

DISCIPLINARY COMMITTEE [BENCH-III (2019-20)]

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

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

File No. : [PPR/P/74/15/DD/6/INF/17-DC/1252/19]

In the matter of:

CA. A Vijay Kumar (M.No.200770),

Flat no. 206, SIRI Towers,

Plot no. 5, Maitrivihar,

S.R. Nagar Post,

Hyderabad-500 038

.....Respondent

MEMBERS PRESENT:

CA. Atul Kumar Gupta, Presiding Officer

Smt. Anita Kapur, Member (Govt. Nominee)

Shri Ajay Mittal, Member (Govt. Nominee)

CA. Chandrashekhar Vasant Chitale, Member

CA. Manu Agrawal, Member

Date of Final Hearing: 2nd July 2020 through Video Conferencing

Place of Hearing: Gurugram

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Allegation raised by the Informant, CBI:-

1. The Informant Department alleged that the Respondent without verifying requisite records had issued three certificates dated 7th February, 2011, 5th March, 2011 and 31st May, 2011 to M/s Sven Genetech Ltd.(hereinafter referred to as the 'Company') According to the Informant Department, based on the certificate of the Respondent, a loan was released by State Bank of India to the Company.

1.1 In respect of first certificate dated 7th February, 2011 (**B-165A**) issued by the Respondent, it was alleged that the Respondent in this certificate had certified that the Company had brought an amount of Rs. 314.61 Lakhs in form of equity on 31.01.2011 and amount of Rs. 314.61 Lakhs has been paid to machinery suppliers, raw material suppliers and others as an advance for which SBI had sanctioned corporate loan.

1.2 In respect of second certificate dated 5th March, 2011 (**B-165B**) issued by the Respondent, it was alleged that the Respondent in this certificate had certified that the Company had brought in an amount of Rs. 3.75 crores out of its internal accruals as on 04.03.2011 and paid to various parties for expansion of project.

1.3 In respect of third and last certificate dated 31st May, 2011 (**B-165C**) issued by the Respondent, it was alleged that the Respondent in this certificate had certified the end use of loans amounts released by SBI, Overseas Branch, Hyderabad by the Company by stating that the Company had drawn Rs. 21,11,62,443.00 as on 31.03.2011 out of corporate loan amount of Rs. 22.50 crores sanctioned by SBI.

Proceedings:

2. At the outset on 2nd July 2020, the Committee noted that the Respondent vide his e-mail dated 22nd June, 2020 sent his written submissions in the matter and also submitted that due to prevailing unavoidable situation, he would be unable to appear before the Committee for e-hearing and thus requested the Committee to decide his



case based on the submissions available on record. The Committee, accordingly, upon consideration of the facts and circumstances of the case and all the documents as well as written submissions as available on record , concluded hearing in the matter.

Findings of the Committee:

3. The Committee noted that the **first allegation** of the Informant against the Respondent was that he had issued a certificate dated 7th February, 2011 (**B-165A**) wherein he had certified that the Company had brought an amount of Rs. 314.61 Lakhs in form of equity on 31.01.2011 and an amount of Rs. 314.61 Lakhs was paid to machinery suppliers, raw material suppliers and others as an advance for which SBI had sanctioned corporate loan. It was noted that the certification was made in two parts wherein first part related to bringing of amount of Rs. 314.61 Lakhs in form of equity and second part related to payment of Rs. 314.61 Lakhs as advances to suppliers of machinery/raw material/others. As regards first part of the certificate, the Committee noted that the Director(Discipline) in his *Prima Facie* Opinion did not find any ambiguity regarding equity capital and its receipt and thus had dropped the allegation related to first part of the First certificate. The Committee has ,accordingly, looked into the second part of the First certificate only on merits during the hearing.

3.1 As regard **second part of the first certificate** ,it was alleged that the payments were made to the suppliers by M/s Jupiter Bioscience Limited(the parent Company) on behalf of the Company towards advances which brought on record the fact that the Company used the route of its parent Company for making payment of Rs. 314.61 Lakhs as advances to suppliers of machinery/raw material/others on its behalf (**B-8 to B-9 vis- a-vis B-27 to B-69**) .

