

CONFIDENTIAL

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

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

Findings 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

PPR/P/7/2014/DD/5/INF/2014-DC/709/2017

In the matter of:

CA. Sanjay Kumar Agrawal,
309, 2nd Floor,
Eskay Plaza,
Near Anand Talkies,
Moudhapara,
RAIPUR- 492001

---Respondent

Members Present:

CA. Naveen N.D. Gupta, Presiding Officer
Shri Ajay Mittal, IAS (Retd.), Member (Govt. Nominee)
Ms. Anita Kapur, Member (Govt. Nominee)
CA. Shyam Lal Agarwal, Member
CA. Sanjay Kumar Agarwal, Member

Date of Final Hearing : 12th November, 2018

Place of Final Hearing : New Delhi

PARTIES PRESENT

Counsel for the Respondent: CA. C.V. Sajan



Allegations of the Informant, The Manager, RBI, Bhopal:

Letters dated 17th May, 2013 (A-3 to A-42) and 13th September, 2013 were received from Ms. Meenakshi Dubey, the Manager, Reserve Bank of India, Bhopal (hereinafter referred to as “**Informant**”) containing allegations against **CA. Sanjay Kumar Agrawal** (hereinafter referred to as the “**Respondent**”). As per the information letter dated 17th May, 2013 read with the letter of Informant dated 13th September, 2013, from the audited Report and audited Financial Statement of M/s. Silver star Finance and Leasing Ltd., Satna (M.P.) (hereinafter referred to as the “**Company**”) for the Financial Year 2011-12 as audited by the Respondent, it was observed that 20% of the profit was not transferred to the Statutory Reserve Fund as per the requirement of Section 45-IC of the RBI Act, 1934 and accordingly, the Respondent had failed to submit the Exception Report in this context to RBI. Further, it was also alleged that the Certificate issued by the Respondent was not in the specified format.

Proceedings:

1. At the time of hearing held on 21st May, 2018, the then Committee noted the presence of the Respondent along with his authorized Counsel. The Respondent was put on oath. Thereafter, the then Committee asked the Respondent as to whether he wished the charges to be read out or these could be taken as read. The Respondent stated 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 to the charges, the Respondent pleaded not guilty and opted to defend the case. The Counsel for the Respondent, thereafter, made his submissions on the allegations. The then Committee further examined the matter in view of the information available and considered the submissions made by the Counsel present alongwith the Respondent. Based on the documents available on record and after considering the oral and written submissions made by the Respondent before it, the then Committee directed the Office to seek certain Clarification/opinion from Auditing and Assurance Standard Board of ICAI with reference to Section 45-IC of the RBI Act 1934. The Committee also directed that a letter be written to the RBI to seek the details of action taken against the Company in respect of reported non-compliance. In pursuance to further directions given by the Committee from time to time, the following information was sought from the Respondent as well:



- a) Whether the Company in question had declared any dividend in the year under examination or thereafter but before creating special reserve as required under section 45-IC of the RBI Act.
- b) In case, dividend was not declared, the period when such Reserve was first created and the period(s) against the profit of which it was created with the copy of balance sheet concerned highlighting the profits against which reserve was created and provide the name of the auditor of the Company for the period(s) concerned.
- c) If the dividend was declared subsequently in (b) case above, then how much dividend was declared and whether special reserve was created only against the profits of that particular year or against the entire surplus accumulated till then and to furnish the details thereof as in (b) above.
- d) Whether if RBI had taken any action against the company in question and if so the details thereof.

2. 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. The Committee thereafter informed the Counsel 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 defence both in writing and orally was 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, the Committee concluded the hearing in the matter.

