

CONFIDENTIAL

DISCIPLINARY COMMITTEE [BENCH – III (2020-21)]
[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. : [PR 112/18- DD/137/2018-DC/1242/2019]

In the matter of:

Shri Rajiv Pradhan,

Authorized Signatory,

M/s Cascade Energy Pte. Ltd.,

Flat No.7, Door No. 10,

Madhans, South Canal Bank Road,

CHENNAI - 600 028

...Complainant

Versus

CA. R Mohan (M.No. 023022),

Partner, M/s Anil Nair & Associates,

Chartered Accountants,

"CASA BLANCA", 1st Floor,

6, Casa, Major Road,

CHENNAI - 600 008

....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: 24th August, 2020 through Video Conferencing

PARTIES PRESENT:

The following Parties were present :

- (i) **CA R Mohan – the Respondent (appeared from his residence at Chennai)**

(M)

Allegations of the Complainant:

1. The Complainant alleged that the Complainant Company, being 51% shareholder of M/s Zynergy Solar Projects & Services Ltd., Chennai (hereinafter referred to as the **Company**"), sought its audit report from the Respondent being the Statutory auditor for financial year 2016-17 vide letter dated 9th March, 2018 (**C-7 to C-9**) but the Respondent did not respond to the same.

Proceedings:

2. The Committee noted that the Respondent was present during the hearing. However, the Complaint was neither present nor any communication was received from him. The Committee, thereafter, decided to proceed in the matter. The Respondent gave a declaration that there was nobody except him in his room from where he was appearing before it and that he would neither record nor store the proceedings of the Committee in any form. Being the first hearing, the Respondent was put on oath. Thereafter, the Committee asked the Respondent whether he wished the charges to be read out or it could be taken as read. The Respondent stated he was aware of the allegations raised against him and the same might be taken as read. On being asked, as to whether the Respondent pleaded guilty, he replied that the Respondent pleaded not guilty and made his submissions in the matter.

Thereafter, the Committee examined the Respondent and he, thereafter, made his final submissions in the matter. Based on the documents available on record and after considering the oral and written submissions made by the the Respondent before it, the Committee concluded hearing in the matter.

Findings of the Committee:

3. The Committee noted that the Director(Discipline) in his prima facie opinion dated 29th August 2019 had held the Respondent not guilty of alleged misconduct but the Board of Discipline, at its 130th meeting held on 25th Nov, 2019, considered the prima facie opinion of the Director (Discipline) along with the Complaint and Written Statement on record. The Board on perusal of the letter dated 9th March 2018 together with the copy of the letter dated 7th August, 2017 and the copy of the financial statement of the company Zynergy Solar Projects and Services Pvt Ltd. for the F.Y 2015-16 and 2016-17 was of the view that the conduct of the Respondent needs to be examined further. Accordingly, the Board did not agree with the prima facie opinion of the Director (Discipline) and held the Respondent Guilty of Professional Misconduct falling within the meaning of Clause (7) of Part I and Clause (1) of Part II of the Second Schedule to the Chartered Accountants Act, 1949 and

referred the matter to the Disciplinary Committee to proceed under Chapter V of the CA Rules, 2007. Accordingly, the Committee conducted further inquiry in the extant matter against the Respondent that being the statutory auditor of the Company for F.Y. 2016-17, if he failed to provide audit report of the Company to M/s. Cascade Energy Pte. Ltd., Singapore which was holding 51% shares of the Company being represented by the Complainant.

4. The Committee noted the oral as well as the written submissions made by the Respondent in the matter wherein he inter-alia submitted that he received a letter dated 09.03.2018 from one Mr. V.Sankaranarayanan who purported to represent M/s. Cascade Energy Pte. Ltd., thus, was seeking a range of information from him pertaining to the financials of the Company for FY 2015-16 and 2016-17. However, there was no indication of any authorisation from M/s. Cascade Energy Pre. Ltd. in favour of Mr. Sankaranarayanan authorising him to seek any information on behalf of it from the Respondent. He further stated that for all practical purposes, the said Mr. V. Sankaranarayanan, who purported to be a Counsel for M/s. Cascade Energy Pre. Ltd. was nothing but a stranger to him, and he owed no obligation to respond to the said request made by him. Thereafter, the Respondent was informed in 2017 by the Managing Director of the Company stating that an Order had been passed by the Deputy Commissioner of Income Tax, Corporate Circle, 1(1), Chennai dated 19.05.2017 under Section 24(3) of the Benami Transactions (Prohibition) Amendment Act, 2016 attaching provisionally 51% of the shares and debentures of the Company and all the underlying rights held therein in the shares held by M/s. Cascade Energy Pte Ltd., Singapore.

