

CONFIDENTIAL

DISCIPLINARY COMMITTEE [BENCH – II (2018-2019)]

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

Findings cum Order 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.

File No. : [PR 253/13-DD/249/2013]/DC/507/2016]

In the matter of:

**Ms. Ritu Kansal,
703, Millenia Emerald Heights,
Ramprastha Greens,
Sector-7, Vaishali,
Ghaziabad-201 010**

.....Complainant

Versus

**CA. Sandeep Agrawal (M. No. 411029),
M/s Rama Kant Gupta & Co., (FRN No. 005005C)
Ganesh Bhawan,
Chiera Oil,
Mdhoganj Lashkar
Gwalior-474 001**

.....Respondent

MEMBERS PRESENT:

**CA. Prafulla P. Chhajed, Presiding Officer
Shri Rajeev Kher, I.A.S. (Retd.), Govt. Nominee
CA. Amarjit Chopra, Government Nominee
CA. Mangesh P. Kinare, Member**

DATE OF FINAL HEARING : 18.09.2018

PLACE OF FINAL HEARING : ICAI Bhawan, New Delhi

PARTIES PRESENT:

**Respondent : CA. Sandeep Agrawal
Counsel for the Respondent : CA. Ravi Holani and CA. Kapil Ahuja**



Ms. Ritu Kansal, Ghaziabad –vs.- CA. Sandeep Agrawal, Gwalior

Charges in Brief:-

1. The Committee noted that there is only one charge against the Respondent that he along with his partner CA. Rama Kant Gupta of M/s. Rama K Gupta & Co. (earlier M/s. Lulla Gupta & Co.) were the Statutory Auditors of M/s. Decopride Infratech Pvt. Ltd. (hereinafter referred as **the Company**) wherein Mrs. Asha Gupta, wife of Mr. Rama Kant Gupta, was acting as Director of the Company and signed Balance Sheet as on 31.03.2009 as well as on 31.03.2010. Further, the Respondent and his partner have verified and certified various documents for the purpose of filing with the Registrar of Companies.

Brief facts of the Proceedings held on 18/09/2018:

2. On the day of hearing i.e. 18/09/2018, the Committee noted that the Complainant was not present and even there was no intimation of her absence. However, there was a notarized affidavit dated 03rd July, 2018 from her for withdrawal of this complaint against the Respondent in which she has stated that *"she had filed a complaint against CA. Sandeep Agrawal on 11.10.2013 which was registered as complaint No. DD/249/2013. That the complaint was filed on account of a commercial dispute with the promoters and directors of M/s. Decopride Infra-tech Private Limited (Company). That the commercial dispute has now been settled and hence, she hereby unequivocally withdraw the aforesaid complaint. That she has no grievance against CA. Sandeep Agrawal in respect of professional or other misconduct in any manner whatsoever"*. The same was placed before the Committee for its consideration in terms of Rule 6 of the Chartered Accountants (Procedure of Investigation of Professional and Other Misconduct and Conduct of Cases) Rules, 2007. The Committee on consideration of the same did not accept the said withdrawal and decided to proceed on the merits of the case.

2.1 On other side, the Respondent with his Counsel appeared before the Committee. The Respondent was put on oath. In the absence of the Complainant and with consent of Respondent, the charges were taken as read. On being asked to the Respondent whether he pleads guilty, he replied in negative. Thereafter, the Committee directed him to proceed ahead with his defence.



2.2 The Counsel for the Respondent filed written submissions at the time of hearing and submitted that the Respondent has not certified any documents of the Company and he has merely uploaded certain statutory forms of the Company with Registrar of Companies. Further, he has also never signed any Balance Sheet of the Company in the capacity of an auditor. So merely uploading certain forms without certifying anything would not get attracted in any clauses of Schedules to the Act.

2.3 The Committee recorded the submissions of the Counsel for the Respondent and concluded the hearing in the above captioned case.

Findings of the Committee

3. On perusal of documents on record, the Committee noted that Annual Financial statements for Financial Years 2008-2009 and 2009-2010 of the Company have been certified by CA. Rama Kant Gupta, partner of the Respondent. The Respondent was nowhere involved in certification of financial statements of the Company.

3.1 Further, the Committee perused the submissions of the Counsel for the Respondent on the day of hearing and documents/papers on record and observed that the Respondent had uploaded: (i) Form 23B i.e. accepting the appointment as auditor of the Company for financial year 2012-2013 on behalf of M/s. Rama K. Gupta & Co. (ii) Form 23 for registration of resolution dated 15/02/2013 and (iii) Form 23 AC i.e. filing of Balance Sheet and other documents for financial year ending on 31.03.2010 with Registrar of Companies. Except uploading these Forms, there was no role of the Respondent in any kind of certification or audit opinion and or functioning of the Company.

3.2 On perusal of these Forms, the Committee noted that as there is no expression of any audit opinion by the Respondent, hence, attributing any violation of provisions of Clause (4) and Clause (7) of Part I of Second Schedule to the Chartered Accountant Act, 1949 on his part does not arise. Accordingly, the Committee decided to hold the Respondent NOT GUILTY in respect of this charge.

4. Further, on perusal of Prima Facie Opinion, the Committee noted that another charge against the Respondent is that a letter dated 20th September, 2014 was received from the Complainant requesting for withdrawal of her complaint. However, since the signature of the Complainant did not match with that in Form "I", confirmation was sought from the Complainant vide email dated 5th February, 2015 wherein she



specifically denied to have withdrawn the complaint. At the time of formation of Prima Facie Opinion, this was taken as indulgence of the Respondent in trying to extricate himself from this case through undesirable means and accordingly, he was held guilty of 'other misconduct' under Clause (2) of Part IV of the First Schedule read with Section 22 to the Chartered Accountant Act, 1949.

4.1 In respect of above charge, the Committee observed that there is no direct or indirect evidence to prove the indulgence of the Respondent in this episode. Mere circumstantial evidences or suspicion on conduct of the Respondent are not sufficient to hold the Respondent GUILTY of "Other Misconduct" falling within the meaning of Clause (2) of Part IV of the First Schedule read with Section 22 of the Chartered Accountant Act, 1949 especially when the Complainant has again expressed her wish to withdraw said complaint against the Respondent vide her affidavit dated 03/07/2018 as narrated in para 2 above.

Conclusion

5. Thus, upon consideration of all facts and records and in terms of reasoning as above, in the considered opinion of the Committee, the Respondent is **NOT GUILTY** of "Other Misconduct" falling within the meaning of Clause (2) of Part IV of First Schedule and Clauses (4) and (7) of Part I of Second Schedule to the Chartered Accountant Act, 1949 read with Section 22 of the said Act.

6. Accordingly, in terms of Rule 19 (2) of the Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007, the Committee passes Order for closure of this case against the Respondent.



Sd/-
(CA. PRAFULLA P. CHHAJED)
PRESIDING OFFICER

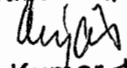
Sd/-
(SH. RAJEEV KHER, I.A.S. (Retd.)
GOVERNMENT NOMINEE

Sd/-
(CA. AMARJIT CHOPRA)
GOVERNMENT NOMINEE

Sd/-
(CA. MANGESH P. KINARE)
MEMBER

DATE : 05th February, 2019.
PLACE : New Delhi

Certified Copy


Ajay Kumar Jain
Deputy Secretary
Disciplinary Directorate