3. The Respondent in his written submissions had stated that the Company in question was engaged predominantly in trading business of motor vehicles because of which share of NBFC business had shrunk significantly and the profit attributable to NBFC business was so insignificant that there was no scope for creating any Statutory Reserve Fund as prescribed by the NBFC Regulations. Therefore, there was no violation in this case. Since there was no violation, the Exception report was not required to be filed either. As regards the allegation that the Certificate was not in specified format, it was submitted that the allegation raised by the RBI in its allegation



letter was vague as the only report an auditor was required to file with RBI was the Exception Report which was not applicable in extant case and the Audit Report to Board of Directors and annexure thereto were the other reports already furnished by the Respondent, but directly to the Company. All of them were in proper format with all contents as required by RBI notifications. The voluntary certificate lying on page A-8 of the PFO was an additional certificate obtained by the Company from Respondent, on a special request, ostensibly to file with RBI to comply with their queries and no format was specified for this certificate nor was it issued in compliance of any specific RBI Notification. Hence no case of professional negligence can be made against the Respondent on such an ambiguous point.

Findings of the Committee:

4. The Committee noted that the basic charge against the Respondent was that in the Audited Financial Statement of the Company for the Financial Year 2011-2012, 20% of the profit had not been transferred to the Statutory Reserve Fund as per the requirement of 45-IC and that the certificate issued by him was not in the prescribed format. The Committee also noted that the Respondent had failed to submit the Exception Report to RBI and also the certificate issued by the Respondent was not in the specified format.

5. The Committee noted the provisions of Section 45-IC of RBI Act, 1934 in respect statutory reserve fund which state as under:

45-IC Reserve fund:-

(1) non-banking financial Company shall create a reserve fund and transfer therein a sum not less than twenty per cent of its net profit every year as disclosed in the profit and loss account and before any dividend is declared.

6. It was noted that the Respondent had submitted that the Company was engaged predominantly in trading business of motor vehicles because of which share of NBFC business had shrunk significantly and no profit was earned from its NBFC business during 2011-2012. Therefore, there was no need for creating any Statutory Reserve Fund as prescribed by NBFC Regulations. It was noted that the company had



declared dividend of Rs. 69,870/- for Financial Year 2011-12. However, such profit was not earned from NBFC activities of the Company but from its truck dealership business. It was noted from the statement of Profit & loss for the said period that total revenue was reported as Rs.37.37 crores (B-10) out of which Rs. 36.81 crores had been reported as revenue from operations which was earned by Trading of goods and scrap sales as evident from Note II. Revenue from operations (B-15). Further the balance being 'other income' constituted primarily of labour charges and free service constituting 33 lakhs (approx). Hence, it was viewed that contention of the Respondent that dividend was not paid out of profit of NBFC activities was acceptable. Further, it was noted that Para 2.11 of 'Technical Guide on Audit of Non-Banking Financial Companies' issued in 2010 states as follows with respect of Reserve Fund:

*"Every NBFC is required to create a Reserve Fund to which at least 20 percent of its net profits must be transferred **before declaration of any dividend**. The Reserve Fund can be used only for the purposes specified by the RBI from time to time. The Central Government has the power to exempt, on the recommendation of the RBI, an NBFC from this requirement provided the sum total of its statutory reserves and share premium account is not less than its paid up capital (**emphasis added**)."*

7. The Committee thus noted that since no dividend was paid out of NBFC activities, obligation to transfer to statutory reserve does not arise. Thus, the obligation on the auditor for submission of the exception report was not expected in extant case. The Committee thus decided to hold the Respondent not guilty of the first charge as alleged in the instant case.

8. As regard the second charge relating to the non-submission of the report in specific format, the Committee noted the Respondent's submission and was of the considered view that the allegation appeared to be vague as the only report that was required to be filed with RBI was the exception report, which was not applicable in the extant case. However a certificate dated 2nd January 2013 was referred to by the RBI in its allegation letter in context of this allegation. On perusal of the same, the Committee noted that it was an additional certificate obtained by the Company from the Respondent to comply with the queries and no specific format was specified for this certificate nor was it issued in compliance to any specific RBI Notification. The



Committee therefore was of the considered view that there was no case of professional misconduct against the Respondent as regard the second charge also.

Conclusion:

9. 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 orders 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

Sd/-
(CA. Sanjay Kumar Agarwal)
Member

Date : 29th January, 2019

Place : New Delhi



Certified Copy

Ajay Kumar Jain
Deputy Secretary
Disciplinary Directorate
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