4.1 The Respondent submitted that at no point of time M/s. Cascade Energy Pte. Ltd., Singapore ever approached him for any information. In such circumstances, there was no obligation resting on him to furnish any information when he had received a bald letter from one Mr. V. Sankaranarayanan who claimed himself to be the Counsel of M/s. Cascade Energy Pte Ltd. whose rights as a shareholder were frozen by the Income Tax Department together with the fact that there was no letter of authorisation presented by Mr. V. Sankaranarayanan along with his letter dated 9th March 2018.

5. The Committee, thereafter, perused the contents of letter dated 9th March, 2018 (C-7 to C-9) and noted that no authorization was attached to the same and hence in such a scenario the decision and approach of the Respondent in not sharing the documents and information with third party was warranted under the circumstances and quite justified more so when he had received an explicit information from the Managing Director of the Company in 2017 about the shares held by M/s

Cascade Energy Pte Ltd. Singapore being provisionally attached by the Income Tax Department. The Committee also noted that the notice/letter dated 9.3.2018 was received from an Advocate asking for some information about the financial statements and other matters thereof but there was no proof that he represented the other shareholder .i.e. the Singapore Company and if due to the management dispute and the provisional attachment of shares, the Respondent using his prudence and professional judgment did not respond, then it could in no way be construed as Professional Misconduct more so when Code of Ethics, issued by the Institute clearly advocates that the member in practice should not disclose information acquired in the course of professional engagement to any person other than client so engaging him. It further states that

"If disclosure is required in other cases, it would be necessary to ensure that the consent of the client is given by a person who is competent to accord such consent. Thus, in the case of a sole proprietary concern, the consent may be given by the proprietor or his constituted attorney who is legally empowered to give such consent. In the case of a partnership firm, since in turn, every partner has the authority to bind the firm by his acts, the consent may be given by any partner. In the case of a Company, by virtue of Section 291 of the Companies Act, the Board of Directors is empowered to do all that the Company in a general meeting may do unless a resolution by the Company in a general meeting is required by the Act or by the Memorandum or Articles of the Company. Hence, the consent may be given by the Managing Director if the powers of the Board of Directors are delegated to him comprehensively enough to include the power to give such consent, but if the powers of the Board of Directors are not so delegated, the consent should be obtained by means of resolution of the Board of Directors of the Company.

In view of above, it was felt that the Respondent was duty bound for not sharing information with the third party without obtaining the consent of his client and when he had been explicitly informed of the then prevailing circumstances by the Managing Director of the Company, the Respondent cannot be held guilty of the alleged misconduct.

6. The Committee also noted the casual approach being adopted by the Complainant whereby firstly, he raised unsubstantiated allegations against the Respondent and, thereafter, failed to file either the Rejoinder before the Director (Discipline) or any submissions before the Disciplinary Committee in the matter which gave an impression to the Committee that either he was non-serious to pursue the extant case against the Respondent or was satisfied with the conduct of the Respondent.

Conclusion :

7. Thus in conclusion, in the considered opinion of the Committee, the Respondent is held **NOT GUILTY** of professional misconduct falling within the meaning of Clause (7) of Part I and Clause (1) of Part II of Second Schedule of Chartered Accountant Act 1949.

8. The Committee, accordingly, ordered the closure of this case against the Respondent.



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

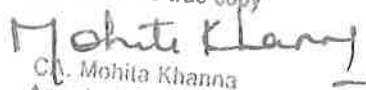
Sd/-
[Smt. Anita Kapur]
Member, (Govt. Nominee)
(approved & confirmed through e-mail)

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: 16th December, 2020 (passed through VC)

Certified to be true copy

C. Mohita Khanna
Assistant Secretary,
Disciplinary Directorate
The Institute of Chartered Accountants of India
ICAI Bhawan, Vishwas Nagar, Shahdra, Delhi-110032

