claimed that the fact that shares were transferred in June 2005 due to which shareholdings of the then existing promoters/directors, Shri Suresh Chandra Agrawal and Smt. Anju Agrawal had ceased to exist, was not known to him. On the date of signing the Balance Sheet for the Financial Years 2005-06 and 2006-07, the copy of Annual Return then available was only for the year 2004-05 for verification (public inspection) in which the said two persons were shown as Directors. He had verified the minute books and all other secretarial records including share transfer register produced before him for verification.



In the said records, nothing was mentioned regarding transfer / auction of shares of director/promoters by the Income Tax Department.

7. In this regard, the Committee noted that the Form no. 32 (D-2 and D-3) which showed changes in the Directorship, and consequently the previous Directors viz, Shri Suresh Chandra Aggarwal and Smt. Anju Aggarwal being removed from their position of Directors by the Shareholders at the Extra-Ordinary General Meeting under Section 284 of the Companies Act, 1956 was uploaded on ROC Website as on 11th October 2006. It was noted that the Respondent had signed the Financial Statements of the Company for the Financial Year 2005-2006 on 30th September 2006 and that for the Financial Year 2006-2007 on 21st June 2007. The Committee, further noted from the contents of the search report of the Company Secretary and an independent professional dated 27th November 2018 submitted on record by the Respondent that although the names of the erstwhile directors were removed from the position of the Directors on 21st July 2005 but their names still existed as the Directors till the aforesaid form 32 was uploaded on ROC website. The Committee, thus, was of the view that the contention of the Respondent made at the time of hearing that he had no evidence to hold that the shareholding of the existing directors had been transferred in the auction and they were no more the directors of the Company as on the date of signing respective Financial Statements was acceptable.

8. Thus the Committee was of the considered opinion that there was no failure on part of the Respondent in carrying out audit assignment of the Company for the Financial Years 2005-2006 and 2006-07 as he had certified the financials which were counter-signed by the persons in the capacity of Directors whose names also existed in the MCA records.

Conclusion

9. Thus, in conclusion, in the considered opinion of the Committee, the Respondent was **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 passed 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 Ajay Mittal, IAS (Retd.)
Member (Govt. Nominee)

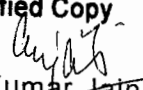
Sd/-
(CA. Shyam Lal Agarwal)
Member

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