3.2 The Respondent in this regard had submitted in his defence that M/s.Jupiter Bioscience Limited was making investments continuously in its subsidiary ,M/s.Sven Genetech Limited i.e., the Company in extant case since its inception in the form of Equity only. Further, as informed by the Management of the company, due to the

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technical capabilities of M/s.Jupiter Bioscience Limited, it was involved in the project for better negotiations and thus also made advance payments to the machinery suppliers and others. Accordingly, M/s.Jupiter Bioscience Limited has paid advances to the machinery suppliers and others and obtained receipts from the suppliers and these receipts were part and parcel of the loan proposal of SBI in the form of means of finance. All the data was submitted to the State Bank of India (SBI) by the company during the period of appraisal and prior to the first certificate of the Respondent dated 07.02.2011. Thereafter, based on the equipment quotations, receipts and bank statements submitted to SBI; the SBI had released the balance payments to the suppliers after deducting the advances already paid by the company. He also stated that while issuing the said certificate, he had verified copy of sanction letter dated 05.02.2011 from SBI (**B-18 to B-26**), Bank Statements of the Company and its parent Company i.e. M/s Jupiter Bioscience Limited, Documents pertaining to EGM on 05.1.2011, EGM extracts 05.02.2011 and resolution of allotment.

3.3 The Committee in this regard noted that the essence of second leg of the First charge was that an amount of Rs. 314.61 Lakhs has been paid to machinery suppliers, raw material suppliers and others as an advance for which SBI had sanctioned corporate loan and such advance payment to suppliers were routed through the parent Company. The Committee noted the submissions of the Respondent in this regard wherein he had submitted that the reason for such a routing of advance money was that firstly the parent Company was involved in the project and secondly, simply to seek better negotiation ,such a mode of payment was adopted. The Committee also noted that although the Informant Department had raised an allegation as regard the certificate dated 7th February 2011 issued by the Respondent but failed to pinpoint the alleged misconduct on part of Respondent as the figures of equity received and the amount of advance passed to suppliers as certified by the Respondent were absolutely correct and matched with the documents on record. As regard the fact that advance payment to suppliers were routed through the parent Company, the Committee was of the view that the same would have been

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a strategic business decision of the Company and concluded that since no misconduct on part of Respondent in this regard was evident , therefore, the Respondent was held **Not Guilty** of this allegation.

4. The Committee noted that the **second allegation** of the Informant against the Respondent was in respect of second certificate dated 5th March, 2011 (**B-165B**) issued by the Respondent wherein the Respondent had certified that the Company had brought in an amount of Rs. 3.75 crores out of its internal accruals as on 04.03.2011 and paid to various parties for expansion of project. It was noted that the certification was made in two parts wherein first part related to bringing of amount of Rs. 3.75 crores out of internal accruals and second part related to payment of Rs. 3.75 crores as advances to suppliers of machinery/raw material/others.

4.1 The Committee noted the submissions made by the Respondent wherein he had stated that the Company had internal accruals in form of Profit after Tax (PAT) to the extent of Rs. 953.87 Lakhs as at 31.3.2010 and Rs. 1539.13 Lakhs as at 31.03.2011 as per the audited Balance Sheet of the Company and he had certified that the Company has deployed internal accruals of Rs.375 Lakhs in the project. As regard the second part of the certificate, wherein it was certified that the advances were paid by the Company directly to the suppliers of machinery/raw material/others out of internal accruals , the Respondent submitted that the certificate was issued by him after verifying copy of receipts produced by the suppliers (**B-11 to B-12 vis-à-vis B-91 to B-118**), Bank statement of the Company confirming payments were made to suppliers and others, Ledger accounts and other statements for the payments recorded in the books of accounts of the Company, and Balance Sheet of the Company (**B-164 to B-164B**).

4.2 The Committee in this regard noted that on the perusal of documents made available on record ,it had been well established/demonstrated by the Respondent that he had issued the certificate certifying the equity proceeds received by the Company and the advances paid to the suppliers were as per the documents

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produced to him for verifications which included receipts of the suppliers, bank statements, EGM Notices, resolutions and other relevant documents including documents submitted with ROC. The Committee was, accordingly, of the view that there was no merits in the allegation raised and thus the Respondent was held **Not Guilty** of this allegation.

5. In respect of **third and last certificate**, dated 31st May, 2011 (**B-165C**) issued by the Respondent, the Committee noted that the Director(Discipline) while forming his *Prima Facie* Opinion had dropped this charge and held the Respondent not guilty of this allegation. Accordingly, the same was not taken up the Committee on merits.

Conclusion :

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

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

sd/-
[CA. Atul Kumar Gupta]
Presiding Officer

sd/-
[Smt. Anita Kapur]
Member, (Govt. Nominee)
(approved & confirmed through e-mail)

sd/-
[Shri Ajay Mittal]
Member, (Govt. Nominee)
(approved & confirmed through e-mail)

sd/-
[CA. Chandrashekhar Vasant Chitale]
Member
(approved & confirmed through e-mail)

sd/-
[CA. Manu Agrawal]
Member
(approved & confirmed through e-mail)

DATE: 28th August, 2020 (through video conferencing)

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Certified to be True Copy
Mohita Khanna
(Mohita Khanna)
Assistant Secretary
Disciplinary Directorate
The Institute of Chartered Accountants of India