

CONFIDENTIAL

DISCIPLINARY COMMITTEE [BENCH – IV (2020-2021)]

[Constituted under Section 21B of the Chartered Accountants 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-289/2014/DD/303/14/DC/810/18]

In the matter of:

Ms. Sandeep Kaur,
F-20, 1st Floor,
Shopping Complex,
Mansarovar Garden
NEW DELHI-110 015

.....Complainant

Versus

CA. Bhagirath Kapil Kumar (M No.095639)
M/s. Batra Deepak & Associates,
Chartered Accountant,
1-B, 1/17, Lalita Park,
Vikas Marg,
Laxmi Nagar
DELHI-110 092

.....Respondent

MEMBERS PRESENT:

CA. Nihar Niranjana Jambusaria, Presiding Officer
Shri Arun Kumar, IAS (Retd.), Government Nominee
Ms. Nita Chowdhury, IAS (Retd.), Government Nominee
CA. (Dr.) Debashis Mitra, Member
CA. Jay Chhaura, Member

DATE OF FINAL HEARING : 07.09.2020
PLACE OF FINAL HEARING : ICAI, NEW DELHI (Through VC)

PARTIES PRESENT:

Respondent(s) : CA. Kapil Kumar Bhagirath
Counsel for the Respondent (s) : CA. C. V. Sajan

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Charges in brief:-

Background:

The Respondent was the auditor of the Company M/s. Scientific Security Management Services Pvt. Ltd (hereinafter referred as **the Company**) for the financial years 2012-13 and 2013-14. The Complainant is the wife of the Managing Director of the Company and there were some disputes between the Complainant and the Managing Director of the Company. The Complainant had cited certain discrepancies in the balance sheets audited by the Respondent.

1. There are six charges against the Respondent, in which he has been held Prima facie guilty. These are as under:-

1.1 First charge relates to Capital Work in Progress amounting to Rs. 17.34 crores included in Fixed Assets. The Complainant alleged that the Respondent failed to disclose that the said transaction is in the nature of trade in properties and is not allowed by the Objects Clause of the Memorandum of Association (MOA) of the Company. Further the Complainant alleged that there was no capital work in progress.

1.2 Second charge relates to non-mentioning of fraud by the employees of the Company by the Respondent in his audit report.

1.3 Third charge relates to non-disclosure of service tax raid on 05.04.2013. The Complainant in her complaint had mentioned that a demand of more than Rs. 8 crores was raised at the time of the survey.

1.4 Next charge is in respect of contradictory remarks as per audit report and as per schedules to the financial statements regarding fixed assets.

1.5 Fifth charge of the Complainant is regarding irregularity of the Company in paying its dues, which according to her was not reported properly in Para (ix) (a) of CARO by the Respondent.

1.6 The last and sixth charge is that the Company has defaulted in making the payment of installments on vehicle loan, which has grossly been ignored by the Respondent auditor.

Brief of Proceedings:

2. The Committee noted that the Respondent along-with Counsel was present and appeared before it through video conferencing.

2.1 The Secretary to the Committee apprised that the Complainant is not present as notice of this meeting intimating date, time and venue has been sent to her at available address but the same could not be delivered after repeated attempts by courier agency and the same was returned with remark 'receiver not available'



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2.2 The Committee noted that this case was earlier fixed on 27/08/2020 and was adjourned in the absence of the Complainant and this time also she is not present and this case pertains to year 2014, hence, looking at the long pendency of this case, the Committee decided to proceed ex-parte the Complainant based upon available documents on record.

2.3 The Respondent was put on oath. In the absence of the Complainant, the Secretary to the Committee explained the charges to the Respondent and being enquired by the Committee; he pleaded not guilty and wishes to defend the charges.

2.4 The Counsel for the Respondent made written as well as oral submissions. After recording the submissions of the parties, the Committee concluded the hearing in the captioned matter.

FINDINGS:

The findings of the Committee in respect of charge (s) (explained in Para 1 above) are as under:-

3.1 The Committee perused the submissions of the Respondent dated 19/08/2020 and Memorandum of Association of the Company brought on record by the Respondent. After perusal of the same, the Committee noted that the Company was permitted to invest in properties as per point no. 2 of Ancillary and Incidental Objects of the Company, which reads as under:

"To purchase, take on lease or otherwise acquire and to hold and maintain land, rights, over or connected with land, buildings, patents, inventions, immovable property of any kind which may be deemed necessary or convenient for the purpose of the Company"

3.1.1 Further, the Committee perused the resolutions of Board meetings of the Company brought on record by the Respondent and noted that the Board has authorized Mr. Sanjeev Paul, Director and the Complainant, one of the Directors of Ms. Sandeep Kaur, New Delhi -vs. - CA. Bhagirath Kapil Kumar (M. No. 095639), New Delhi

the Company for the purchase of residential/commercial properties for the purpose of guest houses and branch offices.

3.1.2 In view of the above facts/documents, the Committee was of the view that there is no merit in the said charge of the Complainant as the same was well within the Object Clause of the MOA of the Company.

3.2 In respect of the second charge, the Committee perused the original complaint and noted that the Complainant herself has admitted that “an amount of Rs. 7.35 crores was *stolen* in a heist conducted, planned and executed by the employees of the Company”.

3.2.1 The Committee also made reference to FIR no. 211/2013 dated 24/06/2013 filed by a security guard of the Company and noted that in said the FIR, it is mentioned at column no. 9 that an amount of Rs. 7.31 crores was stolen by cutting the Hand Safe (Cash Box)

3.2.3 Moreover, in view of audited financial statements for financial year 2013-2014 audited by the Respondent, it is evident that insurance claim was lodged by the Company for this effect and the same was covered under insurance and accounted for in the books of the Company.

3.2.3 Further, there is a Management representation letter dated 23/08/2014, in the note no. 18 in which it is stated that “No material *frauds* have been noticed by the Company Management during the year except incidents of the theft and burglary of the cash at various ATMs which is part and parcel of the business of the company.”

3.2.4 On the basis of the above findings, the Committee was of the opinion that it was a cash loss and not a fraud as construed by the Complainant. Hence, there is no requirement of reporting the same in CARO as alleged by the Complainant.

3.3 In respect of next charge i.e. service tax raid, the Committee noted the contents of letter dated 09/01/2014 of Additional Director General, Directorate General of Central Excise Intelligence, which reads as under:-





"Since M/s. Scientific Security Management Services Pvt. Ltd. have discharged their entire service tax liability along-with interest on short paid service tax and prescribed penalty, well before the issuance of show cause notice and as all the details were available in their specified records, as per the provisions of Section 73 (4A) of the Finance Act, 1994, the proceedings are closed and accordingly, no show cause notice is being issued to the Company".

3.3.1 Moreover, there is Management representation letter dated 23/08/2013, in which it is stated that the Company is regular in depositing all statutory dues including EPF, ESI, Service Tax, Professional Tax, TDS and other undisputed taxes.

3.3.2 In view of the above facts/findings, the Committee was of the view that the said charge of the Complainant is factually incorrect as the same has been accounted for in the books itself and Excise Department has also closed the case without any show cause notice to the Company.

3.4 In respect of fourth charge i.e. contradictory statements, the Committee noted the submissions of the Counsel for the Respondent. The Counsel admitted the mistake that under point (i) (c) of CARO, the word "substantial" was unintentionally omitted.

3.4.1 Upon perusal of audited financial statements of the Company, the Committee noted that fixed assets disposed off during the year is just 3% of total fixed assets which is not a substantial part which could affect going concern of the Company. Hence, in view of the concept of materiality, the Committee dismisses said charge leveled against the Respondent by the Complainant.

3.5 Next charge related to irregularity in paying dues, which was not reported in CARO by the Respondent. However, in view of findings given at Para 3.3 (including sub paras) regarding service tax liability, the Committee absolves the Respondent from this charge.

3.6 Further, in respect of last charge that the Company has defaulted in making the payment of installments on vehicle loans, the Committee accepted the submissions

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of the Counsel for the Respondent that there is no due which was outstanding for more than six months .Moreover, upon perusal of Prima Facie Opinion and complaint letter and rejoinder, the Committee noted that there is no single evidence on record to substantiate the said charge. Accordingly, the Committee dropped the said charge against the Respondent.

CONCLUSION:

4. Thus, in the considered opinion of the Committee, the Respondent is **NOT GUILTY** of Professional Misconduct falling within the meaning of Items (5), (6) & (7) of Part I of the Second Schedule to the Chartered Accountants Act, 1949.

5. 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. Nihar Niranjana Jambusaria)
Presiding Officer

Sd/-

Shri Arun Kumar, IAS (Retd.)
Government Nominee

Sd/-

Ms. Nita Chowdhury, IAS (Retd.)
Government Nominee

Sd/-

CA. (Dr.) Debashis Mitra
Member

Sd/-

CA. Jay Chhaira
Member

Date: 09th November, 2020

Place: New Delhi

Certified to be true copy



Mukesh Kumar Mittal
Assistant Secretary,
Disciplinary Directorate

The Institute of Chartered Accountants of India,
ICAI Bhawan, Vishwas Nagar, Shahdara, Delhi-110032